1979 WL 43561 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
September 5, 1979

***1** Robert W. Davis, Esquire
Kershaw Town Attorney
Post Office Box 145
Kershaw, South Carolina 29067

Dear Mr. Davis:
You have requested an opinion from this Office concerning the validity of several ordinances being considered by the Kershaw Town Council. The proposed ordinances, in the order in which you listed them, are as follows:

1. An ordinance requiring men to wear shirts while in the business district.

2. A curfew ordinance requiring everyone to be off the streets of the business district at a certain hour.

3. An ordinance requiring grills, restaurants, nightclubs, lounges and pool halls to close at a certain hour. In my opinion, each of these ordinances would most probably be an unauthorized exercise of the Town of Kershaw's municipal police power, except as hereafter discussed.

The power of a municipality to enact ordinances is limited to the promulgation and enforcement of measures reasonably related to a legitimate goal, such as the preservation of the community health, safety or general welfare; and, even if an ordinance has a legitimate objective, it must not be vague or overbroad or unnecessarily interfere with the personal liberties of citizens. McQuillin, Municipal Corporations, § 24.09, § 24.48 et seq.

Both 'dress code' and curfew ordinances have been struck down in other jurisdictions as unnecessarily interfering with the personal rights of citizens, guaranteed by the Fifth and Fourteenth Amendments, to move freely about the community. Such ordinances would probably not be upheld by the courts of this State absent some compelling justification for their existence. A curfew ordinance, for example, might be sustained in the event of a community emergency; even then, however, the ordinance would probably be valid only for so long as the emergency conditions prevail. Id., § 19.30.

An ordinance which attempted to regulate the hours of operation of lawful businesses was held to be violative of the South Carolina Constitution in Painter v. Town of Forest Acres, 231 S.C. 56, 97 S.E.2d 71 (1957), as an unlawful taking of property. There the South Carolina Supreme Court said:
. . . property consists not merely in its ownership and possession but an unrestricted right of use, enjoyment, and disposal. Anything which destroys one or more of these elements to that extent destroys the property itself.

It is possible, however, that an exception to this rule may exist as to the regulation of pool halls. I am enclosing a copy of an opinion of this Office stating that pool halls, due to their peculiar character, may be prohibited entirely from operating within municipal limits. If a municipality can prohibit the existence of pool halls entirely, it can likewise subject their operation to strict regulation.
With kind regards,

Karen LeCraft Henderson

Senior Assistant Attorney General

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