

1978 WL 34895 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 3, 1978

***1 RE: DUI-City Ordinance**

Mr. A. D. Orander, Jr.
Attorney for the City of Easley
P. O. Box 1018
Easley, South Carolina 29640

Dear Mr. Orander:

Your recent letter to the Attorney General has been referred to me for reply. Thank you for your patience in awaiting our response.

You have asked whether the City of Easley may legally create a fine of Two Hundred (\$200) Dollars for a first offense violation of Section 15-11 of the Easley City Code, which ordinance makes it unlawful to drive in the City while intoxicated. The city ordinance appears to parallel the state statute (Section 56-5-2930) dealing with the same subject. The only difference appears to be the punishment provided therefor. The city ordinance merely increases the punishment therefor to Two Hundred (\$200) Dollars.

This Office has previously advised that municipalities may not adopt ordinances and provide penalties for the violation thereof that either increase or decrease the penalty provided for the same offense by general law. A copy of that opinion is enclosed for your convenience. Accordingly, it remains the position of this Office that municipalities may not adopt ordinances and provide penalties which are inconsistent with those provided for the same offense by general law.

You have next asked whether the provisions of the Implied Consent Law (Section 56-5-2950) apply to violations of Section 15-11 of the City Code. Were the penalties identical in both the city ordinance and state law, violators could be prosecuted under either provision. In either event, it is our opinion that the provisions of the Implied Consent Law could be applied in the same manner as it is for violation of state law. The plain terms of the Implied Consent Act so indicate in providing that a breath test may be required of any person arrested 'for any offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of intoxicating liquor.' The plain terms of the Act, therefore, do not limit such tests to situations involving a violation of state law, but rather apply to any offense as specified above.

I trust the preceding discussion adequately answers your questions, however, if any further explanation is required, please feel free to contact me.

Very truly yours,

Richard P. Wilson
Assistant Attorney General

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