

1980 WL 120912 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 6, 1980

\*1 Colonel Meek

Captain Wiggins  
South Carolina Highway Patrol  
Post Office Box 191  
Columbia, South Carolina 29202

Gentlemen:

You have requested advice as to the constitutionality of [Code of Laws of South Carolina § 4-18-30](#) and have also inquired as to whether someone other than the owner of a wrecker may be held criminally responsible for violating the provisions of an ordinance enacted by the Greenville County Council, pursuant to § 4-18-10, et seq.

The presence of a specific penalty provision applicable to wrecker owners and the absence of any penalty provisions for wrecker operators or agents does not render this statute constitutionally infirm. [Code of Laws of South Carolina § 17-25-30 \(1976\)](#) provides that in cases of legal conviction when no punishment is provided by statute, the court shall award such sentence as is conformable to the common usage and practice in this State, according to the nature of the offense, and not repugnant to the constitution. Individuals other than wrecker owners, therefore, may be prosecuted under the Greenville Ordinance and may be sentenced to similar penalties as the wrecker owners themselves.

[Code of Laws of South Carolina § 4-18-30](#) provides:

If a wrecker proceeds to the scene in violation of any of the provisions of this Chapter, the owner of the wrecker shall be fined in an amount not to exceed \$200.00 or imprisoned for a term not to exceed 30 days.

The plain meaning of this statute seems to exclude intent or knowledge as a necessary element of this offense and is specifically intended to hold the wrecker owner criminally liable. Such an approach has been approved by our court in the case of [State vs. Manus](#), 179 S.C. 45, 183 S.E. 552.

I have been unable to find any South Carolina law which has placed any restrictions upon the General Assembly with respect to statutes of this nature. Other jurisdictions have held that a penal law cannot be valid where the utmost care and circumspection would not prevent the violation of the statute.

If a statute is capable of valid application and is also capable of an invalid application, it is said to be invalid only when it is applied to factual situations which render it unconstitutional. [Southerland on Statutory Construction § 52.06](#). Code [Section 4-18-30](#) may fall within the category of statutes which may be unconstitutional in application, but since it is capable of valid application, it is not unconstitutional on its face. In such cases only the act of application is invalid, and not the statute itself.

I would recommend that enforcement of the Greenville County Ordinance, as authorized by [Code Section 4-18-10](#), be undertaken and that each case be reviewed by the Solicitor or this office to ensure that the statute is being constitutionally applied. This necessarily will depend upon the facts and circumstances of each case.

Very truly yours,

Richard D. Bybee  
Assistant Attorney General

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