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February 1524

The State of South Carolina



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p. 103*

April 5, 1985

Wendell O. Brown, Esquire  
Town Attorney - Town of Kingstree  
Post Office Box 708  
Kingstree, South Carolina 29556

Dear Mr. Brown:

In a letter to this Office you referenced Ordinance No. 85-1 of the City of Kingstree and requested an opinion on its validity. The ordinance provides in part as follows:

"(n)o proprietor, manager or employee of any business in the downtown area of Kingstree shall park and leave standing any motor vehicle for a period of more than two (2) consecutive hours between the hours of 8:00 A. M. and 6:00 P. M., except on Sundays and legal holidays, on the following streets in the Town of Kingstree...."

Generally, a municipality is recognized as being empowered to regulate the time, place and manner of parking in its streets and public places. McQuillin, Municipal Corporations, Section 24.641 p. 700. Moreover, the authority of a municipality in this State to regulate parking on its streets is expressly provided by statute. See: Sections 5-29-30 and 56-5-710, 1976 Code of laws. In Hall v. Burg, 206 S.C. 173, 33 S.E.2d 401 (1945), the State Supreme Court recognized that the regulation of traffic, including the parking of automobiles, is a proper exercise of a municipality's police power. See also: 60 C.J.S., Motor Vehicles, Section 28(1) p. 201; City of Orlando v. Orlando Cullum, 400 So.2d 513 (1981).

It is generally recognized that inherent in a municipality's authority to regulate its streets and keep them free from obstructions is the authority to regulate parking of motor vehicles with respect to the length of time a vehicle may be parked. 60 C.J.S., Motor Vehicles, Section 28(1) p. 202. In Owens v. Owens, 193 S.C. 260, 8 S.E.2d 339 (1940), the State

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Supreme Court was faced with a challenge to an ordinance of the City of Columbia which provided for the maintenance of parking meters. In its decision upholding the ordinance, the Court stated:

"... while the public has an absolute right to the use of the streets for their primary purpose, which is for travel, the use of the streets for the purpose of parking automobiles is a privilege, and not a right; and the privilege must be accepted with such reasonable burdens as the city may place as conditions to the exercise of the privilege." 193 S.C. at 268.

The Court further recognized that:

"(s)ince there can be no doubt of the right to regulate parking, the city should have a wide latitude in selecting the means to be adopted.... A regulatory ordinance relating to the parking of cars will be presumed to be justified by local conditions, unless the contrary clearly appears. Much should be left to the city's discretion." 193 S.C. at 269-270.

While a municipality is authorized to regulate parking, such regulations have been determined to be invalid if they are arbitrary and discriminatory. McCoy v. Town of York, 193 S.C. 390, 8 S.E.2d 905 (1940); 60 C.J.S. Motor Vehicles, Section 28(1). It is generally held that:

"(a) parking ordinance must be uniform in operation and not oppressive or discriminatory... (However) ... it can adopt a reasonable classification with respect to times, places or vehicles within its operation. Thus, a prohibition of parking in a certain street or at a certain place need not include all vehicles, in order to be valid, where there is a reasonable basis for the distinction germane to a legitimate object of the regulation." McQuillin, Municipal Corporations, Section 24.642 p. 702.

Consistent with the above, ordinances have been enacted so as to forbid or limit the time allowed to park in restricted areas such as congested districts or downtown districts during

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business hours. Such municipal regulations directed at directed at hastening the departure of parked vehicles in congested areas have been recognized as being valid. McQuilln, Municipal, Municipal Corporations, Section 24.646, ipn 706646 Such regulations are consistent with the recognized principle that the authority to make traffic regulations includes the authority to make them fit to existing conditions and to make exceptions to that end. See Commonwealth v. Sargent, v117 N.E.2d 154 (1953). In determining the reasonableness of traffic regulations, the court, in Sargent in Sargent included the factors of the need for parking in a particular locality and the availability of space elsewhere among the variables to be considered. Therefore, certain parking classifications which discriminate in parking availability may not necessarily be irrational or arbitrary. See: City of Akron v. Davies, 170 N.E.2d 494 (1959).

In State v. Perry, 130 N.W.2d 343 (1964), the Minnesota Supreme Court dealt with a challenge to a municipal parking ordinance which was alleged to be unconstitutional. The ordinance prohibited parking upon any street within the city for more than two consecutive hours within a designated period. In its decision upholding the statute the court commented that the purpose behind regulations permitting parking for only a limited time is "...to keep parking space fluid and to guarantee householders, merchants, and their invitees reasonable access for transacting business."

Referencing the above, since we have found no general law in conflict therewith, it appears that the ordinance of the City of Kingstree which limits the availability of parking for proprietors, managers and employees in the downtown area could be upheld as being valid. While it does discriminate against the referenced individuals, such discrimination is not necessarily irrational or arbitrary. Instead, it could be asserted that the need to increase the availability of parking in an area where parking is at a premium is a rational basis for such a restriction and therefore such a restriction is warranted.

Sincerely,



Charles H. Richardson  
Assistant Attorney General

CHR:djg

REVIEWED AND APPROVED BY:



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