

# The State of South Carolina



## Office of the Attorney General

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August 14, 1992

Harold B. Johnson, Chief of Police  
Post Office Box 1449  
Sumter, South Carolina 29151

Dear Chief Johnson:

You state that confusion has arisen over the authority of the Sumter police department to enforce fire lane violations on private property, such as a shopping mall, which has not been posted. You ask whether your officers have authority to cite fire lane violations which occur on private property. In support of your enforcement authority you argue that fire codes and similar regulations are not controlled by S.C. Code Ann. § 23-1-15 but stem from the health and safety powers found in S.C. Code Ann. §§ 5-7-30 and 6-9-10 et seq. You state that the City of Sumter has adopted the Standard Fire Prevention Code and has passed ordinances addressing the issue of blocking devices designed to protect public safety. I understand that the issue about which you inquire is not the subject of a judicial order as this Office is unable, in an opinion, to comment upon, supersede, or affirm an order of a court.

Section 602.6 of the 1988 Standard Fire Prevention Code and which you have provided for my review provides

602.6.1 Every building hereafter constructed shall be accessible to fire department apparatus by way of access roadways with all-weather driving surface of not less than 20 ft of unobstructed width, ...

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602.6.2 The required width of access roadways shall not be obstructed in any manner, including the parking of vehicles. Installation of No Parking signs or other appropriate notice or of approved obstructions inhibiting parking, may be required and if installed shall be maintained.

....

602.6.5 Designated fire lanes or roads deemed necessary for fire department access by the Fire Official shall be maintained in an operable condition.

Also, you provided ordinance number 1268, adopted by Sumter City Council on July 2, 1991. Section 19-179 of the ordinance provides that

No vehicle shall stop, stand, or park in such a manner as to block any fire hydrant, fire lane, or other property to which immediate access is necessary to ensure public safety.

The General Assembly authorized municipalities such as Sumter to adopt by reference the Standard Fire Prevention Code and to promulgate regulations to implement it. S.C. Code Ann. §§ 6-9-10; 6-9-60. The legislature has also provided that violations of the particular fire prevention code adopted or regulations relating thereto are misdemeanors punishable by a fine or imprisonment. S.C. Code Ann. § 6-9-70.

Pursuant to S.C. Code Ann. § 5-7-110, municipal police officers "shall exercise their powers on all private and public property within the corporate limits of the municipality ..." (emphasis added). Also S.C. Code Ann. § 17-13-40 allows that "police authorities of all towns and cities of this State may make arrests of all offenders against municipal ordinances and statutes of this State ...".

The statutory provision you bring to my attention is § 23-1-15 which provides:

Any real property which is used as a parking lot and is open to use by the public for motor vehicle traffic shall

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be within the police jurisdiction with regard to the unlawful operation of motor vehicles in such parking lot.

Such parking lots shall be posted with appropriate signs to inform the public that the area is subject to police jurisdiction with regard to unlawful operation of motor vehicles. The extension of police jurisdiction to such areas shall not be effective until the signs are posted.

In any such area the law enforcement agency concerned shall have the authority to enforce all laws or ordinances relating to the unlawful operation of motor vehicles which such agency has with regard to public streets and highways immediately adjoining or connecting to the parking area. (Emphasis added).

With regard to Section 23-1-15, we have opined that the statute provides for the posting of private parking lots for enforcement of laws and ordinances regarding the unlawful operation of motor vehicles on public streets and highways so as to bring the lots within the jurisdiction of the police. See Ops. Atty. Gen. dated March 4, 1992; September 8, 1986; February 25, 1981. We have also opined that "the question of whether specific property is public or private is ... irrelevant as to certain traffic offenses." Op. Atty. Gen. October 5, 1985. We have determined that Section 23-1-15 would have no effect on a traffic offense in which the commission on public property is not an element, such that certain traffic offenses may be committed and are enforceable on private property regardless of whether the property is posted. See Ops. Atty. Gen. dated May 21, 1980; September 29, 1975. For example, the offense of driving under the influence may be committed on private property even though it is not posted because operation of a motor vehicle on a public highway is not a required

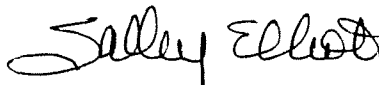
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element of the offense. Op. Atty. Gen. dated April 22, 1985. See also Ops. Atty. Gen. December 23, 1974 (Reckless driving applies to offenses on private property even though not posted as the presence of the offender on a public highway is not made an element); January 18, 1988 (Reckless homicide may be committed on private property); May 21, 1980 (A violation of the handicapped parking provision may occur on private property which is not posted because presence on a public highway is not an element of the offense).

The ordinances you provided, if considered traffic ordinances, do not require that the offense be committed on a public highway or street, therefore, posting of private property would not be necessary for the commission and enforcement of the act. Further, the offense may be considered a violation of a city ordinance adopting the fire prevention code which may not be considered a traffic offense but would be enforceable pursuant to the Section 6-9-70 and the ordinances implementing it. In that case, "the distinction whether property is private or public is irrelevant to the question of the authority of a law enforcement officer to make arrests or investigate crimes generally." Op. Atty. Gen. October 5, 1985. See also Sections 5-7-110 and 17-13-40; Ops. Atty. Gen. October 2, 1985 and August 7, 1974. In either event, your officers should have authority to enforce fire lane requirements on private property regardless of whether the property is posted.

With kind regards, I am

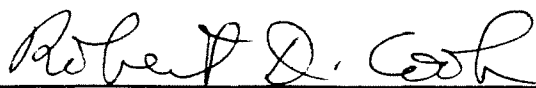
Sincerely,



Salley W. Elliott  
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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