

1974 WL 27205 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 15, 1974

***1 RE: No. 213—Municipal**

Mr. Sam Rogol
Attorney at Law
P. O. Box 528
Darlington, South Carolina 29532

Dear Mr. Rogol:

In your capacity as Town Attorney for the Town of Lamar, South Carolina, you have sought our advice concerning the constitutionality of an ordinance that establishes a curfew within Lamar's municipal limits. That ordinance reads in part. [A] midnight to daylight curfew shall be enforced on all persons and vehicles, except emergency vehicles, within the Town limits of Lamar, S. C. due to the many complaints from citizens of excessive noise during the late evening hours and the early morning hours.

We feel that that ordinance is unconstitutional.

Liberty of the person, secured against the federal government by the Fifth mendment and against state governments including municipal corporations by the Fourteenth Amendment . . . , includes liberty to be or go where one pleases, subject to not violating property and personal rights of other persons, and subject also to governmental restrictions constituting due process of law. *McCUILLIN, MUNICIPAL CORPORATIONS* § 19.30 at 484.

Consequently, an ordinance that restricts one's movements must bear a sufficiently close relation to the peace, safety, and welfare of the public as to justify the inconvenience to which law-abiding citizens may occasionally be subjected. *Ibid.* at 485. In our judgment, the ordinance bears no such relation.

An ordinance proscribing excessive noise, it seems to us, would have been more appropriate.

Kind regards,

C. Tolbert Goolsby, Jr.
Deputy Attorney General

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