1982 WL 189252 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
April 15, 1982

***1** Richard C. Moore, Esquire
Simpsonville City Attorney
111 E. Curties Street
Simpsonville, South Carolina 29661

Dear Mr. Moore:
You have requested an opinion from this Office regarding the validity of a proposed ordinance which would restrict the use and operation of video and computer games. The specific proposals involved are: (1) the number of machines in an establishment will be limited according to the amount of square footage; (2) any establishment having more than four machines must have a full-time attendant on duty; (3) any establishment having more than four machines must close at midnight; and (4) no one under the age of eighteen (18) years can play the machine.

The legal basis for the enactment of these proposals is the police power of the City of Simpsonville. While 'there is no inherent police power in municipal corporation, . . . without doubt a state can delegate the power or at least the authority to exercise it to municipal and other governmental agencies of the state'. 6 McQUILLIN MUNICIPAL CORPORATIONS §§ 24.35-36 at 498-499; City of Charleston v. Jenkins, 243 S.C. 205, 133 S.E.2d 242 (1963). This delegation is accomplished through Section 5-7-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended, which authorizes municipalities to enact:
. . . regulations, resolutions and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of such powers in relation to roads, streets, markets, law enforcement, health and order in such municipalities or respecting any subject as shall appear to them necessary and proper for the security, general welfare and convenience of such municipalities or for preserving health, peace, order and good government therein . . ..

An ordinance regulating the use of video and computer games is a police ordinance in that it is a municipal legislative exercise of the police power vested in the City of Simpsonville by Section 5-7-30. 'A police ordinance, to be valid, must clearly have a substantial and a reasonable relation to a proper object of the police power, to wit, the public health, morals, peace, safety, order and welfare.' 6 McQUILLIN MUNICIPAL CORPORATIONS §§ 24.48 and 24.49 at 521. As stated in McCoy v. Town of York, 193 S.C. 390, 8 S.E.2d 905 (1940):
The standard by which the validity of an ordinance enacted under the exercise of police power is tested is that the exercise of the power should extend only to reasonable and necessary measures. . . . There must be a real connection between the actual provision of a police regulation and its avowed purpose and to be valid as a legislative exercise of police power, the legislation must be clearly demanded for the public safety, health, peace, morals, or general welfare. 193 S.C. at 394.

Furthermore, it is axiomatic that the municipal ordinance may not conflict with the laws of the State. City of Charleston v. Jenkins, supra; Loman v. City of Greenville, 225 S.C. 289, 82 S.E.2d 191 (1954).

***2** There is little doubt that video and computer games, being of similar character to pinball and other machines, are subject to the police power of the City of Simpsonville. Indeed, regulation of these games, it might be argued, promotes the public welfare and morals in the same sense as that enunciated by the Court in Holliday v. Governor of South Carolina, 78 F.Supp. 918, aff'd per curiam, 335 U.S. 803 (1948), to wit:

These machines . . . may have a tendency to collect idle people, school boys and college students together, to detain business people from their business, and wage earners from their work. The owners and operators of such machines are interested in stimulating play and in having as full attendance each day as possible, from which temptations beyond mere amusement are likely to result. The General Assembly of South Carolina, under its police power, had the right to declare such machines gambling machines per se, and as such illegal in the State of South Carolina. It had the right by such legislation to guard the youth of the State, school boys and college students against the insidious temptations and protect them from the evil and corrupting influences that may be clustered around and amanate from the coin operated pin ball machines, an instrumentality that adds nothing to the general welfare, affords no employment to the unemployed, produces nothing where nothing is bought and carried home and used, and is merely a civil parasite. 78 F.Supp. at 925.

Though an ordinance regulating the operation of video and computer games may promote the public welfare, the regulation must be reasonable and be reasonably related to achieving the objectives of the exercise of the police power. Regarding the first three proposals set out in your letter and listed above, this Office cannot give a definite opinion as to their probable validity. We can only emphasize that the City bears the burden of proving the reasonableness of these proposals. The argument might be made that these three proposals are directed at limiting the number of young people who gather in any one place and thereby avoiding the evils discussed in the Holliday opinion. Reference is made to 1976 Op.Atty.Gen. 88 which essentially states that a municipality may enact a valid ordinance requiring that pool tables in business establishments cease operations after 11:00 p. m. The question remains, however, whether those first three proposals are reasonably related to achieving the goals of the exercise of the police power (i.e., health, morals, etc.).

The fourth proposal which would prohibit persons under the age of eighteen from playing the machines has some legal support. Section 20-7-360, CODE OF LAWS OF SOUTH CAROLINA, 1976 (Cum.Supp.), provides that it shall be 'unlawful for any minor under the age of eighteen to play a pinball machine'. Additionally, Section 52-15-50 prohibits the owner of pinball machines from permitting any minor to play the machines and the owner is responsible to see that every person who plays the machine is legally authorized to do so. Provisions similar to these were held to be constitutional in State v. Langley, 236 S.C. 583, 115 S.E.2d 308 (1960).

***3** Inasmuch as a municipality may enact a regulation which is also covered by State statute as long as the ordinance does not exceed the statute (see, e.g., City of Spartanburg v. Gossell, 228 S.C. 464, 90 S.E.2d 465 (1955), under present law, the City of Simpsonville can validly enact a regulation prohibiting the operation of video and computer games by any person under the age of eighteen. It is noted, however, that this ordinance would still be subject to the reasonableness test. Particular attention should be given to the fact that the Langley decision was made twenty-two years ago and societal attitudes may have changed over the years, thus making reversal of the Langley decision at least a possibility.

It should also be mentioned that regulations such as these must apply uniformly to all similarly situated. Thus, it might be held that these proposals should apply to pinball and other machines as well as video and computer games. This is particularly true where, as here, video and computer games are included in the same ordinance regulating these other games. The Court, therefore, might find that video and computer games are a part of the broader class of machines listed in Section 9-5007 and that the proposals should apply equally to all. See generally, McQUILLIN MUNICIPAL CORPORATIONS § 24.53 at 528-529.
With kind regards,

Karen LeCraft Henderson
Deputy Attorney General

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