

1979 S.C. Op. Atty. Gen. 225 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-141, 1979 WL 29143

Office of the Attorney General

State of South Carolina

Opinion No. 79-141

December 31, 1979

***1 SUBJECT: Parking—Handicapped Persons**

A municipality may provide by ordinance a greater penalty than that provided by state statute for unlawful use of a municipal parking place designated for handicapped persons.

TO: Robert G. Clawson, Jr.
Assistant Corporation Counsel
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QUESTION PRESENTED:

You have requested an opinion as to the validity of a municipal ordinance which provides a greater penalty than that provided by state statute for unlawful use of a municipal parking place designated for handicapped persons.

AUTHORITIES:

[Code of Laws of South Carolina § 5–7–30 \(Cum. Supp. 1978\)](#)

[Code of Laws of South Carolina § 56–3–1960 \(Cum. Supp. 1978\)](#) [Code of Laws of South Carolina § 56–3–1970 \(Cum. Supp. 1978\)](#)

[Code of Laws of South Carolina § 56–5–710\(1\), \(1976\)](#) [City of Spartanburg v. Gossett](#), 228 S.C. 464, 90 S.E.2d 645 (1955)

[Hall v. Burg](#), 206 S.C. 173, 33 S.E.2d 401 (1945) [Shaw v. City of Norfolk](#), 167 Va. 346, 189 S.E. 335 (1937) [Struthers v. Sokol](#), 108 Ohio St. 263, 140 N.E. 519 (1923)

DISCUSSION:

[Code of Laws of South Carolina § 56–3–1970 \(Cum. Supp. 1978\)](#) provides a maximum penalty of five (5) dollars for the unlawful parking of ‘any vehicle in a parking place clearly designated for handicapped persons unless the vehicle bears the distinguishing license plate or placard provided in [§ 56–3–1960](#).’ However, [Code of Laws of South Carolina § 56–5–710\(1\), \(1976\)](#) gives local authorities within the reasonable exercise of the police power the right to regulate the standing or parking of vehicles with respect to streets and highways under their jurisdiction. Although this statute does not specifically grant municipalities the authority to provide a penalty for unlawful parking greater than that provided for in the statute, such authority may be found in the municipality's police power. The regulation of traffic by local authorities on all the streets within their boundaries is a power naturally and ordinarily vested in municipalities, and a legislative intent to take it away and confer it upon some other authority must be clearly expressed. See, [Hall v. Burg](#), 206 S.C. 173, 33 S.E.2d 401 (1945). It should be noted that the present question concerns only the authority of municipalities to regulate traffic on the streets within their boundaries, and this opinion should not be construed as extending the scope of municipal authority and ordinances into other areas of law enforcement.

The general powers of municipalities are presently codified in [Code of Laws of South Carolina § 5–7–30 \(Cum. Supp. 1978\)](#) and include ‘ . . . authority 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 . . . in such municipalities or respecting any subject as shall appear to them necessary and proper for the security, general welfare . . . or for preserving health, peace, order and good government therein’ ‘The general rule is that, where a municipality has the power to legislate on the same subject with which the State has dealt by general law, in the absence of specific restrictions, the ordinance of the municipality will not be declared invalid merely because different penalties are prescribed in the ordinance from those prescribed by a general statute.’ [Shaw v. City of Norfolk](#), 167 Va. 346, 189 S.E. 335, 338 (1937), cited in [City of Spartanburg v. Gossett](#), 228 S.C. 464, 90 S.E.2d 645 (1955). ‘A police ordinance is not in conflict with a general law upon the same subject . . . even though greater penalties are imposed by the municipal ordinance.’ [Struthers v. Sokol](#), 108 Ohio St. 263, 140 N.E. 519, 521 (1923), cited in [Shaw](#). It would seem that where a municipality determines that due to local parking conditions a penalty of more than five (5) dollars is necessary to effectively enforce designated parking places for handicapped persons, the municipality may, in the interest of protecting the public health, safety and welfare, provide for such penalty.

CONCLUSION:

*2 Where a municipality determines that due to local parking conditions a penalty of more than five (5) dollars is necessary to effectively enforce designated parking places for handicapped persons, the municipality may provide for such penalty in the interest of protecting the public health, safety, and welfare.

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