

1984 WL 249794 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 4, 1984

***1 RE: Proposed Juvenile Ordinance (Opinion #822)**

Mr. James F. Elders
Chief of Police
City of Georgetown
1405 Prince Street
Georgetown, South Carolina 29440

Dear Chief Elders:

Bob Cook, Executive Assistant for Opinions, has referred your letter, dated February 27, 1984, to me for reply.

You inquired as to the constitutionality of ordinances proposed for the City of Georgetown, relating to curfews. Section 18-7.1 provides a curfew for minors under the age of seventeen years; § 18-7.2 places criminal penalties upon parents who allow their children under age seventeen to violate § 18-7.1; § 18-7.3 allows police officers the power to apprehend and question minors under the age of seventeen who are found to be loitering or wandering during the times of regular school hours; finally, § 18-7.4 sets penalties.

Over the years there have been several instances where vagrancy ordinances, or curfew ordinances, have been invalidated by the courts. Generally, they have been held unconstitutional because they fail to 'give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute . . . and because [they] encourage arbitrary and erratic arrests and convictions'. [Papachristou v. Jacksonville, 405 U.S. 156, 92 S.Ct. 839, 31 L.Ed.2d 110 \(1972\)](#). This office has expressed opinions holding certain curfew and vagrancy ordinances to be unconstitutional over the years; two examples are enclosed (Opinions dated September 28, 1976, and September 5, 1979.)

More pertinent to your inquiry are two Federal Court cases my research has uncovered. In [Naprstek v. City of Norwich, 545 F.2d 815 \(2nd Cir., 1976\)](#), a juvenile curfew ordinance was held to be unconstitutional. It forbid children under the age of seventeen 'to be upon the streets or in any public places or buildings of the city . . . unless accompanied by parent, guardian, or other adult person having care and custody of the minor . . . after a particular hour of the night'. Citing the 'fair notice' requirements above, the Court ruled the ordinance unconstitutional, since it failed to provide the hour at which the curfew ends. The Court held that parents and minors were not given fair notice of when children under the age would be permitted to return to the streets.

Of course, your proposed ordinance does contain a time of 6:00 A.M., when children may be allowed in the streets. However, in the case of [Johnson v. City of Opelousas, 658 F.2d 1065 \(5th Cir., 1981\)](#), a similar statute was held to be unconstitutional. A Louisiana city ordinance provided there that it would be unlawful for a child under the age of seventeen years to loiter, travel, or in other means be on the streets of the city between 11:00 P.M. and 4:00 A.M. the following day, and 1:00 A.M. on Friday and Saturday night and 4:00 A.M. the following day, unless the minor was accompanied by a parent. That ordinance tracks the language of yours, as indicated on the enclosed copy of the case. Citing [Naprstek](#) and two other cases, the Court held that the curfew ordinance was constitutionally infirm in its breadth.

***2** A review of the two prior opinions of this office, and the two federal cases I have cited, all of which are enclosed, point to the constitutional difficulties in enacting an ordinance such as that proposed by Georgetown. While only a Court can construe with certainty the constitutionality of a given ordinance, the enclosures indicate probable constitutional problems. Accordingly,

I would suggest that you review this matter and the enclosures with your City Attorney, to determine the appropriate steps that may be taken.

Sincerely yours,

James G. Bogle
Assistant Attorney General

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