

1980 WL 120901 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 30, 1980

*1 Honorable Mordecal C. Johnson
Councilman District #1
City of Florence
P. O. Box 1804
Florence, SC 29503

Dear Mr. Johnson:

In a letter to this Office, you asked for an opinion as to the constitutionality of Sections 18-18 and 18-31 of the Florence City Code. You also forwarded a copy of a letter which you received from your city attorney in which he provided his comments on the constitutionality of such ordinances.

As to the referenced city code provisions, enclosed please find copies of previous opinions of this office, letters dated September 5, 1979 and September 28, 1976, which indicate the various problems often found in municipal ordinances of the type referenced by you. While the September 28, 1976 opinion deals mainly with another municipality's loitering statute, and thus is obviously applicable to the Florence loitering provision, the discussion in such opinion is equally applicable to vagrancy statutes. Also, it has come to my attention that the former state statute prohibiting vagrancy, Section 16-565 of the 1962 Code of Laws, which was identical to the Florence provision, has been repealed. While not familiar with the reasons for such repeal, it may be suggested that one reason may have been that the standards used to define vagrancy as detailed in the state statute and the Florence provision are obviously outdated.

While only a court can construe with certainty the constitutionality of any municipal ordinance, the enclosed opinions indicate probable constitutional problems with the referenced Florence ordinances. I suggest that upon reviewing such opinions, you discuss such with your city attorney as to possible changes in such ordinances.

With best wishes, I am
Sincerely,

Charles H. Richardson
Assistant Attorney General

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