

1977 S.C. Op. Atty. Gen. 64 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-65, 1977 WL 24407

Office of the Attorney General

State of South Carolina

Opinion No. 77-65

March 1, 1977

***1 A MUNICIPALITY CANNOT ADOPT ORDINANCES AND PROVIDE PENALTIES FOR THE VIOLATION THEREOF THAT DIFFER FROM THE PENALTY PROVIDED FOR THE SAME OFFENSE BY GENERAL LAW.**

TO: Neal Forney
Assistant Director
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QUESTION PRESENTED:

May a municipality adopt ordinances and provide penalties for the violation thereof that either increase or decrease the penalty provided for the same offense by general law?

AUTHORITIES:

Section 47–32, 1962 Code of Laws of South Carolina, as amended.

Vol. 5, McQuillan Municipal Corporations, § 15.22 [City of Spartanburg v. Gossett](#), 228 S. C. 464, 90 S. E. 2d 645 (1956).

[State v. Solomon](#), 245 S. C. 550, 141 S. E. 2d 818 (1965).

DISCUSSION:

It is clear that under the broad authority delegated to municipalities by Section 47–32, 1962 Code of Laws of South Carolina, as amended, they are empowered to punish acts that are also violations of State law. [City of Spartanburg v. Gossett](#), 228 S. C. 464, 90 S. E. 2d 645 (1956).

All such municipal legislative acts must be consistent with ‘the Constitution and general laws of this State’ (§ 47–32), and any conflict between a municipal ordinance and a State law must be resolved in favor of the general law. [State v. Solomon](#), 245 S. C. 550, 141 S. E. 2d 818 (1965).

Since any municipal ordinance that adds to, subtracts from, modifies, limits, or amends a State law may be said to conflict with the State law (Vol. 5, McQuillan Municipal Corporations, § 15.22), any ordinance that has the effect of either increasing or decreasing the penalty attached to a general law by the General Assembly would be inconsistent with the ‘general laws of this State’ and in violation of Section 47–32.

CONCLUSION:

It is the opinion of this Office that municipalities lack the authority to adopt ordinances and provide penalties for the violation thereof that either increase or decrease the penalty provided for the same offense by the general law.

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