The State of South Carolina

Office of the Attorney General

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August 22, 1986

Robert L. Stoddard, Esquire
Duncan Town Attorney
P. O. Box 5178
Spartanburg, South Carolina 29304

Dear Mr. Stoddard:

In a letter to this Office you indicated that the Town of Duncan has an ordinance which states:

> (n)o person shall drive any vehicle upon a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway.

Such ordinance is consistent with the provisions of Section 56-5-3835 of the Code. You indicated that a mail carrier has been driving upon the sidewalk in instances where he cannot otherwise make a delivery. You have questioned whether the Town may amend its ordinance to authorize a mail carrier to drive upon the sidewalk as necessary.

It is well settled that a municipal ordinance cannot conflict with a state law of general character and statewide application. 56 Am.Jur.2d, Municipal Corporations, § 374. This general rule is in accord with § 5-7-30, which bestows police power upon municipalities. The following sets forth a good summary of the law determining when conflicts between general law and local ordinances occur:

> ... It has been held that in determining whether the provisions of a municipal ordinance conflict with a statute covering the same subject, the test is whether the ordinance prohibits an act which the statute permits or permits an act which the statute prohibits. Accordingly, it has often been held that a municipality cannot lawfully

> forbid what the legislature has expressly licensed, authorized, permitted or required, or authorize what the legislature has expressly forbidden.

56 Am.Jur.2d, Municipal Corporations, Section 374. See also: 62 C.J.S., Municipal Corporations, Section 143, 144.

If the Town of Duncan amends its ordinance, which is presently consistent with State law, so as to authorize an exception for mail carriers, such amended ordinance would conflict with the State law. Such would be inconsistent with the general rule stated above and, therefore, such amendment would not be permitted.

I would note, however, that any attempts to enforce present State law as set forth in Section 56-5-3835 or the referenced Duncan municipal ordinance as to mail carriers may conflict with federal law provisions. The United States Constitution, Art. VI, cl.2, provides in part that,

> [t]his Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land.

It has been recognized that when state and federal laws which address similar areas of concern are found to be in conflict, state law provisions are superseded by the federal provisions. See, e.g., Jones v. Rath Packing Co., 430 U.S. 519 (1977); City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624 (1973). Generally, whether the enforcement of a state or local law is precluded by a federal enactment on the same subject is dependent on the nature of the authority exerted by Congress, the object which is sought to be attained, and the character of the requirements imposed by the law. Also to be considered is whether under the circumstances of a particular case, the state law stands as an obstacle to the federal law. Hines v. Davidowitz, 312 U.S. 52 (1941). It is recognized that state law is preempted by federal law in instances when the two schemes conflict so as to make compliance with both federal and state regulations impossible or whenever Congress has clearly shown an intent, whether express or implied, to displace state regulation in a specific area. Florida Lime and Avocado Growers, Inc. v. Paul, 373 U.S. 132 (1963); U. S. v. State of South Carolina, 578 F.Supp. 549 (D. S. C., 1983).

As to the applicability of state laws to postal matters, the same principles apply. Johnson v. State of Maryland, 254 U.S. 51 (1920); Martin v. Pittsburg & L.E.R. Co., 203 U.S. 284 (1906). It has been specifically held that the federal postal service is immune from local and state regulations that have the effect of interfering with the exercise of the postal service's authority. United States v. City of Pittsburg, Cal., 661 F.2d 783 (9th Cir. 1981); Grover City v. United States Postal Service, 391 F. Supp. 982, 986-87 (C.D. Cal. 1975) ("[i]f there were any conflicts between the City's ordinance and postal regulations, the regulations necessarily would pre-empt the ordinance under the Supremacy Clause of the Constitution, Article VI, clause 2, because federal regulations authorized under federal law have the same pre-emptive effect on state or local laws as the federal laws themselves"). But cf. United States v. City of St. Louis, 452 F. Supp. 1147 (E. D. Mo. 1978) (city trespass ordinance, which declared lawn crossing even by mailmen to be a trespass, was not preempted by a federal postal regulation, which provided that postal carriers may cross lawns while making deliveries because the federal regulation was not authorized under federal law and the conduct it purported to authorize violated the householder's fifth amendment rights under prohibition of taking private property for public use without just compensation).

Referencing the above, I am unable to conclusively state that either the referenced state law or municipal ordinance may be enforced as to mail carriers in Duncan. You may wish to consider seeking an opinion of the Regional Counsel of the U. S. Postal Service or the office of the U. S. Attorney in such regard.

If there is anything further, please advise.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:

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