

The State of South Carolina



Office of the Attorney General

Opinion No 87-16
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February 16, 1988

Timothy E. Meacham, Esquire
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Dear Mr. Meacham:

In a letter to this Office you indicated that the City of Florence has enacted an ordinance entitled "Careless Operation". You stated that the ordinance is used as a general "catch-all" for traffic offenses in the City and is used in plea negotiations for State traffic offenses. The text of the ordinance reads as follows:

(i)t shall be unlawful for any person to operate any vehicle without care and caution and full regard for safety of persons or property. Any person failing to do so shall be guilty of careless driving or riding. The operation of any vehicle when the same or any of its appliances is not in proper or safe condition shall be prima facie evidence of careless driving or riding. Careless operation is unlawful and may be a lesser included offense of "reckless driving."

As referenced in your memorandum, pursuant to Section 5-7-30 of the Code, municipalities are authorized to enact ordinances

... not inconsistent with the Constitution and general law of this State, including the exercise of such powers in relation to roads, streets, ... law enforcement

Chapter 5 of Title 56 of the Code (Sections 56-5-10 et seq.) is entitled the "Uniform Act Regulating Traffic on Highways". Included in such chapter are numerous traffic provisions regulating the operation of motor vehicles upon the highways of this

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State. Section 56-5-30 of the Code, a provision included in the chapter, states:

(t)he provisions of this chapter shall be applicable and uniform throughout this State and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance, rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, subject to the limitations prescribed in §56-5-930, adopt additional traffic regulations which are not in conflict with the provisions of this chapter.

Such is consistent with the following principles set forth in 7A Am.Jur.2d, Automobiles and Highway Traffic, Section 17 at p. 205

(m)unicipalities to which the power to regulate the use of their public ways by motor vehicles has been delegated by statute may enact such regulations so long as they are not in conflict with or repugnant to state legislative enactments governing the use of such vehicles, but such regulations are invalid if they are in conflict with statutes relating to the subject. Where the state has retained the power to provide general laws regulating traffic on the highways of the state, legislation enacted pursuant to such right cannot be curtailed, infringed upon, or annulled by local authorities, and where there is conflict between such a state statute and a municipal ordinance, the statute prevails.

See also: McQuillin Municipal Corporations (3rd Ed.) Vol. 6, §§ 21.35, 23.07, 24.54. You also referenced in your memorandum Florence municipal code provisions, Sections 19-1, 19-2 and 19-3, which, consistent with the above, defer to State statutory provisions regulating traffic.

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Included in Chapter 5 of Title 56 is Section 56-5-2920 which states:

(a)ny person who drives any vehicle in such a manner as to indicate either a wilful or wanton disregard for the safety of persons or property is guilty of reckless driving.

Pursuant to Section 56-5-4410 of the Code:

(i)t shall be unlawful for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such an unsafe condition as to endanger any person or property or which does not contain those parts or is not at all times equipped with ... equipment in proper condition and adjustment as required in this article or which is equipped in any manner in violation of this article....

Section 56-5-5310 states:

(n)o person shall drive or move on any highway any vehicle unless the equipment thereon is in good working order and adjustment as required in this chapter and the vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon the highway.

Additionally, pursuant to Section 56-1-720 of the Code, various points are assessed for various types of traffic violations. For instance, for the offense of reckless driving, six points are assessed; for speeding, two or four points are assessed depending on the speed of the vehicle, for operating a vehicle in an unsafe condition, two points are assessed. Pursuant to Section 56-1-740 of the Code an individual's driver's license may be suspended where "... the licensee has been convicted with such frequency of offenses against motor vehicle traffic laws or ordinances as to indicate a disrespect for such laws or ordinances...." According to your memorandum, no administrative penalties are assessed against a driver violating the referenced Florence municipal code provisions.

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In a letter dated October 7, 1987 an attorney for the Department of Highways and Public Transportation addressed the situation where officers of a municipal police department were charging motorists stopped for operating their vehicles in excess of posted speed limits with violating a city ordinance instead of Section 56-5-1520 and 56-5-1530, the state statutes regulating speed on highways. Referencing Section 56-5-30 noted above, it was concluded that such cases of speeding should be brought pursuant to Sections 56-5-1520 or 56-5-1530 instead of the city ordinance. It was also noted that in such situations points should be assessed against speeders pursuant to Section 56-1-720.

As indicated above, regulation of traffic by the State does not necessarily prevent regulation of traffic by a municipality. However, it has been noted that

... police ordinances in conflict with statutes, unless authorized expressly or by necessary implication, are void. A charter or ordinance cannot lower or be inconsistent with a standard set by state law.

McQuillin Municipal Corporations (3rd Ed.) vol. 6, § 24.54. Similarly stated,

(a)ny municipal control or prescribing of offenses must conform to, and not conflict with, the constitution, statutes and public policy of the state ... A statute prevails over or supersedes an ordinance relative to an offense, where the statute is intended to have that effect. Even where the scope of municipal power is concurrent with that of the state and where an ordinance may prohibit under penalty an act already prohibited and punishable by statute, an ordinance may not conflict with or operate to nullify state law.... Ordinances lowering or relaxing statutory standards relative to offenses are void as in conflict with state law and policy.

McQuillin Municipal Corporations (3rd Ed.) vol. 6, § 23.07. Such is consistent with the provisions of Section 56-5-30 referenced above and the statement from 7A Am.Jur.2d noted previously that legislation enacted by a state "cannot be curtailed, infringed upon or annulled" by local legislation.

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Referencing the above, the manner of enforcement of the Florence municipal ordinance prohibiting the careless operation of a vehicle appears to be in conflict with State statutory provisions regulating the operation of motor vehicles. As noted, state law directs that various points are to be assessed for specific traffic violations and upon the accumulation of a specified number, an individual's driver's license may be suspended. However, you indicated that no administrative penalties are assessed for violations of the referenced municipal ordinance. Such non-assessment of penalties conflicts with State law so as to nullify the provisions that mandate the assessment of points for specified traffic offenses. As a result, the point system established by Section 56-1-720 should be utilized to assess points against individuals in the appropriate circumstances.

This Office, however, is unable to definitely conclude that the referenced "careless operation" ordinance is so inconsistent with state statutory provisions regulating traffic as to preclude enforcement of such ordinance. We are informed that ordinances very similar or identical to the Florence ordinance have been enacted by other municipalities in this State. Because of the numerous similar ordinances you may wish to consider seeking a declaratory judgment to determine the issue addressed in your letter with finality.

If there is anything further, please advise.

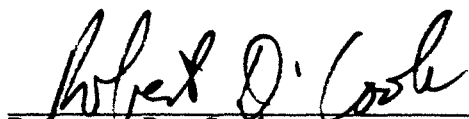
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/rhm

REVIEWED AND APPROVED BY:



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