

7528 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

June 4, 2003

Jimmy Dixon, Chief of Police
Clemson Police Department
Post Office Box 1566
Clemson, South Carolina 29633

Re: S.C. Code Ann. §56-5-2140

Dear Chief Dixon:

You have requested an advisory opinion from this Office regarding the legality of one of your city traffic ordinances. By way of background, you have indicated that the City of Clemson currently has an ordinance that covers the operation of a motor vehicle in the area of illegal U-turns. The ordinance, in Section 18-22, reads:

No U-turn shall be made on any street, except where authorized by an official traffic sign, and only when such movement can be made with safety and without interfering with other traffic. (Ord. No. CC-89-022 & 2, 11-20-89)

You indicate that a violation of this ordinance is punishable in the Clemson Municipal Court by a fine of \$156.00, with no point value on the driver's license. You further indicate that the South Carolina Department of Motor Vehicles has recently notified you that you cannot legally have such an ordinance because it is in conflict with a state statute, S.C. Code Ann. § 56-5-2140, which covers the same offense. You have asked whether the Clemson Police Department can continue to issue citations for violations of this city ordinance.

Law/Analysis

We must begin our analysis with the basic principle that a local ordinance, just like a state statute, is presumed to be valid as enacted unless or until a court declares it to be invalid. Op. S.C. Atty. Gen., May 7, 2003, citing Casey v. Richland County Council, 282 S.C. 387, 320 S.E.2d 443 (1984). Only the courts, and not this Office, would possess the authority to declare such ordinance invalid. Therefore, any ordinance would have to be followed until a court sets it aside.

With this background in mind, we turn to the question of how the courts would likely rule should this city ordinance be challenged as inconsistent with state statute. Pursuant to Section 5-

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7-30 of the South Carolina Code, municipalities are authorized to enact ordinances "... not inconsistent with the Constitution and the general law of this State, including the exercise of such powers in relation to roads, streets, ... law enforcement ...". Any municipal ordinance is presumed to be valid. Scranton v. Willoughby, 306 S.C. 421, 412 S.E.2d 424 (1991). Thus, a municipal traffic ordinance will not be declared invalid unless it is clearly inconsistent with the general state law. Hospitality Ass'n of S.C. v. County of Charleston, 320 S.C. 219, 224, 464 S.E.2d 113, 116 (1995).

Chapter 5 of Title 56 of the Code (Sections 56-5-10, et seq.) is entitled "Uniform Act Regulating Traffic on Highways." Included in this chapter are numerous traffic provisions regulating the operation of motor vehicles on the roads of this State. Section 56-5-30 of the Code states:

The provisions of this chapter shall be applicable and uniform throughout this State, and all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance, rule, or regulation in conflict with the provisions of this chapter unless expressly authorized therein. Local authorities may, however, subject to the limitations prescribed in Section 56-5-930, adopt additional traffic regulations which are not in conflict with the provisions of this chapter.

This statute is consistent with the general principles set forth in 7A Am.Jur.2d, Automobiles and Highway Traffic, Section 17 at p. 205:

Municipalities, to which the power to regulate the use of their public ways by motor vehicle has been delegated by statute, may enact such regulations so long as they are not in conflict with or repugnant to state legislative enactments governing the use of such vehicles, but such regulations are invalid if they are in conflict with statutes relating to the subject. Where the state has retained the power to provide general laws regulating traffic on the highways of the state, legislation enacted pursuant to such a right cannot be curtailed, infringed upon, or annulled by local authorities, and where there is a conflict between such a state statute and a municipal ordinance, the statute prevails.

See also McQuillin Municipal Corporations (3rd Ed.) Vol. 6 §§ 21.35, 23.07, 24.54. Thus, any municipal ordinance that is directly inconsistent with a state statute that regulates the same activity would violate well established principles of law, and would likely be struck down by the courts of this State.

This Office is of the opinion that the Clemson city ordinance in question is inconsistent with the South Carolina Code of Laws. Section 56-5-2140(a), which you have provided in your memorandum, states:

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The driver of any vehicle shall not turn such a vehicle so as to proceed in the opposite direction unless such movement can be made in safety and without interfering with other traffic.

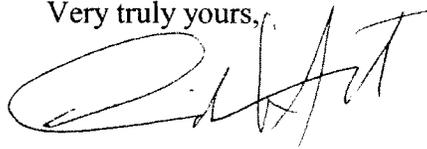
A plain reading of the statute shows that U-turns are generally permissible in South Carolina, so long as they are made safely and without interfering with other traffic. The City ordinance in question imposes a general *prohibition* on U-turns. The ordinance would permit a U-turn only where it is specifically authorized by a traffic sign at a particular location. Thus, Clemson City Ordinance CC-89-022 & 2 appears to be in direct conflict with the Uniform Act Regulating Traffic on Highways in that it generally prohibits a traffic maneuver that is generally permitted by the Act. Previous opinions of this Office have advised that such direct inconsistencies would likely render a municipal ordinance invalid. See Ops. S.C. Atty. Gen., No. 88-16, dated February 16, 1988, and informal opinion dated July 17, 2001. Accordingly, this Office advises that a court would likely hold that the city U-turn ordinance violates Sections 5-7-30 and 56-5-30 of the South Carolina Code of Laws and is therefore invalid.

You indicate in your memorandum that there is also a distinction between the penalties that are imposed for a violation of the city ordinance, which involve no points, as opposed to the penalty provided for in Section 56-1-270, which imposes a four point penalty for "turning unlawfully." While this might present another issue which brings the city ordinance in conflict with the South Carolina Code¹, given our determination that the substance of the Ordinance in question appears to be inconsistent with Section 56-5-2140, I have not addressed this issue in detail.

Conclusion

This Office advises that the Clemson City Ordinance No. CC-89-022 & 2, which generally prohibits U-turns, is presumptively valid until a court in the State of South Carolina orders that it is invalid and sets it aside. However, it does appear that the ordinance is in direct conflict with Section 56-5-2140 of the Code, and pursuant to Section 56-5-30 and the general principals of law discussed above, would likely be declared invalid by the Courts.

Very truly yours,



David K Avant
Assistant Attorney General

¹Op. S.C. Atty. Gen., 88-16, dated February 16, 1988, seems to suggest that such a discrepancy in point values, between enforcement of a municipal ordinance and Section 56-1-270 of the Code, might present an impermissible conflict, but was unable to definitely conclude this.