

1974 WL 27472 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 4, 1974

*1 Francis G. Holliday, Jr., Esquire
Attorney
City of Chester
Chester, SC 29706

Dear Mr. Holliday:

Your letter of September 10, 1974, has been referred to me for answer. You questioned whether or not the officials of the City of Chester can proceed under the criminal penalty provisions under the city ordinance proscribing nuisances. In his letter to you of July 2, 1974, Mr. Randolph R. Mahan, Assistant Attorney General, was of the opinion that 'Presumably, therefore, the power of the municipality ceased with the repeal of Section 32-84 in 1972. The power to regulate nuisances is derived from the Police Powers under the State as sovereign.

There is no inherent police power in municipal corporations, and delegation by the state is requisite to the existence of police power in any municipal corporation. Consequently, the police power of any municipality is limited by the grant thereof to it by the state. See, 6 McQuillin on Municipal Corporations, Section 24.35 at 550-551 (1969). [Footnotes omitted.]

The general grant of the Police Power to regulate nuisances was repealed by Section 32-84 Code of Laws of South Carolina (1962) (as amended), therefore, the only possible delegation of authority to regulate nuisances would come from the city's charter. See, 6 McQuillin on Municipal Corporation, Section 24-38 at 553 (1969).

In studying the copy of the ordinance you sent to Attorney General McLeod, I see that the ordinance was adopted pursuant to Section 5 of the charter for the City of Chester. According to the Secretary of State's Office, the charter for the City of Chester was enacted by the Legislature in 1840. Unfortunately, the Secretary of State's Office does not have a copy of the charter in its office; consequently, I was unable to study the exact delegation contained in the charter. Therefore, if the charter itself contains, either specifically or by implication, the authority to regulate nuisances, the City ordinance in question is valid and city officials may proceed under the Criminal Penalty Provision. However, if the charter contains no such delegation of authority, the Criminal Penalty Provision may not be enforced since the city has no authority to regulate nuisance or to declare what a nuisance is.

Yours very truly,

M. Elizabeth Crum
Assistant Attorney General

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