

# The State of South Carolina



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March 4, 1992

The Honorable Joseph B. Wilder  
Chairman, Joint Legislative  
Committee for the Disabled  
P. O. Box 11867  
Columbia, South Carolina 29211

Dear Representative Wilder:

In a letter to this Office you questioned whether there are any constitutional or other potential legal problems with proposed legislation, H.4133. Such bill states:

Shopping centers and business or commercial establishments which provide handicapped-only parking spaces on private property are authorized to issue uniform citations for violations of the prescribed use of such parking spaces, in accordance with regulations which must be promulgated by the Department of Highways and Public Transportation giving force and effect to the provisions of this section.

Therefore, pursuant to such provision, private entities are given authority to issue uniform citations, which I interpret to be the uniform traffic ticket authorized by Section 56-7-10 of the Code, to enforce the handicapped parking law, which is a State statutory offense. The handicapped parking provisions are set forth in Sections 56-3-1950 et seq. of the Code. Violations of such provisions are misdemeanor offenses which penalties of fines or terms of imprisonment.

I am unaware of any separate authority granting shopping centers, businesses or commercial establishments arrest authority. Also, such authorization of use of the uniform traffic ticket by commercial entities is in addition to

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that granted law enforcement officers who pursuant to Section 56-7-15 of the Code are authorized to utilize such ticket "... to arrest a person for an offense committed in the presence of a law enforcement officer ...." Authorization of use by the referenced commercial entities is unusual in that there is no reference to an individual with such businesses as being the actual party who may issue the ticket. As referenced, the uniform traffic ticket may be used by an officer to make an arrest for an offense committed in his presence. For misdemeanor offenses not committed in an officer's presence, an arrest warrant is typically required. See: Sections 17-13-10 and 17-13-30 of the Code. Before an arrest warrant may issue, the affiant must affirm on oath the facts alleged in the affidavit of the warrant. This grant of law enforcement authority to the referenced commercial entities without any separate authority grant of law enforcement authority also is distinguishable from other provisions which grant arrest authority but establish some standards for the officer to meet in association with such authority. See: Sections 23-23-40 of the Code which requires completion of basic training requirements by law enforcement officers; Section 40-17-130 of the Code which grants private security guards the arrest authority and power of sheriffs on the property they are hired to protect; strict registration and licensing provisions are separately established for such position. The legislation is also distinguishable from other uses of the uniform traffic ticket in that pursuant to Section 56-25-30 of the Code, the law enforcement officer who issues a uniform traffic ticket may allow drivers subject to the Nonresident Traffic Violators Compact to be released on their own recognizance without having to post bond or appear before a magistrate for bond purposes. The legislation makes no reference as to how bond situations would be handled for arrests made by commercial entities. Also, I assume that the legislation provides for the placement in the hands of all commercial entities with designated handicapped parking places uniform traffic tickets which could be used in the manner specified. Such widespread distribution may conflict with the provisions regulating the strict use of the ticket by regular law enforcement agencies. See: Sections 56-7-30 and 56-7-40 of the Code which provides for a method of auditing the use of such tickets and a criminal penalty for failing to properly account for a ticket.

In examining the proposed legislation and particularly noting the distinction between its grant of law enforcement authority to commercial entities which is distinguishable from similar grants of authority to individuals, it appears

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that such legislation could be considered an unlawful delegation of executive authority in violation of Article I, Section 8 of the State Constitution which provides for separation of powers. By H.4133 private commercial entities are granted unfettered discretion in the enforcement of a criminal statute, a typically executive function. No standards of eligibility or qualifications which must be met by these entities are provided. Also, as noted, the method of enforcement is distinguishable from that which is applicable in other situations of enforcement of the handicapped parking law.

It is generally stated:

Inasmuch as the power to legislate is by nature nondelegable, a fortiori it may not be delegated to a private person or persons ... However legislative delegations of power to private persons are not constitutionally forbidden if proper safeguards are provided, and the test is whether the particular delegation is reasonable under the circumstances, considering the purpose and aim of the statute. In order to meet the reasonableness test, a statute delegating power to private persons must satisfy both of the underlying concerns of the nondelegation doctrine, in that the legislature itself must have decided fundamental policy questions relevant to the legislative scheme, and such power may not validly be delegated where its exercise is not accompanied by adequate legislative standards or safeguards against arbitrary or self-motivated action.

The legislature may employ private persons, associations, or private corporations in a public, administrative capacity to carry the law into effect, or to determine facts on which the application or enforcement of the law is to depend, providing the statute establishes an independent standard for the guidance of those who are to administer the law.

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16 C.J.S. Constitutional Law, Section 141 pp. 454-458. Again, by H.4133 there is the delegation of authority to enforce the law, one of the fundamental responsibilities of government, to a private entity without any specification of standards which must be met or followed in such enforcement. A Court could conclude that such constitutes an unlawful delegation of authority.

You also questioned the status of an opinion of this Office dated May 21, 1980 which provides that law enforcement officers may issue a uniform traffic ticket for a violation of the handicapped parking provisions even though such property is not posted pursuant to Section 23-1-15 of the Code. The latter provision provides that private parking lots may be brought within police jurisdiction by the posting of appropriate signs informing the public of such police jurisdiction. Based upon my review, such opinion remains valid.

As to your question regarding any necessary amendment, I can only point to the examples set forth above which distinguish the method of enforcement by commercial entities of the handicapped parking law from other situations where a uniform traffic ticket is used to cite a violation. Attention would have to be given to these inconsistencies to avoid potential problems.

With kind regards, I am


Very truly yours,



Charles H. Richardson  
Assistant Attorney General

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REVIEWED AND APPROVED BY:

  
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