

1976 WL 30849 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 25, 1976

*1 Col. J. L. Altman, Jr.
Chief of Police
Beaufort, South Carolina
Post Office Box 889
Beaufort, South Carolina 29902

Dear Chief Altman:

You have requested an opinion from this Office as to whether or not the City of Beaufort can enact a municipal ordinance making the simple possession of marijuana illegal within the city limits and prescribing the penalty for the violation thereof. In my opinion, it cannot.

Section 47-32, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.), authorizes all South Carolina municipalities to enact:

. . . regulations, resolutions and ordinances, not inconsistent with the Constitution and the general law of this State, including the exercise of such powers in relation to . . . law enforcement, . . . The municipal governing body may fix fines and penalties for the violation of municipal ordinances and regulations not exceeding two hundred dollars or imprisonment not exceeding thirty days. [Emphasis added.]

Pursuant to this authorization, then, a municipal ordinance making the simple possession of marijuana illegal cannot prescribe a penalty for the violation thereof greater than a thirty-day imprisonment or a two hundred dollar fine. Section 32-1510.49(d)(2) of the Code (Cum. Supp.), however, prescribes the penalty for simple possession of marijuana to be imprisonment for not more than six months or a fine of not more than one thousand dollars, or both, for a first offense. Clearly, then, a municipal ordinance making illegal the simple possession of marijuana would necessarily 'be inconsistent with . . . the general law of this State' inasmuch as the maximum permissible penalty would conflict with the penalty prescribed by Section 32-1510.49(d)(2) of the Code.

Moreover, there is an additional reason that such a municipal ordinance is, in my opinion, an unauthorized one. The general rule is that:

. . . municipal control of offenses against the state is limited to offenses of peculiar concern to the people within a particular municipal corporation although of fundamental and ultimate concern to the people of the state as a whole, whereas offenses dealt with and punishable by state statute are those of primary and direct concern to the people of the state as a whole. 6 McQUILLIN MUNICIPAL CORPORATIONS § 23.05 at 413 (Revised ed. 1969).

In my opinion, the control of drugs and other dangerous substances by criminal sanction is a state-wide concern and, thus, the State has, in effect, pre-empted the field of legislation relating thereto.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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