

1975 S.C. Op. Att. Gen. 241 (S.C.A.G.), 1975 S.C. Op. Att. Gen. No. 4188, 1975 WL 22483

Office of the Attorney General

State of South Carolina

Opinion No. 4188

November 20, 1975

\*1 Absent specific statutory authority, a municipality may not authorize its police officers to admit to bail one charged with violating City ordinances.

TO: City Attorney  
Goose Creek, South Carolina

QUESTION PRESENTED:

Whether or not Section 17–54 of the Ordinances of the City of Goose Creek regarding City Police Officers' responsibilities for requiring appearance bonds is valid.

STATUTES, CASES, ETC., INVOLVED:

[Town of Honea Path, S.C. v. Flynn, 255 S.C. 32, 176 S.E.2d 564 \(1970\).](#)

McQuillin, Municipal Corporations, Vol. 5, Section 17.05, P. 313.

71 C.J.S. Pledge, p. 1190.

1966 Ops. Att. Gen., No. 2193, p. 337.

§ 46–855, South Carolina Code of Laws, 1962, as amended.

DISCUSSION OF ISSUES

In your letter of October 9, 1975, to the Attorney General you requested the opinion of this Office as to the validity of Section 17–54 of the Ordinances of the City of Goose Creek. Section 17–54 provides as follows:

‘Each and every member of the Police Department who shall make an arrest of a person or persons for the violation of the laws or ordinances of the City shall require the person or persons to give a valid bond or pledge for his appearance the next session of Municipal Court or he shall take the person so arrested to the City jail for imprisonment.’

‘Should the policeman fail to require a valid bond or pledge and the person so arrested fails to appear when required, the arresting policeman shall be required to pay to the City any fine that may be imposed by the judge or recorder upon any such person so released.’

Because the Ordinance directs certain action by the policemen and provides for punishment by fine for failure to comply, it would likely be regarded as penal and therefore subject to strict interpretation. McQuillin, Municipal Corporations, Vol. 5, Section 17.05, p. 313.

The Ordinance commands an arresting officer either to require a bond from the accused or to place the accused in jail. The Ordinance appears to leave these alternative selections to the discretion of the arresting officer. It is silent as to the manner by which the amount of bail is determined. Thus, the ordinance may be construed to delegate to a nonjudicial officer the discretion to make certain judicial determinations. The ordinance may also be construed to simply make an arresting officer responsible for keeping an arrested person in custody unless such person is released on bond by a judicial officer. In the absence of a statute specifically providing therefore, a police officer may not admit to bail one charged with a criminal offense. 1966 Ops. Atty. Gen., No. 2193, p. 337. Our research has not disclosed any statute which would permit a police officer to accept bail, thus the procedure described above in the first interpretation of the ordinance is impermissible. Cf. § 46–855, South Carolina Code of Laws, 1962, as amended. In any event, the meaning of the ordinance is unclear. Our Supreme Court has said that municipal ordinances which are penal in nature must as a matter of due process sufficiently define the act which is prohibited or required. Such an ordinance may not be vague or indefinite, but must ‘. . . give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden.’ [Town of Honea Path, S. C., v. Flynn, 255 S.C. 32, 176 S.E.2d 564, 567 \(1970\)](#). The Ordinance must fail for lack of clarity and definiteness.

\*2 Other uncertainties are also found in the Ordinance. The mandate of Section 17–54 becomes effective only at such time as an arrest is made for the ‘violation of the laws or ordinances of the City.’ The Ordinance does not make clear for its intended purposes whether the term ‘arrest’ is contemplated to mean detention arising from criminal activity or if it includes a citation or a summons issued for a traffic violation, building code violation, zoning restriction, etc. The policeman has a right to know when the Ordinance becomes effective requiring his compliance. The Ordinance provides that in lieu of a valid bond the arresting officer may require the arrested person to give a ‘pledge.’ ‘The word pledge has a number of different meanings.’ 71 C.J.S. [Pledge](#), p. 1190. The Ordinance does not clarify its instructions, and the arresting officer is entitled to be informed as to what he is being required to do.

Further question is raised by the manner in which the penalty for violation of Section 17–54 is determined. The minimum requirements of fairness and due process dictate that punishment be related to the causal offense. The arresting officer's penalty for violation of Section 17–54 is determined by the punishment imposed upon someone else for an offense not charged against the arresting officer.

## CONCLUSION

It is therefore the opinion of the Office that Section 17–54 of the Ordinances of the City of Goose Creek is invalid inasmuch as there is no statutory provision for a municipal police officer to admit to bail one charged with a criminal offense, and because the Ordinance is too vague and indefinite to be enforceable.

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