

1977 WL 37297 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 8, 1977

*1 The Town of Batesburg does not have traffic jurisdiction over 2,018.7 feet of South Carolina No. 391, said highway right of way merely abutting and not lying within the corporate limits of the town.

Town Attorney
Town of Batesburg, South Carolina

QUESTION PRESENTED:

You have asked whether the police of the Town of Batesburg have traffic jurisdiction over 2,018.7 feet of South Carolina No. 391, the property situate on the East of said highway being in the corporate limits of said town, and the property across said highway and being on the West side thereof, not being in the corporate limits of said town?

DISCUSSION OF ISSUE:

By Ordinance, dated April 4, 1972, the Town Council of Batesburg, South Carolina, annexed to the Town of Batesburg a parcel of land described fully in the Ordinance. The description includes, as one boundary, South Carolina Highway No. 391, for a distance of Two Thousand Eighteen and $\frac{7}{10}$ (2,018.7') Feet, said boundary being, 'along said highway to an iron stake'. The sketch of the property annexed, enclosed with your request for this opinion, clearly shows the boundary line as coextensive with the eastern right-of-way line of South Carolina No. 391. Therefore, this opinion is based upon the factual assumption that no part of South Carolina No. 391 along the Two Thousand Eighteen and $\frac{7}{10}$ (2,018.7') Feet in question lies within the corporate limits of the Town of Batesburg.

The issue here is the territorial limit of the police power of the Town of Batesburg. The law applicable to this issue is stated generally in 56 Am.Jur.2d, Municipal Corporations, § 436:

In accordance with general principles as to the nonextraterritorial operation of municipal powers, the police power jurisdiction of municipal corporations, in the absence of express provisions of statute to the contrary, is limited by the territorial boundaries of the municipalities. Therefore, except as it may be clearly authorized to do so by the state legislature, a municipal corporation cannot give its police ordinances an extraterritorial effect and cannot prohibit activities outside the municipal boundaries. It has been held, however, that an ordinance, even though it is not limited by its terms to the territory of the municipality, is valid and enforceable within the territorial limits of such municipality.

This statement from Am.Jur.2d is apparently in accord with South Carolina law, as noted below.

Section 47-32, Code of Laws of South Carolina, 1962, as amended, enumerates powers of municipalities, including the power of law enforcement. While Section 47-32 was enacted in 1975, said statute is substantially similar to and, apparently, succeeds Section 47-61, Code of Laws of South Carolina, 1962. The South Carolina Supreme Court considered Section 47-61, in City of Charleston v. Jenkins, 243 S.C. 205, 133 S.E.2d 242, 243 (1963), and concluded:

This grant of power for purposes of municipal legislation is as broad and comprehensive as it was within the power of the State to delegate. It is a grant of the sovereign police power of the State itself limited alone (1) by the territorial confines of

a municipality authorized to exercise it, and (2) by the proviso that legislation thereunder shall not be inconsistent with the laws of the State.

*2 While the municipal ordinance in City of Charleston v. Jenkins, supra, did not deal with traffic law enforcement, the principles stated by the Supreme Court are applicable here. Stated simply, the Town of Batesburg has no authority to enforce its traffic ordinances outside the corporate limits of the town.

It should be noted that Section 17-254, Code of Laws of South Carolina, 1962, as amended, grants town police the authority to make arrests within three miles of the corporate limits when a police officer is in pursuit of an offender for commission of an offense within the corporate limits. This statute, however, does not grant any authority to arrest for traffic offenses committed outside the Corporate limits, eventhough within three miles thereof.

CONCLUSION:

In conclusion, the Town of Batesburg does not have traffic jurisdiction over the Two Thousand Eighteen and ⁷/₁₀ (2,018.7') Feet in question along South Carolina No. 391. With respect to your final inquiry concerning what procedure the town can take to place the portion of highway in question within the corporate limits of the town, Section 47-11, et seq., Code of Laws of South Carolina, 1962, as amended, sets forth the procedure for extending corporate limits. More particularly, Section 47-18.2 deals expressly with annexation of the right-of-way area of a state road lying beyond but abutting on corporate limits.

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