



ALAN WILSON
ATTORNEY GENERAL

November 14, 2019

The Honorable Phyllis Alesia Rico Flores
Administrative Judge
City of Charleston Municipal Court
180 Lockwood Boulevard
Charleston, SC 29403

Dear Judge Flores:

You have requested an opinion from this Office regarding appeals of municipal parking violations. Specifically, you state the following:

The City of Charleston Municipal Court is seeking an opinion regarding legal matters surrounding classifying parking violations as civil violations, unless otherwise subject to criminal penalties pursuant to the South Carolina Code of Laws. May rulings or decisions made by parking administrators regarding civil parking violations be appealed for further review to a department within the municipality, other than the Municipal Court?

The Code of Ordinances, City of Greenville, 42-95 and 42-178 reads:

42-95. – Civil fines for municipal parking violations.

All municipal parking violations established under this article shall be subject to civil fines only, and not subject to criminal penalties, except as otherwise mandated by the general law of the state. Enforcement and administration shall be pursuant to such written policies and procedures as are approved by the city manager for that purpose, inclusive of the amount of such fines, which shall be approved in reasonable amounts and incorporated into a schedule of fees.

Sec. 42-178. – Payment and administrative review.

- (a) The timed parking fee shall be due and owing to the city as of the date referenced on the ticket. Failure to pay by the due date shall result in additional sums due as provided for on the ticket.

- (b) Any person aggrieved by the issuance of the ticket may seek administrative review by submitting a written statement as to why the ticket was improvidently issued. Such written statement must be submitted with payment of the fee due and received by the city at the address which appears on the ticket no later than the original due date for payment referenced on the ticket.
- (c) The city manager shall designate such person or persons in one or more departments as he determines to be appropriate to review such written statements and to determine whether a ticket was improvidently issued. If the designated person determines that the ticket was improvidently issued, then the fee shall be returned to the person making the request for review. If the designated person determines that the ticket was not improvidently issued, the fee shall be retained and a written statement of the finding shall be sent to the person making the request for review.
- (d) The city manager is authorized, but not required, to establish additional procedures for appeal and review as the manager in administrative discretion determines is necessary or appropriate, including a hearing before a hearing officer. The city manager is authorized to coordinate the administration of this division addressing timed and reserved parking with other provisions in this article so that persons being cited with violations may have their citations administered and adjudicated in accordance with the general laws of the state as well as the interests of efficient and fair municipal administration.

Does 42-178 offer the Defendant legally sufficient avenues for appeal?

Our telephone conversation with you clarified that you are asking this Office to address whether the City of Greenville is required to provide an appeal or review process for decisions of parking administrators. You are not asking us to opine on either the jurisdiction of the municipal court or the judicial review that is to be afforded to parking violations.

LAW/ANALYSIS:

We will begin our analysis with a brief history of municipal governance. The South Carolina Constitution provides that “[t]he structure and organization, powers, duties, functions, and responsibilities of the municipalities shall be established by general law . . .” S.C. Const, art. VIII, § 9. In response to the

The Honorable Phyllis Alesia Rico Flores

Page 3

November 14, 2019

State Constitution, the Legislature granted municipalities broad powers, including the power to enact and enforce ordinances regarding roads and streets:

[e]ach municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets . . .

S.C. Code Ann. § 5-7-30 (1976 Code, as amended).¹

Pursuant to the Uniform Act Regulating Traffic on Highways (“Act”),² municipalities are allowed to establish traffic ordinances and regulations which are not in conflict with the Act.³ See S.C. Code Ann. § 56-5-30 (1976 Code, as amended). They are further authorized to regulate “the standing or parking of vehicles” “with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power . . .” S.C. Code Ann. § 56-5-710 (1976 Code, as amended).

Municipal ordinances must comply with the due process requirements of the South Carolina Constitution. See S.C. Const, Art. I, §3. The State Constitution grants an individual certain procedural rights in administrative matters:

No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.

S.C. Const. art. I, § 22.

¹ In Glasscock v. Sumter County, 361 S.C. 483, 604 S.E.2d 718, 722 (Ct. App. 2004), the Court of Appeals explained the purpose of granting municipalities such broad power or “home rule”:

[t]hat local governments should be afforded a reasonable degree of latitude in devising their own individual procurement ordinances and procedures is entirely consistent with our state's now firmly rooted constitutional principle of “home rule.” By the ratification of Article VIII of our state constitution in 1973, substantial responsibility for city and county affairs devolved from the General Assembly to the individual local governments. “[I]mplicit in Article VIII is the realization that different local governments have different problems that require different solutions.” [Citation omitted].

² S.C. Code Ann. § 56-5-10 et seq. (1976 Code, as amended).

³ They are also subject to S.C. Code Ann. § 56-5-930 (1976 Code, as amended), which prohibits municipalities from placing or maintaining traffic-control devices upon state highways without written permission from the Department of Transportation.

Greenville ordinance 42-178 establishes an administrative review process and expressly authorizes the city manager to exercise discretionary control to "coordinate the administration of this division . . . in accordance with the general laws of the state." More broadly, it appears that the Ordinance establishes a framework for an administrative process and leaves it to the city manager to ensure an appropriate procedural process. Furthermore, the South Carolina Constitution guarantees the right to judicial review to a person aggrieved by the result of an administrative or quasi-administrative review, which we understand to be distinct from the administrative appeal process which the city manager is authorized but not required to create. The Ordinance does not purport to bar an aggrieved person from seeking judicial review. We also note that the Ordinance is entitled to a presumption of constitutionality.⁴ For these reasons, we believe that a court most likely would conclude that the Ordinance as written does allow for sufficient avenues for appeal.

CONCLUSION:

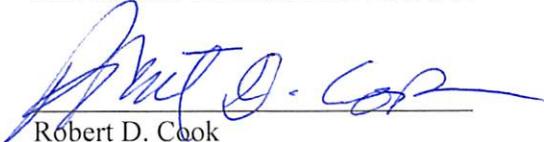
For the reasons stated above, we believe that a court most likely would conclude that Greenville ordinance 42-178 as written does allow for sufficient avenues for appeal. Of course, this opinion can only consider the law in the abstract, and this should not be construed as an opinion on the merits of any as-applied challenge in the absence of any given facts.

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

⁴ See *Op. S.C. Atty. Gen.*, 2003 WL 21043502, at *1 (Mar. 21, 2003) (quoting *Rothschild v. Richland County Bd. of Adjustment*, 309 S.C. 194, 197, 420 S.E.2d 853, 855 (1992) ("it is well settled that ordinances, as with other legislative enactments, are presumed constitutional; their unconstitutionality must be proven beyond a reasonable doubt."))