

1973 WL 26968 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 13, 1973

*1 Honorable L. S. Burton
Mayor
Town of Calhoun Falls
Calhoun Falls, South Carolina 29628

Dear Mayor Burton:

Thank you for your letter of September 14, 1973. You have requested an opinion of this office as to: (1) Whether the Town of Calhoun Falls can pass an ordinance against obscene literature, and (2) Whether the town may make such an offense a felony, as it is under Sections 16-414.1-16-414.8 of the South Carolina Code of Laws, 1962, as amended.

Section 47-61 of the 1962 South Carolina Code of Laws provides:

'Rules or ordinances or police government.—The city and town councils of the cities and towns of the State shall, in addition to the powers conferred by their respective charters, have power and authority to make, ordain and establish all such rules, bylaws, regulations and ordinances, not inconsistent with the laws of this State, respecting the roads, streets, markets, police, health and order of such cities and towns or respecting any subject as shall appear to them necessary and proper for the security, welfare and convenience of such cities and towns or for preserving health, peace, order and good government within them. And the city and town councils may fix fines and penalties for the violation thereof, not exceeding one hundred dollars' fine or thirty days' imprisonment.'

[City of Charleston v. Jenkins](#), 243 S.C. 205, 133 S.E.2d 242 (1963) held that under its authorized police power, a municipal corporation 'may regulate any trade, occupation or business, the unrestrained pursuit or which might affect injuriously the public health, morals, safety or comfort.'

[City of Greenville v. Bryant](#), 186 S.E.2d 236, 257 S.C. 448 (1972), although not referring to the police power in a city licensing ordinance squarely held that 'the materials in question were obscene and the City had the power to prohibit their sale within the City limits.'

This state has long held that city ordinances and state statutes may both 'stand together, and both may be enforced' so long as there is no conflict between them. [Heise v. Town Council](#), 6 Rich. 404; [Florence v. Brown](#), 49 S.C. 332, 265 S.E. 880 (1896). However it is also clear that while a municipality may enforce an ordinance which is similar to a statute, the penalty would be \$100 or imprisonment for thirty days as stated in § 47-61 of the South Carolina Code of Laws, 1962. [City of Spartanburg v. Gosaett](#), 229 S.C. 464, 90 S.E.2d 645 (1955). (See also 1966 Opinion Attorney General Number 2168 p. 301, enclosed.)

In my opinion, the Town of Calhoun Falls may enact an ordinance against obscene literature in furtherance of the state policy, but its penalty is limited to that specifically imposed by statute.

Very truly yours,

Stephen T. Savitz
Staff Attorney

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