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April 8, 1985

Debra Owens, Staff Attorney
City of Florence
City-County Complex
Drawer AA
Florence, South Carolina 29501

Dear Ms. Owens:

In a letter to this Office you indicated that parking in the parking lot of the Florence City-County Complex is restricted so as to preclude most city and county employees from parking in the particular lot. Generally, only the public may park in the lot. However, certain employees who are particularly authorized, such as those who drive city or county vehicles or carry large sums of money, may park in the lot. You stated in your letter that an employee of the sheriff's department has refused to comply with the prohibition against parking and as a result has been ticketed several times. You have questioned whether the practice of ticketing employees who violate the parking policy and park in the particular lot is valid. You also asked whether there is authority for such a policy and whether the policy is valid inasmuch as it discriminates against certain employees. 1/

1/In your letter you did not quote from or supply a copy of the actual ordinance which prohibits parking as described above in the City-County Complex. Therefore, this Opinion should not be construed as interpreting such particular ordinance. Instead, the Opinion deals only with the question of general authority for restricting parking as referenced.

REQUEST LETTER

I am unaware of any State statutes which directly comment on the questions you have raised. 2/ Generally, a municipality is authorized to regulate parking in an off-street parking facility with respect to the length of time parking is permitted and what is permitted to park. 60 C.J.S. Motor Vehicles, Section 28(8), p. 270; McQuillin, Municipal Corporations, Section 24.641, p. 700.41. Moreover it has been held that "municipal operation of parking lots ... constitutes a lawful exercise of police power." McQuillin, Municipal Corporations, Section 24.647, p. 707. See also: Phillips v. Officials of City of Valparaiso, 120 N.E.2d 398 (1954).

As to parking on streets, 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 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 as to parking generally:

> "(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

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2/Sections 5-29-10 et seq. of the 1976 Code of Laws authorizes municipalities to construct off-street parking facilities and to finance such through the issuance of bonds. However, such provisions do not comment on the questions raised by you.

> 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 business hours. Such municipal regulations directed at hastening the departure of parked vehicles in congested areas have been recognized as being valid. McQuillin, Municipal Corporations, Section 24.646, p. 706. 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, 117 N.E.2d 154 (1953). In determining reasonableness of traffic regulations, the court 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.

In City of Akron v. Davies, 170 N.E.2d 494 (1959), municipally-owned vehicles were exempted from a parking prohibition on a particular street near municipal buildings.

A private citizen had been charged with violating the ordinance by parking in the restricted area. During his trial he challenged the ordinance as being discriminatory. Upholding the ordinance as being reasonable, the court commented that "... efficient operation of the government requires that automobiles be accessible and available for the constant use to which they are put by the employees of the city." 170 N.E.2d at 496. Therefore, the court determined that such ordinance had a rational basis. The reversal of the situation in Davies is present in the parking question raised by you inasmuch as for the most parte, government employees are prohibited from parking in the particular lot. However, it is clear that an argument could be made that a rational basis for the restriction exists. You particularly indicated that there is a need for places for members of the general public to park while "conducting business," such as paying fines, in the Complex.

In City of Madison v. McManus, 171 N.W.2d 426 (1969) the Wisconsin Supreme Court was faced with a challenge to a city ordinance which provided that as to parking in the city-county building garage:

> "(n)o person shall without the permission of the City-County Building Commission leave or park any motor vehicle or vehicles in the garage of the City-County Building contrary to a posted sign thereon if there is in plain view on such property a 'No Parking' sign or a sign indicating limited or restricted parking. The City-County Building Commission may permit parking of automobiles when said automobiles are operated by employees or officers of the city or county and where the necessities of their employment or office require parking facilities in the garage of the City-County Building, and for that purpose the City-County Building Commission may designate appropriate space for such parking. Time limits apply on working days only, between the hours of 7:30 A.M. to 5:00 P.M."

The ordinance was challenged as being unfair inasmuch as it was alleged that the ordinance discriminated in favor of a special class. The court however found no merit in such challenge. The court particularly found that the policy which permitted certain government employees to park in the building was reasonable and based on a rational purpose.

Referencing the above, since we have found no general law in conflict therewith, it appears that the parking practice in the Florence City-County Complex could be upheld as being valid. While it does discriminate against most employees who work in the Complex, such discrimination is not necessarily irrational or arbitrary. Instead, it could be asserted that the need to increase the availability of parking for members of the general public 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

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REVIEWED AND APPROVED BY:

Robert D. Cook
Executive Assistant for Opinions