

1975 WL 29298 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 29, 1975

*1 Vernon L. Boatwright
Chief of Police
West Columbia Police Department
P. O. Box 44
West Columbia, S. C. 29169

Dear Chief Boatwright:

This is in response to your letter of September 9, 1975, and our subsequent telephone conversation concerning the passage of a municipal ordinance allowing city police officers to enforce traffic violations in a shopping center parking lot.

At the outset, it is possible that such an ordinance would be a valid exercise of the police power of the municipality in the interest of police safety.

'... [P]rivate land when used as a public street is subject to police power over streets by reason of necessity for regulation inherent in the use permitted.' [Footnote Omitted] McQuillian, Municipal Corporations § 24.568 at 623.

If in fact such an ordinance is permissible, the wording must be such that it does not conflict with or supercede any existing state law. However, specifically with respect to motor vehicles it should be noted that:

'The operation of automobiles in private driveways or parking lots may be made subject to state or municipal regulation to protect public safety. But private grounds have been held not a 'public highway' or 'public place' within the meaning of a measure prohibiting the negligent operation of motor vehicles. Moreover, an ordinance relative to the operation of motor vehicles not limited to their operation upon the municipality's streets and alleys has been held void as invading rights of citizens in territory over which the municipality has no control. Speed regulation does not ordinarily pertain to private ways or grounds.' [Footnotes Omitted] McQuillian, Municipal Corporations § 24.623 at 722.

Thus, there appears to be a division of authority as to whether such an ordinance would be a valid exercise of the police power of the municipality. Although the existence of such an ordinance may be a valid exercise of police power in certain circumstances, a broad ordinance may be suspect in that the ordinance would be allowing enforcement of traffic offenses on private property. In any event, an ordinance of this nature has never been tested in South Carolina and such an issue could be best resolved by the courts.

It should be noted, however, that if such an ordinance was passed with respect to the one shopping center specifically in mind, it would clearly be invalid. In McQuillian, Municipal Corporations § 18.11, it is stated clearly that:

'Ordinances, if they are reasonable, cannot arbitrarily discriminate among persons of the same class and they must operate uniformly upon all who are similarly situated. Discrimination is a fatal defect in any ordinance, and all discrimination in ordinances among those of the same class are bad ...

...

An ordinance enacted in the alleged or ostensible exercise of any of the well-defined purposes of the police power must be general in its nature and applicable alike to all who may properly come within its purview. It cannot be sustained

as an exercise of that power if it is arbitrary and discriminatory. It is arbitrary and discriminatory where it exclusively serves private purposes or the benefit of particular individuals. Where an ordinance imposes penalties, it cannot make a particular act penal when done by one person and impose no penalty for the same act done under like circumstances by another' [Footnotes Omitted] See Also 1970 Attorney General's Opinion No. 2953 at 212.

*2 Additionally, with respect to traffic violations, it is possible to commit a traffic offense on private property, if presence on a public highway is not an element of the offense. 1969 Attorney General's Opinions No. 2634 and 2738. Therefore, it would not be necessary to have a municipal ordinance in order to enforce certain traffic offenses on private property.

For your information, I have enclosed copies of the opinions mentioned in this letter and hope they may be of some assistance in solving your problem. If we can be of any further assistance in this matter, please do not hesitate to contact us.

Very truly yours,

H. Michael Bowers
Legal Assistant

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