

February 16/85

The State of South Carolina



Office of the Attorney General

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September 25, 1985

Walter H. Parham, Esquire  
Greenville County Attorney  
100 Courthouse Annex  
Greenville, South Carolina 29601

Dear Mr. Parham:

By your letter of April 30, 1985, you asked this Office to review a proposed ordinance to regulate pawnshops in light of state statutes which presently regulate pawnshops. You have asked whether Greenville County has the authority to further regulate pawnshops. This Office concurs with your opinion that such regulation by Greenville County would be generally permissible; there are some troublesome areas with the proposed ordinance, however.

Regulation of pawnshops is covered by Section 40-39-10 et seq., Code of Laws of South Carolina (1976 and 1984 Cum.Supp.). This Office considered the authority of a county to regulate another occupation also regulated by the Code in an opinion dated June 11, 1984 (enclosed) and concluded that such county regulation would be permissible. Applying the reasoning and authority cited in that opinion, we would advise that county regulation of pawnshops would be permissible as complementary to state law, assuming no inconsistency between state laws and the county ordinance.

Enclosed are copies of two cases in which municipal ordinances with stricter standards than applicable state law were upheld as a valid exercise of police power as relevant to detection and prevention of crime. See City of Hobbs v. Biswell, 81 N.M. 778, 473 P.2d 917, cert. den. 81 N.M. 772, 473 P.2d 911 (1970); Liberman v. Cervantes, 511 S.W.2d 835 (Mo. 1974). However, it should be noted that "regulations so onerous as to amount to a prohibition of such business ... are not permissible." 54 Am.Jur.2d Moneylenders and Pawnbrokers § 2. Only a court could make such a determination as to Greenville County's ordinance, however.

REQUEST LETTER

Continuation Sheet Number 2

To: Walter H. Parham, Esquire  
September 25, 1985

As you noted on page 4 of your letter, a problem does appear to exist with Section 18 of the proposed ordinance concerning penalties for violation of the ordinance. Section 40-39-130 of the Code provides penalties which, under Section 4-9-30(14) of the Code, could not be modified by a county. See, Terpin v. Darlington County Council, Opinion No. 22351 (S.C. July 9, 1985). Even if this section should be deleted, the County could nevertheless regulate pawnshops.

Another area of concern is Section 9 of the proposed ordinance, which would effectively deny a license or permit to one convicted of a crime of moral turpitude, a crime involving theft, or a crime against property. Section 40-39-40 of the Code authorizes the clerk of court to grant a license to a person who produces to the clerk of court "satisfactory evidence of his good character." On one hand, Section 9 appears to take away the discretion given the clerk of court by Section 40-39-40 of the Code and thus may not be permissible; on the other hand, conviction of one of the specified crimes could be one criterion of good character which must be evidenced to the clerk of court. Before inclusion of this section in the final draft of the ordinance, it would be advisable to obtain the views of the clerk of court since he may be affected by the section. We would note, however, that an ordinance "is not necessarily inconsistent with a state law on the same subject because it provides for greater restrictions or prescribes higher standards than the law." City of Hobbs v. Biswell, 473 P.2d at 921.

In conclusion, with the exceptions as noted above, this Office concurs with your opinion that Greenville County may regulate pawnshops. We trust that the above thoughts and enclosures will be beneficial to you and County Council. Please let us know if we may provide additional assistance or clarification.

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP:djg  
Enclosures

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Executive Assistant for Opinions