

1973 S.C. Op. Atty. Gen. 182 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3545, 1973 WL 21970

Office of the Attorney General

State of South Carolina

Opinion No. 3545

June 18, 1973

***1** A municipal ordinance providing a penalty of \$100.00 or 30 days for carrying a pistol in circumstances that would also constitute a violation of the State Pistol law is invalid.

Chief of Police
Lancaster, S.C.

Inquiry has been made as to the validity of a municipal ordinance that prohibits the carrying of pistols in the same circumstances as provided by State law, but provides a penalty of \$100 or 30 days, whereas State law provides a greater penalty for the same offense.

The general rule is expressed in *Municipal Corporations*, McQuillin, S. 15.22:

“... no municipal ordinance can—subtract from—statutes, at least where the net result is one of conflict.”

The lessening by ordinance of the seriousness of a crime covered by State law by reducing the degree of the offense or the penalty provided for its violation has been held to constitute subtracting from a state statute. See [City of Cincinnati v. King](#), 168 N.W.2d 633; [City of Cleveland v. Betts](#), 154 N.E.2d 917.

In the *Betts* case, an ordinance of the City of Cleveland made the carrying of a concealed weapon a misdemeanor within the jurisdiction of the municipal court, whereas State law provided that the same offense was a felony and imposed a greater penalty. The court said:

“... a police regulation in a municipal ordinance may not validly contravene a statutory enactment of general application throughout the State, and must give way if it conflicts therewith.

“If by ordinance a municipality can make the felony of carrying concealed weapons a misdemeanor, what is there to prevent it from treating armed robbery, arson, rape, burglary, grand larceny or even murder in the same way, and finally dispose of such offenses in the Municipal Court.”

In view of the foregoing, it is the opinion of this Office that a municipal ordinance providing a penalty of \$100 or 30 days for carrying a pistol in circumstances that would also constitute a violation of the State pistol law (Sec. 16–149 et seq., 1962 Code of Laws of South Carolina, as amended) is invalid.

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