

1978 WL 34935 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 8, 1978

*1 Mr. James W. Workman
Attorney at Law
209 West Main Street
Union, S. C. 29379

Dear Mr. Workman:

You have requested an opinion of this Office as to whether Section 12-4 of the 1976 Code of Laws of the Town of Jonesville, South Carolina, vests trial jurisdiction of the offense of resisting arrest in the municipal court.

Section 12-4, supra, makes it unlawful for any person or persons to assault, resist, disturb or interfere in any manner whatsoever with the Chief of Police, any police officer or deputy, regular or special of the Town of Jonesville, while engaged in the regular performance or discharge of his duty or duties. In essence, Section 12-4 makes the offense of resisting arrest punishable by a maximum fine of \$100.00 or imprisonment for a term not exceeding thirty days.

Although the penalties for violation of Section 12-4 are clearly within the jurisdictional limits of the municipal court, that ordinance nonetheless appears to conflict with the general law of the state in this regard. As you note, the crime of resisting arrest is a common law offense in this state punishable by a maximum of ten years imprisonment in the discretion of the trial court. Since the possible penalties upon conviction exceed the maximum permitted in the municipal courts, such courts could not lawfully assume trial jurisdiction over the offense of resisting arrest. Section 12-4 attempts to make the matter one of municipal concern and, therefore, provide an alternative to the general law of the state regarding resisting arrest. A recent opinion of this Office, however, concludes 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. A copy of that opinion is enclosed for your convenience.

Accordingly, it is the opinion of this Office that Section 12-4 is in apparent conflict with the general law of the state and, therefore, must yield in favor of the general law. Therefore, the municipal court could not lawfully assume trial jurisdiction over cases of resisting arrest.

I trust the preceding discussion adequately answers your question, 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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