

1973 S.C. Op. Atty. Gen. 368 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3677, 1973 WL 21128

Office of the Attorney General

State of South Carolina

Opinion No. 3677

December 20, 1973

*1 Honorable Mack Jolley
Chief of Police
Post Office Box 278
Gaffney, South Carolina 29340

Dear Chief Jolley:

Some time ago, you referred to this Office a copy of Gaffney City Code, Section 14–13.1, which prohibits the possession and sale inter alia of narcotic drugs and other compounds such as barbiturates.

Since the State, by the passage of the unlawful drug act of 1971, has imposed greater penalties for identical unlawful acts, it is my opinion that the Gaffney City Code imposing lesser penalties is not valid.

As you know, no city is empowered to enact an ordinance that is in conflict with state law. A criminal ordinance imposing a penalty for an act covered by state law imposing a materially greater penalty would be in conflict with that state law. This distinction is made more important by the fact that the United States Supreme Court has recently held that a defendant may not be convicted for the same act by both the city and the state. This being true, a conviction under a city ordinance would constitute an effective bar to subsequent prosecution under the state law.

The material difference does not appear so obvious when the subject is one of barbiturates or other drugs that are not in the heroin-cocaine-LSD category. In other crimes, the importance can be seen with greater clarity. If, for example, a city decided to pass an ordinance making it a violation of municipal law to break and enter with intent to steal and impose a \$100 or 30-day penalty therefor, a defendant could escape the possible maximum sentence applicable under state law by pleading guilty to the charge made under the municipal ordinance.

In summation, it is the opinion of this Office that Gaffney Code Section 14–13.1 is invalid in any particular in which it parallels state criminal law providing a penalty more severe than that provided under municipal law.

Very truly yours,

Joseph C. Coleman
Deputy Attorney General

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