CHAPTER 7

General Structure, Organization, Powers, Duties, Functions and Responsibilities of All Municipalities

**SECTION 5‑7‑10.** Scope of chapter.

The provisions of this chapter provide for the structure, organization, powers, duties, functions and responsibilities of municipalities under all forms of municipal government provided for in Chapters 9, 11 and 13 unless otherwise specifically provided for in those chapters. The powers of a municipality shall be liberally construed in favor of the municipality and the specific mention of particular powers shall not be construed as limiting in any manner the general powers of such municipalities.

HISTORY: 1962 Code Section 47‑30; 1975 (59) 692.

CROSS REFERENCES

Administration of the government generally, see Title 1, Sections 1‑1‑10 et seq.

Constitutional provisions regarding local government, generally, see SC Const, Art 8, Sections 1 et seq.

LIBRARY REFERENCES

Municipal Corporations 59.

Westlaw Key Number Search: 268k59.

C.J.S. Municipal Corporations Sections 113, 115, 117 to 118, 138.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 12.1, “Home Rule”‑The Power of Municipalities to Enact Regulations and Ordinances.

NOTES OF DECISIONS

In general 2

Validity 1

1. Validity

Municipalities had authority under state law to adopt ordinances imposing 5% per month penalty for late payment of business license taxes on telecommunications company, even though state statute limited fines for violation of ordinances to $500 and/or imprisonment for 30 days; limitation for violation of ordinances was for criminal penalties and not civil penalties, and authority to impose civil penalties was fairly implied and not prohibited under statute authorizing collection of business license tax. Municipal Ass’n of South Carolina v. AT & T Communications of Southern States, Inc. (S.C. 2004) 361 S.C. 576, 606 S.E.2d 468. Municipal Corporations 983

Determining whether a local ordinance is valid is a two‑step process: the first step is to determine whether the municipality had the power to adopt the ordinance, and if no power existed, the ordinance is invalid; however, if the municipality had the power to enact the ordinance, the second step is to determine whether the ordinance is consistent with the Constitution and general law of the state. Denene, Inc. v. City of Charleston (S.C. 2002) 352 S.C. 208, 574 S.E.2d 196, rehearing denied, on subsequent appeal 359 S.C. 85, 596 S.E.2d 917. Municipal Corporations 111(1); Municipal Corporations 111(2)

2. In general

Where Public Service Commission (PSC) allows utility to pass on percentage of city’s business license tax which exceeds a cap approved by PSC to customers within city, tariff does not conflict with city’s power to tax under State Constitution and Code (Article VIII, Section 17, and Sections 5‑7‑10, 5‑7‑30, and 58‑9‑30 of Code), notwithstanding city’s assertion that cap is so low that it allows excessive percentage to be passed on to utility’s customers within city, since utility still pays tax and tariff simply passes portion of tax on to city’s taxpayers rather than to those outside city limits or across state. City of Spartanburg v. Public Service Com’n of South Carolina (S.C. 1984) 281 S.C. 223, 314 S.E.2d 599.

**SECTION 5‑7‑12.** School resource officers; procedures for certain arrests; jurisdiction; employment rights.

(A) The governing body of a municipality or county may upon the request of another governing body or of another political subdivision of the State, including school districts, designate certain officers to be assigned to the duty of a school resource officer and to work within the school systems of the municipality or county. The person assigned as a school resource officer shall have statewide jurisdiction to arrest persons committing crimes in connection with a school activity or school‑sponsored event. In all circumstances in which a school resource officer arrests a student for a misdemeanor offense, the officer may issue a courtesy summons to appear to a student involved in the particular incident in connection with a school activity or school‑sponsored event. Notwithstanding another provision of law, a student arrested for a misdemeanor offense by a school resource officer must have a bond hearing in magistrates court within twenty‑four hours of his arrest. When acting pursuant to this section and outside of the sworn municipality or county of the school resource officer, the officer shall enjoy all authority, rights, privileges, and immunities, including coverage under the workers’ compensation laws that he would have enjoyed if operating in his sworn jurisdiction.

(B) For purposes of this section, a “school resource officer” is defined as a person who is a sworn law enforcement officer pursuant to the requirements of any jurisdiction of this State, who has completed the basic course of instruction for School Resource Officers as provided or recognized by the National Association of School Resource Officers or the South Carolina Criminal Justice Academy, and who is assigned to one or more school districts within this State to have as a primary duty the responsibility to act as a law enforcement officer, advisor, and teacher for that school district.

HISTORY: 1998 Act No. 435, Section 3; 2008 Act No. 267, Section 2, eff June 4, 2008.

Effect of Amendment

The 2008 amendment, in subsection (A), in the first sentence substituted “another” for “any other” in two places and added the third and fourth sentences relating to student arrests.

CROSS REFERENCES

School Resource Officers, see S.C. Code of Regulations R. 43‑210.

LIBRARY REFERENCES

Schools 72.

Westlaw Key Number Search: 345k72.

C.J.S. Schools and School Districts Sections 375, 387 to 389, 396.

Attorney General’s Opinions

Discussion of whether a school district could employ a security officer other than a School Resource Officer to provide protection at schools. S.C. Op.Atty.Gen. (February 24, 2016) 2016 WL 963708.

**SECTION 5‑7‑20.** Form and effect of corporate name of municipality.

The corporate name of every city or town incorporated under this title shall be ‘the city of “\_\_\_\_\_\_\_\_\_\_”‘ or ‘the town of “\_\_\_\_\_\_\_\_\_\_”‘, and in such corporate name the municipality shall have all powers granted to municipalities by the Constitution and the general law of this State as fully and completely as though they were specifically enumerated herein.

HISTORY: 1962 Code Section 47‑31; 1975 (59) 692.

CROSS REFERENCES

Authority for regional councils of government, see SC Const, Art 7, Section 15.

Constitutional provisions dealing with finance, taxation, and bonded debt, generally, see SC Const, Art 10, Sections 1 et seq.

Constitutional provisions dealing with local government generally, see SC Const, Art 8, Sections 1 et seq.

Prohibition on issuance by municipal corporations of licenses to sell alcoholic beverages, see SC Const, Art 8‑A, Section 1.

Protection of chartered rights and powers of municipalities, see Const SC, Art 7, Section 11.

Special election for bonding municipality, see SC Const, Art 17, Section 7B.

LIBRARY REFERENCES

Municipal Corporations 21.

Westlaw Key Number Search: 268k21.

C.J.S. Municipal Corporations Section 34.

Attorney General’s Opinions

The City of Spartanburg may, pursuant to the general municipal police powers provision (Section 5‑7‑20) install and monitor alarm systems in the homes and businesses of private citizens. 1976‑77 Op Atty Gen, No 77‑250, p 183.

**SECTION 5‑7‑30.** Powers conferred upon municipalities; surtax for parking spaces.

Each 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, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it, including the authority to levy and collect taxes on real and personal property and as otherwise authorized in this section, make assessments, and establish uniform service charges relating to them; the authority to abate nuisances; the authority to provide police protection in contiguous municipalities and in unincorporated areas located not more than three miles from the municipal limits upon the request and agreement of the governing body of such contiguous municipality or the county, including agreement as to the boundaries of such police jurisdictional areas, in which case the municipal law enforcement officers shall have the full jurisdiction, authority, rights, privileges, and immunities, including coverage under the workers’ compensation law, which they have in the municipality, including the authority to make arrests, and to execute criminal process within the extended jurisdictional area; provided, however, that this shall not extend the effect of the laws of the municipality beyond its corporate boundaries; grant franchises for the use of public streets and make charges for them; grant franchises and make charges for the use of public beaches; engage in the recreation function; levy a business license tax on gross income, but a wholesaler delivering goods to retailers in a municipality is not subject to the business license tax unless he maintains within the corporate limits of the municipality a warehouse or mercantile establishment for the distribution of wholesale goods; and a business engaged in making loans secured by real estate is not subject to the business license tax unless it has premises located within the corporate limits of the municipality and no entity which is exempt from the license tax under another law nor a subsidiary or affiliate of an exempt entity is subject to the business license tax; borrow in anticipation of taxes; and pledge revenues to be collected and the full faith and credit of the municipality against its note and conduct advisory referenda. The municipal governing body may fix fines and penalties for the violation of municipal ordinances and regulations not exceeding five hundred dollars or imprisonment not exceeding thirty days, or both. If the person or business taxed pays a business license tax to a county or to another municipality where the income is earned, the gross income for the purpose of computing the tax must be reduced by the amount of gross income taxed in the other county or municipality.

For the purpose of providing and maintaining parking for the benefit of a downtown commercial area, a municipality may levy a surtax upon the business license of a person doing business in a designated area in an amount not to exceed fifty percent of the current yearly business license tax upon terms and conditions fixed by ordinance of the municipal council. The area must be designated by council only after a petition is submitted by not less than two‑thirds of the persons paying a business license tax in the area and who paid not less than one‑half of the total business license tax collected for the preceding calendar year requesting the designation of the area. The business within the designated area which is providing twenty‑five or more parking spaces for customer use is required to pay not more than twenty‑five percent of a surtax levied pursuant to the provisions of this paragraph.

HISTORY: 1962 Code Section 47‑32; 1975 (59) 692; 1976 Act No. 729; 1978 Act No. 409, Section 1; 1988 Act No. 495, Section 2; 1993 Act No. 171, Section 1; 1999 Act No. 113, Section 21; 2008 Act No. 412, Section 2, eff June 25, 2008.

Effect of Amendment

The 2008 amendment, in the first undesignated paragraph, added the third sentence relating to reduction of the amount of gross income taxed.

CROSS REFERENCES

Ad valorem tax for payment of general obligation bonds, see Section 5‑21‑400.

Assessment and collection of municipal taxes on motor vehicles, see Section 12‑37‑2690.

Assessment of taxes and fees, see Section 6‑1‑300 et seq.

Authority of municipalities to establish special improvement districts, see Section 5‑37‑10 et seq.

Authorization for governing bodies of municipalities to enter into cooperative agreements with the United States Government, see Section 3‑7‑10.

City housing authorities, generally, see Section 31‑3‑310 et seq.

Execution by General Services Division of certificates of exemption from taxation on behalf of political subdivisions, see Section 1‑11‑160.

Imposition of business license tax or increase in rate thereof, see Section 6‑1‑315.

Insurance of public buildings, see Section 4‑17‑50.

Local and regional planning programs, see Section 6‑7‑10 et seq.

Municipal boards of health, see Section 44‑3‑10.

Municipal courts, see Section 14‑25‑5 et seq.

Municipal hospitals, see Section 44‑7‑610 et seq.

Power of counties and incorporated municipalities to enter into agreements to construct and operate pollution control facilities and to make loan agreements, issue bonds and accept grants for such facilities, see Section 48‑3‑10 et seq.

Prisoners working on city or town streets, see Section 5‑27‑130.

Proof of ordinances, see Section 19‑3‑10.

Streets and sidewalks, generally, see Section 5‑27‑10 et seq.

Trial of persons charged with violations of ordinances of municipality or laws of State, see Section 5‑7‑90.

LIBRARY REFERENCES

Municipal Corporations 188, 589 to 592, 623, 633, 680, 908, 956.

Westlaw Key Number Searches: 268k188; 268k589 to 268k592; 268k623; 268k633; 268k680; 268k908;268k956.

C.J.S. Municipal Corporations Sections 123 to 128, 137 to 141, 143 to 146, 152 to 153, 204, 486 to 487, 1474 to 1475, 1483, 1563, 1646, 1652, 1725 to 1726, 1728 to 1729, 1731, 1733.

RESEARCH REFERENCES

ALR Library

61 ALR 6th 387 , Obligation of Online Travel Companies to Collect and Remit Hotel Occupancy Taxes.

118 ALR 5th 347 , Validity, Construction, and Application of State Statutes and Local Ordinances Governing Personal Watercraft Use.

Encyclopedias

S.C. Jur. Constitutional Law Section 12.1, “Home Rule”‑The Power of Municipalities to Enact Regulations and Ordinances.

S.C. Jur. Gaming Section 20, Under Municipal Law.

S.C. Jur. Hotels, Motels and Other Lodgings Section 26, Taxes.

S.C. Jur. Intoxicating Liquors Section 34, South Carolina Constitution.

S.C. Jur. Public Nuisance Section 31, Power of Municipalities to Abate Nuisances.

LAW REVIEW AND JOURNAL COMMENTARIES

Nature of a Business License Tax. 32 S.C. L. Rev. 471 (March 1981).

Public Regulation of Land Use in South Carolina, 10 SCLQ 485 (1958).

Attorney General’s Opinions

Discussion of the power of a municipal council to discipline one of its own members by removal from a meeting. S.C. Op.Atty.Gen. (July 7, 2016) 2016 WL 3946154; S.C. Op.Atty.Gen. (April 20, 2016) 2016 WL 2607250; S.C. Op.Atty.Gen. (May 31, 2016) 2016 WL 3355910.

The City of Orangeburg may provide financial assistance to another governmental entity, such as South Carolina State University, for the repair of streets and sidewalks on the South Carolina State campus and such assistance constitutes a public purpose and falls within the corporate purpose of the City. S.C. Op.Atty.Gen. (May 3, 2016) 2016 WL 2764106.

City business license tax on gross income collected in the year that a business closes or transfers ownership conflicts with general law. S.C. Op.Atty.Gen. (December 10, 2015) 2015 WL 9406830.

Assuming the appropriate agreements are in place for expanded jurisdiction under Section 5‑7‑30, the town of Pelion appears to have both the authority to contract and jurisdiction to enforce contracts entered into under Section 5‑7‑110’s private business provision, regardless of whether the private business is located within three miles of the municipality’s corporate limits, so long as a description of the area to be served is filed with the appropriate county and state law enforcement agencies. S.C. Op.Atty.Gen. (August 14, 2013) 2013 WL 4636664.

The constitutionality of local ordinances as they relate to the application of Home Rule provisions of the Constitution and legislative enactments is presumed. S.C. Op.Atty.Gen. (February 22, 2013) 2013 WL 861300.

Discussion of the power of a municipality to disband its police department. S.C. Op.Atty.Gen. (July 11, 2012) 2012 WL 3057451.

Absent a constitutional or statutory provision requiring the acceptance of a payment that satisfies only a portion of the amount due on a tax bill, a court likely would find that whether to accept such payment lies in the municipality’s discretion. S.C. Op.Atty.Gen. (April 24, 2012) 2012 WL 1649763.

A business license tax imposed by a county or municipality must be calculated using gross income. S.C. Op.Atty.Gen. (April 23, 2012) 2012 WL 1561868.

The exclusive franchise to one carriage tour operator to conduct business on the public streets of the City of Beaufort would be of questionable validity. S.C. Op.Atty.Gen. (Nov. 1, 2011) 2011 WL 6120334.

A court would likely find the proposed public safety fee fails to satisfy one or more of prongs of the four‑part test for the validity of a uniform service charge. Consequently, a court would likely find the public safety fee is a tax, and it would then proceed to determine whether the tax is consistent with the laws of this State, including the restrictions on property tax increases. S.C. Op.Atty.Gen. (August 24, 2011) 2011 WL 3918170.

A court would likely find that an ordinance, allowing catamarans to be stored on the beach, conflicts with an easement that allows the city the “right to clear and remove any…obstructions” from the beach in order to satisfy its agreements with the Army Corps of Engineers; the city may therefore require landowners to remove catamarans from the beach despite the ordinance. S.C. Op.Atty.Gen. (Feb 8, 2011) 2011 WL 782319

It would not be a violation of the prohibition against dual office holding for the Richland County Sheriff to enter into a management contract with the City of Columbia to turn over the full, complete and entire responsibility for law enforcement within the City of Columbia to the Sheriff. S.C. Op.Atty.Gen. (Sept. 10, 2010) 2010 WL 3896166.

City’s loitering ordinance does not provide sufficiently specific limits on the unfettered enforcement discretion of police officers in order to meet constitutional standards for “definiteness and clarity.” As a result, the ordinance would be susceptible to overbreadth and vagueness challenges on the grounds that it does not provide the type of notice that would allow ordinary citizens an understanding as to what type of conduct is specifically prohibited and may allow arbitrary and discriminatory enforcement. Also, there are not sufficient minimal guidelines to instruct law enforcement in the enforcement of the ordinance. S.C. Op.Atty.Gen. (Jan. 28, 2010) 2010 WL 441000.

It is likely court would find proposed ordinance is within authority of municipality to provide for government services deemed necessary and proper for security, general welfare, and convenience of municipality or for preserving health, peace, order, and good government. Court, however, would most likely find proposed ordinance invalid since purposes and uses of funds from municipal accommodations tax and state local option sales tax are in conflict. 1993 Op Atty Gen No. 93‑76.

Section 5‑7‑30 allowing the establishment of the uniform service charges is broad enough to permit the City of Isle of Palms to charge the public a reasonable fee for use of public restroom facilities to cover the cost of supplies and maintenance. 1992 Op Atty Gen No. 92‑53.

The maximum noise ordinance fine that can be imposed for a first offense is $200 plus assessments. 1992 Op Atty Gen No. 92‑51.

An isolated delivery of goods into a municipality and in the absence of other business activities within the municipality would not subject the persons making the delivery to the business license tax of the municipality. 1989 Op Atty Gen, No. 89‑114, p 308.

A wholesaler who delivers goods to a retailer within a municipality is not subject to the business license tax of the municipality unless he maintains within the municipality a warehouse or mercantile establishment for the distribution of wholesale goods. 1989 Op Atty Gen, No. 89‑114, p 308.

Frequent deliveries of goods into a municipality would subject the person making the deliveries to the business license tax of the municipality. 1989 Op Atty Gen, No. 89‑114, p 308.

Municipal ordinances which attempt to regulate the sale, possession or discharge of fireworks in a manner inconsistent with State law are invalid. 1989 Op Atty Gen, No. 89‑68, p 176.

Only a court could determine with finality whether a municipal ordinance prohibiting the careless operation of motor vehicles is inconsistent with state statutory provisions regulating the operation of motor vehicles as to preclude enforcement of such ordinance. 1988 Op Atty Gen, No. 88‑16, p 54.

A company that provides information through telephonic means and has salesmen that solicit business, service accounts and provide expert advice on the acquisition of the receiving equipment to customers within a municipality is in all probability subject to the license tax ordinance of the municipality. 1987 Op Atty Gen, No. 87‑71, p 182.

Municipality may acquire, own, and operate cable telecommunication system, and full faith and credit and revenues of municipality may be pledged for payment of debt created by purchase. 1985 Op Atty Gen, No. 85‑141, p 401.

1985 Act No. 166 repealed provisions authorizing municipality to adopt provisions of Chapter 51 of Title 12 for collection of its taxes; Chapter 51 can be used to collect municipal taxes only when municipality contracts for county to collect tax. 1985 Op Atty Gen, No. 85‑89, p 251.

Both municipalities and counties have authority to regulate massage parlors pursuant to their general police powers, so long as such are not inconsistent or in conflict with Section 40‑29‑10, et seq., or any other general law. 1984 Op Atty Gen, No. 84‑66, p. 166.

Municipalities have been granted the specific authority to levy business license tax on gross income pursuant to Section 5‑7‑30, and gross income is interpreted as total receipts from a business before deductions, but excluding those funds that are collected and held for remittance to another governmental entity. 1983 Op Atty Gen, No. 83‑76, p. 121.

Municipalities have been granted the specific authority to levy business license on gross income pursuant to Section 5‑7‑30; however, a municipal license tax ordinance would be invalid, in part, if it is construed to levy a license tax upon wholesalers who neither maintained a warehouse or mercantile business within the Town. 1982 Op Atty Gen, No 82‑19, p 24.

Tax anticipation notes are not subject to the limitation that restricts certain debts of a political subdivision to 8% of the assessed value of all taxable property of such political subdivision. 1982 Op Atty Gen, No 82‑40, p 44.

A city has authority to collect property taxes at the beginning of its fiscal year; a city may impose a penalty for late payment of property taxes provided the same does not exceed two hundred dollars ($200.00). 1981 Op Atty Gen, No 81‑36, p 57.

Charges for originating and terminating intrastate telephone calls within a municipality may be included in the measure of municipal license taxes and would be presumed reasonable until facts are presented to overcome the presumption. 1979 Op Atty Gen, No 79‑70, p 91.

The taxes pledged for repayment of tax anticipation notes issued by a municipality are those taxes to be collected, or that can reasonably be expected to be collected, in the municipality’s current fiscal year. 1979 Op Atty Gen, No 79‑116, p 163.

A municipality cannot adopt ordinances and provide penalties for the violation thereof that differ from the penalty provided for the same offense by general law. 1976‑77 Op Atty Gen, No 77‑65, p 64.

A municipality does not have the authority to impose a room tax on motels, hotels or other public lodging. 1976‑77 Op Atty Gen, No 77‑44, p 43.

A municipality may not employ an attorney in matters in which it is not directly interested or which lie outside its corporate affairs. 1976‑77 Op Atty Gen, No 77‑206, p 158.

The City of Dillon may not contract with local nonprofit recreational organizations to provide specified recreational programs for the City if the programs are designed primarily for the benefit of the individual organizations and their members and will provide only a negligible benefit to the public. 1976‑77 Op Atty Gen, No 77‑266, p 197.

The term “gross income” in Section 47‑32 [1976 Code Section 5‑7‑30] refers to gross receipts before deductions and expenses. 1976‑77 Op Atty Gen, No 77‑40, p 42.

The Town of Whitmire may enact an ordinance making it unlawful to operate vehicles owned by its residents without displaying a sticker indicating that municipal taxes are paid. 1976‑77 Op Atty Gen, No 77‑310, p 237.

Under existing State law, Section 5‑7‑30, Code of Laws of S.C., 1976, a town ordinance is valid which increased the punishment for any violation of the town code from $100 to $200. 1976‑77 Op Atty Gen, No 77‑297, p 225.

(1) A municipality cannot absolutely prohibit the use of safe and sanitary mobile homes, and in order to prohibit trailers in residential areas, the town should provide zoning; (2) A town may require a person to obtain a business license when he operates a business out of his home but does no business in the town, if administrative work relating to the business is done at his home. 1976‑77 Op Atty Gen, No 77‑281, p 216.

A municipality may require under the authority of repealed 1962 Code Section 47‑271 that all delinquent taxes be paid as a condition to the renewal of a business license. 1975‑76 Op Atty Gen, No 4237, p 21.

An ordinance imposing license taxes on insurance companies doing business in the City of Allendale is constitutional, provided a rational basis exists for the separate classifications of such businesses. 1975‑76 Op Atty Gen, No 4376, p 214.

The City of Hanahan has the right to reserve, in its invitation to bid, the right to accept separate items in one or more bids. 1975‑76 Op Atty Gen, No 4529, p 392.

Under the authority of repealed 1962 Code Section 47‑253 a municipality may affix the date when ad valorem taxes are to be due, after which penalties may be imposed, and may provide for a date when the same shall be deemed to be delinquent, requiring enforced collection. 1975‑76 Op Atty Gen, No 4232, p 15.

Under the Home Rule Act, municipal ordinances may prescribe a maximum punishment not exceeding $200 or 30 days, whereas county ordinances may prescribe punishment not to exceed those of Magistrates’ Court of the county; county ordinances may not require penalties concerning litter, gun control or freedom of information; municipal ordinances may set penalties relating to firearms if they do not conflict with general laws of the state; however, municipal ordinances may not deal with freedom of information. 1975‑76 Op Atty Gen, No 4355, p 184.

Act No. 283 of 1975 [Chapter 9 of Title 4 and Chapters 1, 5, 7, 9, 11, 13, 15, 17 of Title 5 of 1976 Code] the “home rule” legislation does not grant to counties the authority to pass ordinances for the regulation of noise pollution or to provide penalties for the violation thereof. 1974‑75 Op Atty Gen, No 4118, p 192.

Absent specific statutory authority, a municipality may not authorize its police officers to admit to bail one charged with violating City ordinances. 1974‑75 Op Atty Gen, No 4188, p 241.

A city may constitutionally impose a license fee under former Code 1962 Section 47‑271 on the total gross income of a corporation doing business both within and without the city where a relationship exists between the activity without and the activity within the city. 1974‑75 Op Atty Gen, No 4206, p 251.

A municipality has the authority to require a license of persons engaged in the occupation or business of plumbing, painting and carpentry; a person continually and regularly engaged in the business of selling guns from his home from a catalog can be required to have a business license under an appropriate municipal business licensing ordinance. 1974‑75 Op Atty Gen, No 4040, p 113.

A municipality may lawfully impose a business license tax on a land surveyor who undertakes a regularly conducted business within the municipality even though the surveyor may have already paid a business license fee in another municipality. 1974‑75 Op Atty Gen, No 4039, p 112.

Former Code 1962 Section 47‑61 granted to City Councils in South Carolina the authority to enact ordinances or rules complying with the National Flood Insurance Act of 1963 and the Flood Disaster Protection Act of 1973. 1974‑75 Op Atty Gen, No 3954, p 27.

Municipalities are not empowered to offer rewards for the apprehension of offenders against criminal laws of the State, unless a statutory or charger provision expressly so provides. 1974‑75 Op Atty Gen, No 4224, p 264.

Ordinance prohibiting removal of certain sized trees without obtaining city permit places undue restriction on use of private property. 1974‑75 Op Atty Gen, No 4175, p 232.

The term “those engaged in the calling or profession of teachers or ministers of the gospel” set forth in former Code 1962 Section 47‑271 is to be construed as either teachers of the gospel or ministers of the gospel and is not to be construed as public school teachers. 1974‑75 Op Atty Gen, No 4033, p 104.

The Town of Donalds may tax property under the provision of former Code 1962 Section 47‑161. 1974‑75 Op Atty Gen, No 3978, p 51.

A municipality may regulate the use of mobile homes and travel trailers within its city limits. 1971‑72 Op Atty Gen, No 3305, p 122.

Municipalities may not enforce garbage and trash assessments by discontinuing municipal water service. 1971‑72 Op Atty Gen, No 3413, p 287.

Providing penalties for improperly obtaining automobile license tags. Municipalities may enact ordinances which provide penalties for obtaining automobile license tags without having paid municipal personal property taxes. 1971‑72 Op Atty Gen, No 3291, p 102.

Ordinance prohibiting poolrooms. A town may by ordinance prohibit poolrooms from operating inside its limits. 1967‑68 Op Atty Gen, No 2457, p 120.

Registration and licensing of motor vehicles. Cities and towns with population less than fifty‑five thousand may by ordinance require registration and licensing of motor vehicles under the police power of this section; however, any fee imposed as a charge for registering and licensing motor vehicles must bear a reasonable relation to the expense incurred in making the ordinance operative. 1966‑67 Op Atty Gen, No 2335, p 161.

Depositing municipal funds in separate accounts. City councils are authorized by this section to regulate by ordinances, not inconsistent with general laws, the procedure for depositing municipal funds in separate custodial accounts. 1964‑65 Op Atty Gen, No 1799, p 42.

NOTES OF DECISIONS

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Ordinances held valid 3

1. In general

In broad and comprehensive terms. 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 the municipality authorized to exercise it, and (2) by the proviso that legislation thereunder shall not be inconsistent with the laws of the State. Lomax v. Greenville, 225 S.C. 289, 82 S.E.2d 191 (1954); Charleston v. Jenkins, 243 S.C. 205, 133 S.E.2d 242 (1963).

Section gives municipalities police power. The exercise of police power is expressly conferred upon municipalities by this section, but the exercise of the power is subject to limitations. McCoy v. York, 193 S.C. 390, 8 S.E.2d 905 (1940). Charleston v. Jenkins, 243 S.C. 205, 133 S.E.2d 242 (1963).

By ordinances enacted pursuant to police power. Any and all ordinances enacted under this section must be in the exercise of the police power thus granted. Southern Fruit Co. v. Porter, 188 S.C. 422, 199 S.E. 537 (1938); Charleston v. Jenkins, 243 S.C. 205, 133 S.E.2d 242 (1963).

Applied in Dillon v. Saleeby, 95 S.C. 442, 81 S.E. 153 (1914). Radio Cab Co. v. Bagby, 224 S.C. 28, 77 S.E.2d 264 (1953).

Cited in Union v. Board of Com’rs, 91 S.C. 248, 74 SE 496 (1911). Gaud v. Walker, 214 S.C. 451, 53 S.E.2d 316 (1949).

Quoted in Marion v Baxley, 192 S.C. 112, 5 S.E.2d 573 (1939). Hall v. Burg, 206 SC 173, 33 S.E.2d 401 (1945).

Stated in Bailey Liquor Co. v. Austin, 1897, 82 F. 785.

In the context of insurance, the state’s authorization of business license ordinances is proper, since the state can delegate the restriction‑free taxing power conferred on the states by the McCarran‑Ferguson Act, 15 USCA Sections 1011, 1012. When the state delegates this power to municipalities, the municipalities share the state’s immunity from Commerce Clause attack. City of Charleston v. Government Employees Ins. Co., 1994, 869 F.Supp. 378, vacated.

A municipality’s business license fee is an excise tax, not an income or a sales tax. Town of Hilton Head Island v. Kigre, Inc. (S.C. 2014) 408 S.C. 647, 760 S.E.2d 103, rehearing denied, certiorari denied 135 S.Ct. 959, 190 L.Ed.2d 832. Licenses 1

In areas served by a public utility which are subsequently annexed or newly incorporated into a municipality, a new relationship is created by operation of law between the municipality and the existing utility provider; the new relationship is municipality as franchisor and utility provider as franchisee, although the relationship obviously is more limited in scope and nature than the typical franchisor‑franchisee relationship due to the lack of a franchise agreement. South Carolina Elec. & Gas Co. v. Town of Awendaw (S.C. 2004) 359 S.C. 29, 596 S.E.2d 482. Municipal Corporations 36(3)

Determining whether a local ordinance is valid is a two‑step process: the first step is to determine whether the municipality had the power to adopt the ordinance, and if no power existed, the ordinance is invalid; however, if the municipality had the power to enact the ordinance, the second step is to determine whether the ordinance is consistent with the Constitution and general law of the state. Denene, Inc. v. City of Charleston (S.C. 2002) 352 S.C. 208, 574 S.E.2d 196, rehearing denied, on subsequent appeal 359 S.C. 85, 596 S.E.2d 917. Municipal Corporations 111(1); Municipal Corporations 111(2)

In order to pre‑empt an entire field, an act must make manifest a legislative intent that no other enactment may touch upon the subject in any way. Denene, Inc. v. City of Charleston (S.C. 2002) 352 S.C. 208, 574 S.E.2d 196, rehearing denied, on subsequent appeal 359 S.C. 85, 596 S.E.2d 917. Municipal Corporations 592(1)

In order for there to be a conflict between state statute and municipal ordinance, both must contain either express or implied conditions which are inconsistent or irreconcilable with each other; mere differences in detail do not render them conflicting and if either is silent where the other speaks, there can be no conflict between them. Denene, Inc. v. City of Charleston (S.C. 2002) 352 S.C. 208, 574 S.E.2d 196, rehearing denied, on subsequent appeal 359 S.C. 85, 596 S.E.2d 917. Municipal Corporations 111(2)

If an ordinance unreasonably prohibits the sale of beer and wine, in effect banning a business which the state has deemed legal, the ordinance would exceed the police power of the municipality and be unenforceable. Denene, Inc. v. City of Charleston (S.C. 2002) 352 S.C. 208, 574 S.E.2d 196, rehearing denied, on subsequent appeal 359 S.C. 85, 596 S.E.2d 917. Intoxicating Liquors 15

Town lacked authority after annexation to charge electric utility a franchise fee for utility’s right to keep lines and poles on roads, where there was no franchise agreement. South Carolina Elec. & Gas Co. v. Town of Awendaw (S.C.App. 2002) 351 S.C. 491, 570 S.E.2d 542, rehearing denied, certiorari granted, reversed 359 S.C. 29, 596 S.E.2d 482. Electricity 10

A municipal fee is valid as a uniform service charge if (1) the revenue generated is used to the benefit of the payors, even if the general public also benefits, (2) the revenue generated is used only for the specific improvement contemplated, (3) the revenue generated by the fee does not exceed the cost of the improvement, and (4) the fee is uniformly imposed on all the payors. BellSouth Telecommunications, Inc. v. City of Orangeburg (S.C. 1999) 337 S.C. 35, 522 S.E.2d 804, rehearing denied. Municipal Corporations 956(1)

Municipality’s authority to enact ordinances pursuant to police power includes power to enact regulations based on aesthetic considerations. Peterson Outdoor Advertising v. City of Myrtle Beach (S.C. 1997) 327 S.C. 230, 489 S.E.2d 630, rehearing denied. Municipal Corporations 589

Like the broad grant of power to counties in Section 4‑9‑25, the only limitation on the broad grant of power to municipalities in Section 5‑7‑30 is that the regulation, resolution, or ordinance may not be inconsistent with the Constitution and general law of the State of South Carolina. Hospitality Ass’n of South Carolina, Inc. v. County of Charleston (S.C. 1995) 320 S.C. 219, 464 S.E.2d 113.

Although Section 5‑7‑30 lists various specific powers possessed by municipalities, the broad grant of power stated at the beginning of the statute is not limited by the specifics mentioned in the remainder of the statute; to hold otherwise would directly contradict Section 5‑7‑10, and a limited reading of Section 5‑7‑30 is inconsistent with the liberal rule of construction mandated by Constitution Art VIII, Section 17. Hospitality Ass’n of South Carolina, Inc. v. County of Charleston (S.C. 1995) 320 S.C. 219, 464 S.E.2d 113. Municipal Corporations 57

In light of South Carolina Constitution Art VIII’s mandatory liberal rule of construction, Section 5‑7‑30 authorized a municipality to enact an ordinance promoting the general health, safety, and welfare of the town’s residents and visitors by raising funds to improve, maintain, nourish an renourish the town’s beaches. Hospitality Ass’n of South Carolina, Inc. v. County of Charleston (S.C. 1995) 320 S.C. 219, 464 S.E.2d 113.

A city’s operation of a cable television system does not qualify as a recreational activity under Section 5‑7‑30. Sheppard v. City of Orangeburg (S.C. 1994) 314 S.C. 240, 442 S.E.2d 601.

The power to impose a license tax implies the power to classify businesses and establish rates of taxation. However, the classifications must be reasonable and not arbitrary, and taxes must be equally assessed on persons of the same class. Thomson Newspapers, Inc. v. City of Florence (S.C. 1985) 287 S.C. 305, 338 S.E.2d 324. Licenses 7(2)

Where Public Service Commission (PSC) allows utility to pass on percentage of city’s business license tax which exceeds a cap approved by PSC to customers within city, tariff does not conflict with city’s power to tax under State Constitution and Code (Article VIII, Section 17, and Sections 5‑7‑10, 5‑7‑30, and 58‑9‑30 of Code), notwithstanding city’s assertion that cap is so low that it allows excessive percentage to be passed on to utility’s customers within city, since utility still pays tax and tariff simply passes portion of tax on to city’s taxpayers rather than to those outside city limits or across state. City of Spartanburg v. Public Service Com’n of South Carolina (S.C. 1984) 281 S.C. 223, 314 S.E.2d 599.

Business license tax is special tax whose classification must be rationally based on provision of governmental services and benefits to be derived from taxpayer thereby. Southern Bell Tel. and Tel. Co. v. City of Aiken (S.C. 1983) 279 S.C. 269, 306 S.E.2d 220.

Construction of ordinances. In construing an ordinance it will be presumed a city council had in mind a constitutional rather than an unconstitutional purpose. City of Darlington v. Stanley (S.C. 1961) 239 S.C. 139, 122 S.E.2d 207. Municipal Corporations 122.1(2)

An ordinance will not be declared unconstitutional if by any reasonable construction it can be harmonized with the State and Federal Constitutions. City of Darlington v. Stanley (S.C. 1961) 239 S.C. 139, 122 S.E.2d 207.

The same act may constitute two offenses, one against the State and one against the municipality, and the fact that punishment under a State statute is greater than that which can be imposed by a municipal court for the same act does not deprive the latter court of jurisdiction. City of Spartanburg v. Gossett (S.C. 1955) 228 S.C. 464, 90 S.E.2d 645.

Municipal corporations have and can exercise only their inherent powers and such as have been conferred upon them by the legislature in express terms or by reasonable implication, and, as a general rule, the grant of power will be strictly construed against the municipality. Lomax v. City of Greenville (S.C. 1954) 225 S.C. 289, 82 S.E.2d 191. Municipal Corporations 57

But have discretion within such powers. It by no means follows that within the sphere of the power so granted the municipal authorities have no discretionary power. Lomax v. City of Greenville (S.C. 1954) 225 S.C. 289, 82 S.E.2d 191.

City and town councils may legislate. This section provides in terms that the city and town councils may legislate and regulate, but it must be done by ordinances and rules duly enacted and adopted. Morison v. Rawlinson (S.C. 1940) 193 S.C. 25, 7 S.E.2d 635.

Powers to protect public health are broad. In the exercise of its powers to preserve and protect the health of the inhabitants of the municipality, the range of the exercise of the powers of the council is much wider than in its relation to other matters. Ward v. Town of Darlington (S.C. 1937) 183 S.C. 263, 190 S.E. 826.

And subject to judicial review. The courts may inquire into the action of a municipality to determine whether it has exercised its power in accordance with the constitutional and statutory laws of the United States and the several states, and may determine whether its ordinance is reasonable. Ward v. Town of Darlington (S.C. 1937) 183 S.C. 263, 190 S.E. 826. Municipal Corporations 63.1

Ordinance repugnant to State law is void. A municipality is powerless to prohibit that which the State authorizes, directs, or requires, and an ordinance which is repugnant to the Constitution or general laws of the State is void under this section. Law v. City of Spartanburg (S.C. 1928) 148 S.C. 229, 146 S.E. 12.

But statutory offense may be prohibited by ordinance. A municipality may provide that the same act which is contrary to statute is an offense against its ordinance. City of Anderson v. Seligman (S.C. 1910) 85 S.C. 16, 67 S.E. 13.

Municipalities have only powers expressly granted by the legislature or necessarily implied from those so granted. Blake v. Walker (S.C. 1885) 23 S.C. 517.

2. General validity and reasonableness of ordinances

For additional related cases, as to power of courts to pass on reasonableness of ordinances, see Darlington v Ward, 48 SE 570, 26 SE 906 (1897). Greenville v Kemmis, 58 SC 427, 36 SE 727 (1900). Kennedy v Sowden, 1 McM. (26 SCL) 323. Crosby v Warren, 1 Rich (30 SCL) 385. State v Sloan, 48 SC 21, 25 SE 898 (1896). Abbeville v Leopard, 61 SC 99, 39 SE 248 (1901). Summerville v Pressley, 33 SC 56, 11 SE 545 (1890). City Council of Charleston v Baptist Church, 4 Strob. (35 SCL) 306. Charleston Consol. Ry., etc., Co. v Charleston, 92 SC 127, 75 SE 390 (1912). City Council of Charleston v Benjamin, 2 Strob. (33 SCL) 508. Allen v Adams, 66 SC 344, 44 SE 938 (1903). State v Williams, 11 SC 288 (1878). City Council of Charleston v Heisembrittle, 2 McM. (27 SCL) 233. City Council of Charleston v Baptist Church, 4 Strob. (35 SCL) 306. Darlington v Ward, 48 SC 570, 26 SE 906 (1897).

City’s power to levy a business license tax under statute governing the powers conferred upon municipalities was not limited by the meaning of the term “gross income,” as used in the remainder of the statute; the only limitation on the broad grant of power was that the ordinance could not be inconsistent with the constitution or general laws of the state, and taxpayer challenging city’s interpretation of “gross income” made no argument explaining how the ordinance was inconsistent with the constitution or general laws. Olds v. City of Goose Creek (S.C.App. 2016) 418 S.C. 573, 795 S.E.2d 163, rehearing denied. Municipal Corporations 956(1)

Franchise fee that telephone company was required to pay to city in exchange for using the public streets for poles, wires, cables, and other equipment incidental to telephone service was not a “general revenue tax,” even though the city placed the revenue into the general fund; the company received the privilege in exchange for the fee. BellSouth Telecommunications, Inc. v. City of Orangeburg (S.C. 1999) 337 S.C. 35, 522 S.E.2d 804, rehearing denied. Taxation 2002

City does not have right to impose business license tax with respect to telephones outside city although they may be under city’s exchange; furthermore, with respect to intrastate toll calls, there is no reasonable, rational, or fair way to apportion such tax among various taxing jurisdictions. Southern Bell Tel. and Tel. Co. v. City of Aiken (S.C. 1983) 279 S.C. 269, 306 S.E.2d 220.

The conviction of the operator of a horse‑drawn carriage for violating an ordinance enacted pursuant to Section 5‑7‑30 banning mule or horse‑drawn sightseeing vehicles on all or part of eight streets in the historic district of Charleston was improperly reversed and the ordinance erroneously invalidated since the ordinance had the reasonable purpose of preventing traffic congestion prevalent on the older, narrower streets of the city and it was conceded that the vehicles in question were slower and less maneuverable than automobiles and often blocked traffic on narrow streets. City of Charleston v. Roberson (S.C. 1980) 275 S.C. 285, 269 S.E.2d 772.

An ordinance which in effect reposes an absolute, unregulated and undefined discretion in an administrative or public body will not be upheld. An exception or qualification to this rule is frequently made where it is difficult or impracticable to lay down a definite comprehensive rule, or the discretion relates to the administration of a police regulation and is necessary to protect the public morals, health, safety and general welfare. City of Darlington v. Stanley (S.C. 1961) 239 S.C. 139, 122 S.E.2d 207. Constitutional Law 2427(1); Municipal Corporations 591

Ordinance enacted under police power must be reasonable. The standard by which the validity of an ordinance enacted under the exercise of police power is tested, is that the exercise of the power should extend only to reasonable and necessary measures. McCoy v. Town of York (S.C. 1940) 193 S.C. 390, 8 S.E.2d 905. Municipal Corporations 620; Municipal Corporations 625

And actually needed for public welfare. There must be a real connection between the actual provisions of a police regulation and its avowed purpose. To be valid as a legislative exercise of police power, the legislation must be clearly demanded for the public safety, health, peace, morals, or general welfare. McCoy v. Town of York (S.C. 1940) 193 S.C. 390, 8 S.E.2d 905. Municipal Corporations 594(1)

Its validity is not based on preamble statement. The mere statement in the preamble of an ordinance that it is passed under the police power does not give a municipality carte blanche to pass an unreasonable ordinance or one opposed to the Constitution or laws of the State. McCoy v. Town of York (S.C. 1940) 193 S.C. 390, 8 S.E.2d 905.

3. Ordinances held valid

Business license tax ordinance, which required businesses within town to pay an annual license fee based upon business’s classification and gross income, was not unconstitutional despite taxpayer’s argument that the ordinance was not sound policy, for it was anti‑business; business license fee was a tax on privilege of doing business within the town, and therefore, it was the manufacturing activity of taxpayer’s business which occurred wholly within the town limits, and not its receipt of income or sales of its products in interstate commerce, that was the business activity being taxed. Town of Hilton Head Island v. Kigre, Inc. (S.C. 2014) 408 S.C. 647, 760 S.E.2d 103, rehearing denied, certiorari denied 135 S.Ct. 959, 190 L.Ed.2d 832. Commerce 63.10; Licenses 7(1)

City ordinance banning smoking in restaurants and bars was consistent with the constitution and general laws of state, and thus was a proper exercise of municipal power; although the state had legislated restrictions on smoking in certain areas, the ordinance adding areas did not in any way conflict with state law, since both ordinance and statutes sought to protect citizens from second‑hand smoke. Foothills Brewing Concern, Inc. v. City of Greenville (S.C. 2008) 377 S.C. 355, 660 S.E.2d 264, rehearing denied. Environmental Law 246; Municipal Corporations 592(1)

Municipalities had authority under state law to adopt ordinances imposing 5% per month penalty for late payment of business license taxes on telecommunications company, even though state statute limited fines for violation of ordinances to $500 and/or imprisonment for 30 days; limitation for violation of ordinances was for criminal penalties and not civil penalties, and authority to impose civil penalties was fairly implied and not prohibited under statute authorizing collection of business license tax. Municipal Ass’n of South Carolina v. AT & T Communications of Southern States, Inc. (S.C. 2004) 361 S.C. 576, 606 S.E.2d 468. Municipal Corporations 983

Ordinance prohibiting commercial establishments allowing on‑premises consumption of beer and wine from operating between hours of 2:00 A.M. and 6:00 A.M., Monday through Saturday, was neither inconsistent nor irreconcilable with state statute making it unlawful to sell or offer wine or beer between hours of midnight Saturday and sunrise Monday, and thus, ordinance was valid; statute did not impliedly provide right to sell beer and wine at all times other than those hours prohibited by statute. Denene, Inc. v. City of Charleston (S.C. 2002) 352 S.C. 208, 574 S.E.2d 196, rehearing denied, on subsequent appeal 359 S.C. 85, 596 S.E.2d 917. Intoxicating Liquors 11

Ordinance prohibiting commercial establishments allowing on‑premises consumption of beer and wine from operating between hours of 2:00 A.M. and 6:00 A.M., Monday through Saturday, did not exceed city’s police power, and thus, ordinance was enforceable, where ordinance did not unreasonably prohibit sale of beer and wine. Denene, Inc. v. City of Charleston (S.C. 2002) 352 S.C. 208, 574 S.E.2d 196, rehearing denied, on subsequent appeal 359 S.C. 85, 596 S.E.2d 917. Intoxicating Liquors 15

County ordinance that prohibited long‑term parking of commercial vehicles in residential areas did not violate equal protection by treating parked vehicles differently from commercial vehicles driving through residential area; ordinance bore substantial relationship to promotion of public health, safety, convenience, prosperity, and general welfare of persons residing in single‑family residential areas of county, as prohibiting long‑term parking of commercial vehicles in residential neighborhoods was reasonably related to protecting property values and maintaining aesthetic appearance of residential areas, and prohibiting commercial vehicles from parking in streets in residential zones would reduce traffic congestion. Whaley v. Dorchester County Zoning Bd. of Appeals (S.C. 1999) 337 S.C. 568, 524 S.E.2d 404. Constitutional Law 3512; Zoning And Planning 1086

Truck driver who was cited for violating county ordinance that prohibited long‑term parking of commercial vehicles in residential areas failed to show that ordinance was enforced discriminatorily within meaning of equal protection clause; although truck driver presented eleven photographs of other large commercial vehicles in immediate area that allegedly were not subjected to any enforcement action, he failed to establish any purposeful discrimination on part of planning and zoning officials. Whaley v. Dorchester County Zoning Bd. of Appeals (S.C. 1999) 337 S.C. 568, 524 S.E.2d 404. Constitutional Law 3512.5; Zoning And Planning 1775

County ordinance that prohibited long‑term parking of commercial vehicles in residential areas was not overly broad and/or vague for due process purposes, despite claim that because it prohibited construction equipment of any kind in residential zone, residents could not store tools such as hammer on their property; ordinance concerned long‑term “parking” and, hence, necessarily applied to vehicles. Whaley v. Dorchester County Zoning Bd. of Appeals (S.C. 1999) 337 S.C. 568, 524 S.E.2d 404. Constitutional Law 1132(5); Constitutional Law 4093; Zoning And Planning 1086

Franchise fee that telephone company was required to pay to city in exchange for using the public streets for poles, wires, cables, and other equipment was non‑discriminatory as required by the Telecommunications Act; even though the company was the only telephone service provider required to pay the fee, it was the only telephone service provider with a franchise, and a cable television company also paid the fee. BellSouth Telecommunications, Inc. v. City of Orangeburg (S.C. 1999) 337 S.C. 35, 522 S.E.2d 804, rehearing denied. Telecommunications 800

Ordinance requiring telephone company to maintain or remove its facilities in public streets and give notice of a merger or corporate restructuring was permitted by provision of the Telecommunications Act allowing a local government to manage the public rights‑of‑way; the notice provision would ensure notice of a possible change in service. BellSouth Telecommunications, Inc. v. City of Orangeburg (S.C. 1999) 337 S.C. 35, 522 S.E.2d 804, rehearing denied. Telecommunications 790

A municipal franchise fee equal to a percentage of the revenue generated by a telephone company was not inherently unfair or unreasonable as a measure of the franchise’s value as a business asset and, therefore, did not violate provision of the Telecommunications Act requiring a fair and reasonable fee; the fee did not need to be limited to the municipality’s cost of maintaining the public rights‑of‑way. BellSouth Telecommunications, Inc. v. City of Orangeburg (S.C. 1999) 337 S.C. 35, 522 S.E.2d 804, rehearing denied. Telecommunications 800

Franchise fee that telephone company was required to pay to city in exchange for using the public streets for poles, wires, cables, and other equipment did not violate the company’s statutory right to construct and maintain its line on public highways; a subsequent statute specifically delegates to municipalities the power to grant franchises for the use of public streets and to make charges. BellSouth Telecommunications, Inc. v. City of Orangeburg (S.C. 1999) 337 S.C. 35, 522 S.E.2d 804, rehearing denied. Telecommunications 800

Franchise fee that telephone company was required to pay to city in exchange for using the public streets for poles, wires, cables, and other equipment incidental to telephone service was not a “general revenue tax,” even though the city placed the revenue into the general fund; the company received the privilege in exchange for the fee. BellSouth Telecommunications, Inc. v. City of Orangeburg (S.C. 1999) 337 S.C. 35, 522 S.E.2d 804, rehearing denied. Taxation 2002

It was within city’s police power to amend ordinance so as to restrict launching and beaching of motorized watercraft, including personal watercraft, on public beach; such restriction was reasonably related to promoting safety during summer tourist season when beaches were crowded, and ordinance limited motorized watercraft only during hours when beach was most used by public for swimming. Barnhill v. City of North Myrtle Beach (S.C. 1999) 333 S.C. 482, 511 S.E.2d 361. Municipal Corporations 595

Statewide statutes that preempted entire field of regulating watercraft on navigable waters did not preclude city from enacting ordinance that restricted launching and beaching of motorized watercraft, including personal watercraft, on public beach; state statutes regulated only activity “on the waters” and were silent regarding activities on public beaches, and because ordinance regulated activity on public beaches, it was not irreconcilable with those statutes. Barnhill v. City of North Myrtle Beach (S.C. 1999) 333 S.C. 482, 511 S.E.2d 361. Municipal Corporations 592(1)

Municipal transfer fee imposed on conveyances of real property, equal to .25 percent of purchase price, was lawful uniform service charge, rather than nonuniform property tax, where fee was used only for parks and recreational facilities, payers benefitted by enhancement of property values, fee did not generate more revenue than was spent on parks and recreational facilities, and all payers paid uniform percentage of sale price of property conveyed. C.R. Campbell Const. Co. v. City of Charleston (S.C. 1997) 325 S.C. 235, 481 S.E.2d 437. Taxation 2002; Taxation 2028

Section 5‑7‑30 authorized the City of Charleston to enact an ordinance raising funds to offset the costs incurred by the city in providing police, fire, sewer, and other services in locations subject to the ordinance where it was undisputed that such an ordinance would promote the security, health, order, and general welfare of the city. Hospitality Ass’n of South Carolina, Inc. v. County of Charleston (S.C. 1995) 320 S.C. 219, 464 S.E.2d 113.

The “Home Rule” amendments of SC Const Art VIII conferred on a town the power to adopt an ordinance requiring a real estate transfer fee, without express statutory authorization, since by enacting the Home Rule Act, Section 5‑7‑10 et seq., the legislature intended to restore autonomy to local government. Williams v. Town of Hilton Head Island, S.C. (S.C. 1993) 311 S.C. 417, 429 S.E.2d 802.

A city business license tax ordinance enacted pursuant to Section 5‑7‑30, which used gross income as its measure, did not violate equal protection, even though businesses which paid a similar tax to another city were treated differently than businesses which did not, since the classifications were reasonably related to the purpose of avoiding duplicative taxation. Eli Witt Co. v. City of West Columbia (S.C. 1992) 309 S.C. 555, 425 S.E.2d 16.

A town ordinance prohibiting internally illuminated signs which are visible from any public right of way or beach was not invalid as an improper exercise of the town’s police power, since the stated purpose of the ordinance was to promote safety and aesthetics and to enhance and preserve the unique natural environment of the town. Town of Hilton Head Island v. Fine Liquors, Ltd. (S.C. 1990) 302 S.C. 550, 397 S.E.2d 662. Zoning And Planning 1111

A newspaper failed to overcome the presumption of constitutionality of a city ordinance imposing a business license tax on daily newspapers at a higher rate than manufacturers and other businesses where the newspaper established only that it was classified as a manufacturer by the Internal Revenue Service and the South Carolina Tax Commission for purposes of income taxation and ad valorem taxation, and that the newspaper did not require any municipal services other than those required by a manufacturer. Thomson Newspapers, Inc. v. City of Florence (S.C. 1985) 287 S.C. 305, 338 S.E.2d 324. Licenses 7(2)

A city was not barred by either the South Carolina Constitution or by Section 5‑7‑30 from imposing a graduated license tax, since the choice of this method is incident to the power of licensing itself. Southern Bell Tel. and Tel. Co. v. City of Aiken (S.C. 1983) 279 S.C. 269, 306 S.E.2d 220.

City‑railway agreement. If the power of a city to enter into a city‑railway agreement for the improvement of city streets is not expressly stated in this section and Section 47‑1323, it is necessarily implied. Sadler v. Lyle (S.C. 1970) 254 S.C. 535, 176 S.E.2d 290.

Occupations may be regulated as to location or hours. A municipal corporation, under its authorized police power, may regulate any trade occupation, or business, the unrestrained pursuit of which might affect injuriously the public health, morals, safety or comfort; and in the exercise of the power particular occupations may be excluded from certain parts of the city or may be required to be conducted within designated limits, and some may be so offensive or detrimental as to justify their total prohibition. It can make no difference that the trade had been lawfully established prior to the prohibitory ordinance and that it has become offensive solely on account of the growing up of the municipality about it. City of Charleston v. Jenkins (S.C. 1963) 243 S.C. 205, 133 S.E.2d 242.

Regulating hours of sale of beer. An ordinance merely regulating the hours during which beer may be sold, dispensed or permitted to be consumed in commercial establishments within a city is a proper exercise of the police power of the municipality because the purpose thereof is to preserve the peace, order and good government within the city and not in conflict with Section 4‑204.City of Charleston v. Jenkins (S.C. 1963) 243 S.C. 205, 133 S.E.2d 242.

Regulation of parades. The right to engage in a parade is one phase of the exercise of the fundamental right of free speech. But such right is subject to reasonable and nondiscriminatory regulation and limitation. City of Darlington v. Stanley (S.C. 1961) 239 S.C. 139, 122 S.E.2d 207. Constitutional Law 1762

Due to varying traffic conditions and the complex problems presented in maintaining an orderly flow of traffic over the streets and highways, it clearly appears that it would be practically impossible to formulate in an ordinance a uniform plan or system relative to every conceivable parade or procession. City of Darlington v. Stanley (S.C. 1961) 239 S.C. 139, 122 S.E.2d 207.

Ordinance regulating parades was held not designed to suppress in any manner freedom of speech or assembly but to reasonably regulate the use of the streets in the public interest. City of Darlington v. Stanley (S.C. 1961) 239 S.C. 139, 122 S.E.2d 207.

Authorizing police janitors to act as messengers for prisoners. Where municipality considered it a matter of public concern that a person imprisoned in the city jail should be permitted to communicate with his relatives or friends, and janitors in the police department had for many years been under general orders to act as messengers for that purpose where telephone communication was not available, it was within the power of the city, acting through its police department, so to authorize and direct the janitors, and the wisdom of such a policy was not for the determination of the court. Lomax v. City of Greenville (S.C. 1954) 225 S.C. 289, 82 S.E.2d 191. Workers’ Compensation 718

Regulation of traffic is ordinary police power. The regulation of traffic, including the parking of automobiles, is an ordinary police power generally exercised by municipalities as regards all the streets within their boundaries. Since municipalities are naturally and ordinarily vested with this power, a legislative intent to take it away and confer it upon some other authority must be clearly expressed. Hall v. Burg (S.C. 1945) 206 S.C. 173, 33 S.E.2d 401.

Prohibiting Sunday sale of beer and wine. This section does not deny a city the power to adopt an ordinance prohibiting the sale of beer and wine on Sunday, even though such beverages are declared by statute to be nonalcoholic and nonintoxicating. Arnold v. City of Spartanburg (S.C. 1943) 201 S.C. 523, 23 S.E.2d 735.

Parking meters as means of regulation. This section carries with it the implied power to license as a means of regulation, and a city has power to use parking meters to regulate in a reasonable manner the parking of automobiles on the streets. Owens v. Owens (S.C. 1940) 193 S.C. 260, 8 S.E.2d 339.

Power to declare nuisance. The power to declare what shall be a nuisance and to abate it is ordinarily not a self‑executing one. It must be exercised only in accordance with ordinances or bylaws regularly and legally adopted which are applicable alike to all of the class. Morison v. Rawlinson (S.C. 1940) 193 S.C. 25, 7 S.E.2d 635. Municipal Corporations 623(1)

Is limited in application. A city is clothed with authority to declare by general ordinance what shall constitute a nuisance. That is, the city may by such ordinance define, classify, and enact what things or classes of things are injurious to the health or inimical to peace and good order, and under what conditions and circumstances such specified things are to constitute and be deemed nuisances. But the city council may not by mere resolution or motion declare any particular thing a nuisance which has not theretofore been pronounced to be such by law, or so adjudged by judicial determination. Morison v. Rawlinson (S.C. 1940) 193 S.C. 25, 7 S.E.2d 635.

And is subject to review. A municipal corporation cannot make a thing a nuisance by merely declaring it to be such. Such a declaration is not a final determination of the question. It is subject to review by the courts, both as to its reasonableness and as to the thing inveighed against being in fact a nuisance. Morison v. Rawlinson (S.C. 1940) 193 S.C. 25, 7 S.E.2d 635. Municipal Corporations 63.15(3)

Validity of license power as regulation. An act or ordinance imposing a license tax under the police power as a means of regulation is valid only when it is within the limits of such power and is intended for regulation. Otherwise, it is invalid, as where the license tax is imposed for revenue purposes in the guise of a police regulation. Southern Fruit Co. v. Porter (S.C. 1938) 188 S.C. 422, 199 S.E. 537.

License power may be used to regulate. This section, which gives to the cities and towns of the State the authority to establish rules, bylaws, regulations, and ordinances respecting the roads and streets of such cities and towns, carries with it the implied power to license as a means of regulation. Southern Fruit Co. v. Porter (S.C. 1938) 188 S.C. 422, 199 S.E. 537. Licenses 6; Municipal Corporations 703(1)

Ordinance against blowing train whistle within city. A municipal ordinance prohibiting blowing of train whistle within city limits was held valid as not in conflict with Section 53‑743 requiring either sounding of bell or whistle upon approaching crossing. McAbee v. Southern Ry. Co. (S.C. 1932) 166 S.C. 166, 164 S.E. 444.

Ordinance prohibiting poolrooms. An ordinance prohibiting maintenance and operation of public poolrooms within the city limits is within the police power of the city under this section, such ordinance not conflicting with statute licensing and regulating pool and billiard rooms outside of incorporated cities and towns. Clegg v. City of Spartanburg (S.C. 1925) 132 S.C. 182, 128 S.E. 36.

Lighting public streets and buildings. Under this section a city council may provide for the lighting of the public streets and buildings, and order an election to ascertain the wishes of the qualified electors in regard to such improvement, as the Constitution requires. Fowler v. Town Council of Town of Fountain Inn (S.C. 1912) 90 S.C. 352, 73 S.E. 626. Municipal Corporations 279

An act to regulate the operation of poolrooms is not invalid as unauthorized delegation of sovereign powers of State. Fowler v. City of Anderson (S.C. 1925) 131 S.C. 473, 128 S.E. 410. Constitutional Law 2437; Municipal Corporations 592(1)

License to operate livery stable. This section authorizes an ordinance requiring a license to open and conduct a livery stable at a new location and providing that, in considering an application for a license, proximity to populous residence neighborhoods, etc., shall be considered. Douglas v. City Council of Greenville (S.C. 1912) 92 S.C. 374, 75 S.E. 687. Licenses 6

4. Ordinances held invalid

City ordinance making it unlawful for any person to interfere with or molest a police officer in the lawful discharge of his duties was unconstitutionally vague, in violation of the First Amendment; although the ordinance did not specifically proscribe speech, it implicated protected speech, the terms “molest” and “interfere” were not defined, and because a person or ordinary intelligence could only speculate as to what was prohibited by the ordinance, it failed to provide required notice of prohibited conduct, and the statute effectively authorized arbitrary and discriminatory enforcement. McCoy v. City of Columbia, 2013, 929 F.Supp.2d 541. Constitutional Law 1814; Obstructing Justice 104

City ordinance, prohibiting possession of gaming devices on vessel within waters of municipal boundaries operated for purpose of conducting day cruises, unconstitutionally prohibited activity that was otherwise legal within state. Palmetto Princess, LLC v. Town of Edisto Beach (S.C. 2006) 369 S.C. 50, 631 S.E.2d 76. Gaming And Lotteries 206(7)

Service relationship between city’s inhabitants and long‑distance telephone company’s interstate telephone cable in city was too attenuated to be characterized as “franchise” and, thus, statute providing municipalities with authority to grant franchises for use of public streets and to make charges for them did not authorize city to require company to enter franchise agreement as condition of installing and maintaining cable or to impose annual fee on company for cable, although calls of some individuals and businesses in city undoubtedly were routed through cable, where company intended only for its cable to pass through city’s public streets in furtherance of its national business. City of Cayce v. AT&T Communications of Southern States, Inc. (S.C. 1997) 326 S.C. 237, 486 S.E.2d 92, answer to certified question conformed to 116 F.3d 1473. Telecommunications 788; Telecommunications 800

A Pageland Municipal Ordinance 130, enacted pursuant to Section 5‑7‑30, was invalid where it conflicted with Section 58‑27‑440 in that the effect of the ordinance was to allow termination of an electricity suppliers’s service to its industrial customers without a finding of inadequate service by the Public Service Commission; a local ordinance enacted pursuant to the power granted in Section 5‑7‑30 is not valid if it conflicts with the Constitution or general law of the state of South Carolina. Carolina Power & Light Co. v. Town of Pageland (S.C. 1996) 321 S.C. 538, 471 S.E.2d 137, rehearing denied.

A city law imposing a mandatory 30‑day sentence on those convicted of simple possession of marijuana was void as in conflict with state law where the penalty exceeded the penalty parameters for the same conduct established under a state law which afforded offenders the opportunity to pay a fine and avoid a jail sentence; state statutes allow municipal judges a great deal of discretion, which a city law may not attempt to circumvent. City of North Charleston v. Harper (S.C. 1991) 306 S.C. 153, 410 S.E.2d 569.

Intrastate long‑distance telephone calls made from Spartanburg or charged to a Spartanburg number could not be included in the gross income of a telephone company for purposes of a license tax imposed by the city of Spartanburg. The city also lacked power to tax revenues from services the telephone company rendered to customers in the Spartanburg exchange who resided outside of the city limits. Moreover, an ordinance imposing such taxes was unconstitutional as a denial of equal protection where it created a gross disparity in the tax rate imposed on the gross receipts of the telephone company as compared to other companies in the city. Southern Bell Tel. and Tel. Co. v. City of Spartanburg (S.C. 1985) 285 S.C. 495, 331 S.E.2d 333.

City’s business license tax ordinance constitutes denial of equal protection where (1) in addition to seven other classes, residual classification was created to cover hodge podge assortment of occupations and businesses, (2) appellant assigned to residual class was taxed at twenty‑four times average rate imposed upon other businesses under ordinance, and (3) disproportionality lacks rational basis. Southern Bell Tel. and Tel. Co. v. City of Aiken (S.C. 1983) 279 S.C. 269, 306 S.E.2d 220. Telecommunications 800

Granting individuals permission to encroach on streets. This section has to do with the use of streets and roadways for the material interest of the general public, but does not authorize a city council to grant permission to private individuals to encroach upon streets or highways which have been heretofore dedicated to the exclusive use of the public. Sloan v. City of Greenville (S.C. 1959) 235 S.C. 277, 111 S.E.2d 573, 76 A.L.R.2d 888.

Tax on use of streets must be conferred by legislature. Cities and towns of this State cannot tax the use and occupation of streets by the traveling public under the guise of a license or otherwise, unless such power is unequivocally conferred upon them by the legislature. Southern Fruit Co. v. Porter (S.C. 1938) 188 S.C. 422, 199 S.E. 537.

For a case holding that a municipal license tax, imposed upon wholesale delivery trucks operated by out‑of‑State merchants, was invalid as being primarily a revenue measure for street maintenance and repair, and thus not enacted in exercise of the police power, see Southern Fruit Co. v. Porter (S.C. 1938) 188 S.C. 422, 199 S.E. 537.

Ordinance regulating barbecue stand. A city ordinance which made it unlawful for any person owning, operating, or employed at a barbecue stand in any residential area of the city to allow it to remain open between 1:00 P.M. and 6:00 A.M., except on Saturdays when it may remain open until 12:00 midnight, and which defined “residential area” as any section of the city where two or more houses used for residential purposes are located on abutting property, was held unconstitutional, in so far as it defined “residential area,” as being unreasonable and depriving the barbecue owner of the lawful use of his property without due process of law. Fincher v. City of Union (S.C. 1938) 186 S.C. 232, 196 S.E. 1.

Regulation of sale at public auction. Power to regulate sale of merchandise at public auction is not one of incidents to municipal corporation under this section, and such powers can be exercised only when conferred by legislature. Miller v. City of Greenville (S.C. 1926) 134 S.C. 314, 132 S.E. 591, 46 A.L.R. 155.

A city council is without power to permit construction of a parking building where such building would overhang land dedicated to the city for street purposes only, and such council has no authority to permit the area above such streets to be used for private purposes. Sloan v. City of Greenville (S.C. 1959) 235 S.C. 277, 111 S.E.2d 573, 76 A.L.R.2d 888.

5. Hotel room taxes

Language of South Carolina enabling act, giving municipalities the power to impose taxes “provided, however, that this shall not extend the effect of the laws of the municipality beyond its corporate boundaries” was intended to prevent municipalities from attempting to levy taxes against residents or businesses of other municipalities whose activities had no impact on the taxing municipality and did not preclude municipalities from recovering from online sellers and online resellers of hotel rooms to the general public the full amount of municipal accommodation taxes they collected from consumers at the time they rented hotel rooms located in municipalities. City of Charleston, S.C. v. Hotels.com, LP, 2007, 520 F.Supp.2d 757, reconsideration denied 586 F.Supp.2d 538. Innkeepers 4; Taxation 2032

**SECTION 5‑7‑32.** Municipal code enforcement officers; appointment; powers and duties.

A municipality may appoint and commission as many code enforcement officers as may be necessary for the proper security, general welfare, and convenience of the municipality. These officers are vested with all the powers and duties conferred by law upon constables in addition to duties imposed upon them by the governing body of the municipality. However, no code enforcement officer commissioned under this section may perform a custodial arrest. These code enforcement officers shall exercise their powers on all private and public property within the municipality.

HISTORY: 1994 Act No. 341, Section 1.

LIBRARY REFERENCES

Arrest 63.2.

Municipal Corporations 214(1).

Westlaw Key Number Searches: 35k63.2; 268k214(1).

C.J.S. Arrest Section 17.

C.J.S. Municipal Corporations Sections 600 to 601, 604.

**SECTION 5‑7‑35.** Mailing, to division superintendent or local agent of railroad, copies of certain municipal ordinances.

No ordinance of a municipality which affects the operation of any railroad, as defined by Section 58‑17‑10, is effective until a certified copy of the ordinance has been sent to the division superintendent or local agent of the railroad company affected, by certified mail, return receipt requested. If a municipality annexes an area in which a railroad company operates, any existing ordinance which affects the company is not effective until the division superintendent or local agent of the company has been sent a certified copy, by certified mail, return receipt requested, of the ordinance declaring the area annexed.

HISTORY: 1984 Act No. 343.

LIBRARY REFERENCES

Railroads 223.

Westlaw Key Number Search: 320k223.

C.J.S. Quo Warranto Sections 748 to 752, 755, 759 to 762, 779 to 780, 783, 788, 790 to 791.

**SECTION 5‑7‑36.** Assessments for additional police, fire, and garbage services on residential property in improvement districts.

No assessment for the Improvement District improvements may be made on residential property for additional police, fire, and garbage services therein which are part of the plan. Provided, further, no assessment may be assessed against real property which qualifies for exemption from ad valorem taxes as a historic fort pursuant to the statutes of South Carolina.

HISTORY: 2000 Act No. 384, Section 4.

LIBRARY REFERENCES

Municipal Corporations 412, 434(1).

Westlaw Key Number Searches: 268k412; 268k434(1).

C.J.S. Municipal Corporations Sections 1129 to 1130, 1172 to 1175.

**SECTION 5‑7‑40.** Ownership and disposition of property by municipalities.

All municipalities of this State may own and possess property within and without their corporate limits, real, personal or mixed, without limitation, and may, by resolution of the council adopted at a public meeting and upon such terms and conditions as such council may deem advisable, sell, alien, convey, lease or otherwise dispose of personal property and in the case of a sale, alienation, conveyance, lease or other disposition of real or mixed property, such council action must be effected by ordinance.

HISTORY: 1962 Code Section 47‑33; 1975 (59) 692; 1976 Act No. 623, Section 2; 1978 Act No. 435, Section 5.

CROSS REFERENCES

Acquisition and condemnation of land for public works, see Sections 5‑31‑410 et seq.

Power of counties to hold property, see Section 4‑1‑10.

LIBRARY REFERENCES

Municipal Corporations 221, 225.

Westlaw Key Number Searches: 268k221; 268k225.

C.J.S. Municipal Corporations Sections 873 to 876, 878 to 879, 882.

Attorney General’s Opinions

Discussion of the sale of land by municipalities. S.C. Op.Atty.Gen. (July 8, 2013) 2013 WL 3762707.

There is no state law which requires an appraisal before a city council may buy or sell real estate. 1986 Op Atty Gen, No 86‑54, p 157.

(1) The City of Newberry has the power to lease property which it owns; (2) A city is protected under the Sovereign Immunity Doctrine from suits arising out of negligent use of the premises which it has leased and for defective conditions arising subsequent to a lease. 1976‑77 Op Atty Gen, No 77‑14, p 23.

There appears to be no State statutes or other specific authority dealing with the sale or lease of advertising space on publicly owned county or municipal property, such as school property to the private sector. However, once the use of public property is made available, First Amendment constitutional guarantees may be applicable. 1992 Op Atty Gen No 92‑69.

NOTES OF DECISIONS

In general 1

1. In general

Town’s sale of sewer system to county, pursuant to ordinance adopted by town, was authorized by Home Rule Act. Sojourner v. Town of St. George (S.C. 2009) 383 S.C. 171, 679 S.E.2d 182. Municipal Corporations 68

**SECTION 5‑7‑50.** Municipalities’ acquisition of land, easement or right‑of‑way by condemnation.

Any municipality desiring to become the owner of any land or to acquire any easement or right‑of‑way therein for any authorized corporate or public purpose shall have the right to condemn such land or right‑of‑way or easement, subject to the general law of this State, within and without the corporate limits in the county in which it is situated and in any adjoining county or counties. This authority shall not apply to any property devoted to public use; provided, however, the property of corporations not for profit organized under the provisions of Chapter 35 of Title 33, shall not be subject to condemnation unless the municipality in which their service area is located intends to make comparable water service available in such service area and such condemnation is for that purpose. After any such condemnation, the municipality shall assume all obligations of the corporation related to the property and the facilities thereon which were condemned. Provided, however, that any incorporated municipality, or any housing or redevelopment authority now existing or hereafter established to function, may undertake and carry out slum clearance and redevelopment work in areas which are predominately slum or blighted, the preparation of such areas for reuse, and the sale or other disposition of such areas to private enterprise or to public bodies for public uses and to that end the General Assembly delegates to any incorporated municipality, or such authorities, the right to exercise the power of eminent domain as to any property essential to the plan of slum clearance and redevelopment. Any incorporated municipality, political subdivision or authority may acquire air rights or subsurface rights, both as hereinafter defined, by any means permitted by law for acquisition of real estate, including eminent domain, and may dispose of air rights and subsurface rights regardless of who or for what purpose acquired for private or public use by lease, mortgage, sale or otherwise. Air rights shall mean estates, rights and interests in the space above the surface of the ground or the surface of streets, roads, or rights‑of‑ways including access, support and other appurtenant rights required for the utilization thereof. Subsurface rights shall mean estates, rights and interests in the space below the surface of the ground or the surface of streets, roads, or rights‑of‑way including access, support and other appurtenant rights required for the utilization thereof.

HISTORY: 1962 Code Section 47‑34; 1975 (59) 692.

CROSS REFERENCES

Condemnation of land for public works, see Sections 5‑31‑410 et seq.

Dwelling unfit for human habitation in municipalities of over 1,000, see Sections 31‑15‑10 et seq.

Eminent domain generally, see Title 28, Sections 28‑2‑10 et seq.

Eminent Domain Procedure Act, see Sections 28‑2‑10 et seq.

Joint agency’s possessing power of eminent domain pursuant to Joint Municipal Electric Power and Energy Act, see Section 6‑23‑290.

Power of eminent domain possessed by joint agencies created pursuant to Solid Waste Disposal Resource Recovery Facilities Act, see Section 6‑16‑160.

Power of joint system to acquire property interests by condemnation, see Section 6‑25‑100.

Taking of private property, see SC Const, Art 1, Section 13.

LIBRARY REFERENCES

Eminent Domain 9.

Westlaw Key Number Search: 148k9.

C.J.S. Eminent Domain Section 24.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 16, Municipalities.

S.C. Jur. Eminent Domain Section 17, Special Purpose Districts and Agencies.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina: Eminent Domain. 31 S.C. L. Rev. 119.

Attorney General’s Opinions

A court would likely find that an ordinance, allowing catamarans to be stored on the beach, conflicts with an easement that allows the city the “right to clear and remove any…obstructions” from the beach in order to satisfy its agreements with the Army Corps of Engineers; the city may therefore require landowners to remove catamarans from the beach despite the ordinance. S.C. Op.Atty.Gen. (Feb 8, 2011) 2011 WL 782319.

A municipality is authorized to exercise its power of eminent domain over property located outside the corporate limits of the municipality for authorized corporate or public purposes, which would include recreational purposes. 1988 Op Atty Gen, No. 88‑12, p 47.

Code 1962 Section 47‑34 [Code 1976 Section 5‑7‑50] of the Home Rule legislation impliedly allows municipalities to condemn private property for slum clearance and subsequent sale for private use. 1974‑75 Op Atty Gen, No 4195, p 246.

NOTES OF DECISIONS

In general 1

1. In general

A public service district commission was without authority to exercise the power of imminent domain to take property located outside its territorial limits for sewer line construction, since statute, which only authorized the district commission to utilize procedures used by municipalities in condemning land, did not implicitly grant it authority to exercise the substantive right of condemning property located outside its territorial limits. St. Andrews Public Service Dist. Com’n v. Commissioners of Public Works of City of Charleston (S.C.App. 1986) 289 S.C. 68, 344 S.E.2d 857.

**SECTION 5‑7‑60.** Municipality authorized to perform any of its functions or to furnish any of its services; charges and financing.

Any municipality may perform any of its functions, furnish any of its services, except services of police officers, and make charges therefor and may participate in the financing thereof in areas outside the corporate limits of such municipality by contract with any individual, corporation, state or political subdivision or agency thereof or with the United States Government or any agency thereof, subject always to the general law and Constitution of this State regarding such matters, except within a designated service area for all such services of another municipality or political subdivision, including water and sewer authorities, and in the case of electric service, except within a service area assigned by the Public Service Commission pursuant to Article 5 of Chapter 27 of Title 58 or areas in which the South Carolina Public Service Authority may provide electric service pursuant to statute. For the purposes of this section designated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof. Provided, however, the limitation as to service areas of other municipalities or political subdivisions shall not apply when permission for such municipal operations is approved by the governing body of the other municipality or political subdivision concerned.

HISTORY: 1962 Code Section 47‑35; 1975 (59) 692.

CROSS REFERENCES

Contracts for water, lights, natural gas and sewerage within and without city limits, see Sections 5‑31‑1910 et seq.

Extension of municipal water and sewer systems, see Sections 5‑31‑1510 et seq. and 5‑31‑1710 et seq.

Extension of police powers to municipal cemetery located outside the corporate limits, see Section 5‑39‑10.

Furnishing of electric services within consolidated political subdivision governed, in part, by this section, see Section 4‑8‑150.

Midlands Authority not to modify or abridge rights, duties, and privileges of electric suppliers, electrical utilities, municipal electric utilities, or governmental entities supplying electricity under this section, see Section 13‑19‑230.

Power of police of municipal corporation to make arrest outside of corporate limits, see Section 17‑13‑40.

Trident Economic Development Finance Authority not to modify or abridge rights, duties, and privileges of electric suppliers, electrical utilities, municipal electric utilities, or governmental entities supplying electricity under this section, see Section 13‑12‑230.

LIBRARY REFERENCES

Electricity 8.1(2.1).

Municipal Corporations 712(4).

Waters and Water Courses 202.

Westlaw Key Number Searches: 145k8.1(2.1); 268k712(4); 405k202.

C.J.S. Municipal Corporations Sections 1537 to 1538.

C.J.S. Waters Sections 616, 640, 643, 646, 651, 656, 659 to 665.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 12.1, “Home Rule”‑The Power of Municipalities to Enact Regulations and Ordinances.

Attorney General’s Opinions

Discussion of whether the City of Anderson can charge people who live outside the city limits higher rates for water than it charges its residents. S.C. Op.Atty.Gen. (May 21, 2014) 2014 WL 2619138.

The Legislature intended for water districts to have discretion as to how to meet their residents’ water needs. S.C. Op.Atty.Gen. (June 16, 2011) 2011 WL 2648714.

Municipality may agree to sell utility services to industrial park in adjacent county provided such agreement is in accordance with applicable provisions of Sections 5‑31‑1510, et seq., 5‑31‑17, et seq. and 5‑31‑1910, et seq. Park serviced by agreement would not qualify as jointly developed industrial park under Article VIII, Section 13(D) of State Constitution. 1990 Op Atty Gen No. 90‑29.

Five year property tax exemption for new or expanded manufacturing establishments applies to manufacturing establishments in jointly developed industrial parks unless such developments are specifically excluded from exemption by other statutory authority. 1990 Op Atty Gen No. 90‑29.

Neither Article VIII, Section 13(D) of State Constitution nor Section 4‑1‑170 requires that school districts receive fees from jointly developed industrial parks at same percentage as general taxes are to school taxes. Such, however, may be required by other statutory provisions. 1990 Op Atty Gen No. 90‑29.

Lawful contract by county officials will normally be sustained by court regardless of fact such officials may have made bad bargain. 1990 Op Atty Gen No. 90‑29.

Although a municipality may extend its services to persons outside its corporate limits, there is no provision permitting those persons within the extra‑territorial service area to participate in the election of commissioners of public works. 1986 Op Atty Gen, No. 86‑83, p 258.

A municipality has considerable discretion to enter into contracts to provide its services to persons residing outside the municipal limits. 1986 Op Atty Gen, No. 86‑126, p 360.

The municipal authorities of North Augusta, South Carolina, have no power to contract by ordinance with suburban property owners to provide fire protection to private property located outside the corporate limits. 1974‑75 Op Atty Gen, No 4136, p 205.

NOTES OF DECISIONS

Electrical service 1

Fire protection 2

Water and sewer service 3

1. Electrical service

A city’s provision of electrical service to an industrial user located in an area assigned to another provider was illegal and ultra vires, even though the city relied on the industrial consumer choice exception (Section 58‑27‑620[2]) to the Territorial Assignment Act when it extended service at the user’s request, since this exception was repealed by implication to municipalities providing electrical service outside their corporate limits by the enactment of Section 5‑7‑60. City of Rock Hill v. Public Service Com’n of South Carolina (S.C. 1992) 308 S.C. 175, 417 S.E.2d 562.

An electric cooperative’s corridor rights did not prohibit a city from extending electric service to a customer by virtue of Section 5‑7‑60 where the customer was located within territory unassigned by the Public Service Commission. City of Rock Hill v. Public Service Com’n of South Carolina (S.C. 1989) 299 S.C. 95, 382 S.E.2d 888.

A Public Service Commission’s order enjoining a city from providing electrical service to assigned areas outside corporate limits did not apply to property annexed by the city 2 weeks prior to the Commission’s order since Section 5‑7‑60 restricts only the exercise of municipal functions outside corporate limits and the property had been brought inside corporate limits via annexation. Blue Ridge Elec. Co‑op., Inc. v. City of Seneca (S.C. 1989) 297 S.C. 283, 376 S.E.2d 514. Electricity 8.1(4)

Section 5‑7‑60 repeals by implication the provisions of Section 58‑27‑620(2) dealing with municipal electric service in territory assigned to an electric cooperative, and thus precludes municipalities from serving electricity to a requesting consumer at an industrial facility expecting to operate with a load of 750 KW or greater located within territory previously assigned to an electric cooperative, in the absence of an agreement with the cooperative. City of Newberry v. Public Service Com’n of South Carolina (S.C. 1986) 287 S.C. 404, 339 S.E.2d 124. Electricity 8.1(3)

2. Fire protection

An electric utility company was properly included within the county fire protection district where the alleged contract between the utility company and the city was invalid because the individual signing on behalf of the city did not have the necessary authority; Sections 4‑19‑10 and 5‑7‑60 required a valid contract between the municipality and the utility company to avoid the inclusion of the entity in the county fire district. Carolina Power & Light Co. v. Darlington County (S.C. 1993) 315 S.C. 5, 431 S.E.2d 580.

Section 4‑19‑10(b) protects the rights of cities and customers who have contracted for fire protection under Section 5‑7‑60, and, in the absence of an agreement, newly created fire districts must exclude areas served by cities under contract. City of Darlington v. Kilgo (S.C. 1990) 302 S.C. 40, 393 S.E.2d 376.

The area within a 5‑mile radius of 2 cities constituted a “service area” within the meaning of Section 4‑19‑10, so that the 5‑mile radius could not be included in any county district plan without prior agreement with the municipality, even though the area was provided only limited service by the city pursuant to contract, since the legislature did not qualify the nature or extent of the “fire protection services offered” by the municipality which would be necessary to preclude a county from providing fire protection services. City of Darlington v. Kilgo (S.C. 1990) 302 S.C. 40, 393 S.E.2d 376. Counties 18

There is no conflict between Section 4‑19‑10,which provides for the establishment of county fire protection services, and Section 5‑7‑60, under which cities may contract for fire protection services outside the city’s corporate limits. The 1984 County Fire Protection Services Act authorized the creation of county fire protection districts and established criteria which must be met for the institution of such districts. It is only when an existing municipal service area within the county is affected that an agreement for the joint exercise of fire protection powers must be entered into prior to the creation of a county fire protection district. This provision does not embody veto power, but allows both entities to furnish service with a determination of how the costs shall be shared. The legislature balanced the county residents’ interest in having full fire protection with the municipality’s interest in continuing service it had been providing, by requiring an agreement between the 2 when the county proposes to institute county‑wide protection. City of Darlington v. Kilgo (S.C. 1990) 302 S.C. 40, 393 S.E.2d 376.

3. Water and sewer service

The city did not violate the South Carolina Trade Practices Act, Sections 39‑5‑10 et seq. nor did it breach its contract for the supply of water with the plaintiffs in charging plaintiffs more for water than it charged residents within the corporate limits, because the city council set the water rates to be charged and it was undisputed that the rate charged non‑residents was more than that charged residents. Calcaterra v. City of Columbia (S.C.App. 1993) 315 S.C. 196, 432 S.E.2d 498.

Reading Sections 5‑7‑60 and 58‑5‑30 together, it is concluded that general assembly intended for municipalities to be able to extend their services beyond corporate limits without interference from Public Service Commission and to enjoin city from extending its water and sewer services beyond its corporate limits solely because Commission has previously given another entity exclusive rights to provide those services in affected area will indirectly confer upon Commission power which general assembly has seen fit to deny. Glendale Water Corp. of Florence, Inc. v. City of Florence (S.C. 1980) 274 S.C. 472, 265 S.E.2d 41.

**SECTION 5‑7‑80.** Ordinances relating to upkeep of property within municipality.

(1) Any municipality is authorized to provide by ordinance that the owner of any lot or property in the municipality shall keep such lot or property clean and free of rubbish, debris and other unhealthy and unsightly material or conditions which constitute a public nuisance.

(2) The municipality may provide by ordinance for notification to the owner of conditions needing correction, may require that the owner take such action as is necessary to correct the conditions, may provide the terms and conditions under which employees of the municipality or any person employed for that purpose may go upon the property to correct the conditions and may provide that the cost of such shall become a lien upon the real estate and shall be collectable in the same manner as municipal taxes.

HISTORY: 1962 Code Section 47‑37; 1975 (59) 692.

LIBRARY REFERENCES

Municipal Corporations 607, 623.

Westlaw Key Number Searches: 268k607; 268k623.

Attorney General’s Opinions

Sections 5‑7‑80 and 31‑15‑10 et seq. provide direct authority for an ordinance stating that the costs of abating the conditions of “deteriorating structure and abandoned overgrown lots” borne by the Town will be “added to annual property taxes [and] must be paid along with the taxes and remitted to the Town by the county.” S.C. Op.Atty.Gen. (June 22, 2012) 2012 WL 2586919.

A court would likely find that an ordinance, allowing catamarans to be stored on the beach, conflicts with an easement that allows the city the “right to clear and remove any…obstructions” from the beach in order to satisfy its agreements with the Army Corps of Engineers; the city may therefore require landowners to remove catamarans from the beach despite the ordinance. S.C. Op.Atty.Gen. (Feb 8, 2011) 2011 WL 782319

A county is not required to collect the clean‑up cost for a lot under an agreement with a municipality to collect property taxes due the municipality because the clean‑up cost is not a tax. 1989 Op Atty Gen, No. 89‑9, p 31.

There does not appear to be any basis for the City of Greenville to place a municipal lien which would have priority over existing liens, mortgages or other encumbrances of record on a particular property for costs incurred by the City in demolishing, securing or vacating an unsafe building on such property. Specific legislative authority would be necessary for such a lien. 1976‑77 Op Atty Gen, No 77‑404, p 331.

**SECTION 5‑7‑90.** Trial of persons charged with violations of ordinances of municipality or laws of State.

The municipal judge or judges of a municipality shall speedily try all persons arrested and incarcerated with violations of the ordinances of the municipality or the laws of the State within their jurisdiction in a summary manner without a jury unless jury trial is demanded by the accused. Trial must be held within ten days after the arrest or at a time scheduled by the court, in which event the trial is deferred. The municipal judge shall have the same power as a magistrate to compel the attendance of witnesses and require them to give evidence upon the trial before them of any person for the violation of ordinances of the municipality or the laws of this State subject to Section 5‑7‑30.

HISTORY: 1962 Code Section 47‑38; 1975 (59) 692; 2012 Act No. 263, Section 1, eff June 18, 2012.

Effect of Amendment

The 2012 amendment deleted “mayor or” twice before “municipal judge”, substituted “arrested and incarcerated” for “charged”, substituted “ten days” for “seven days”, and made other nonsubstantive changes.

CROSS REFERENCES

Municipal courts, see Sections 14‑25‑5 et seq.

Prisoners working on city or town streets, see Section 5‑27‑130.

LIBRARY REFERENCES

Municipal Corporations 641.

Westlaw Key Number Search: 268k641.

Attorney General’s Opinions

Section 56‑5‑6220 operates on section 5‑7‑90 to prohibit a municipal judge from requiring a defendant to plead in all traffic cases until the elapse of a ten‑day period following the date of arrest. S.C. Op.Atty.Gen. (August 20, 2012) 2012 WL 3732821.

There is no statute of limitations relevant to municipal ordinances generally. However, pursuant to an Order of the Chief Justice, municipal courts “shall try or otherwise dispose of all criminal cases including traffic cases, within 60 days of the return of the charging paper to the court, in the absence of good cause. . .” Such Order is generally considered administrative to the courts and should not be considered as a statute of limitations. 1992 Op Atty Gen No. 92‑51.

Act No. 482 of 1976 operates on 1962 Code Section 47‑38 [1976 Code Section 5‑7‑90] to prohibit a municipal judge from requiring a defendant to plead in a traffic case until the lapse of a ten‑day period following the date of arrest. 1975‑76 Op Atty Gen, No 4361, p 194.

**SECTION 5‑7‑100.** Investigations of departments of municipal government by governing body; compelling attendance of witnesses; subpoenas; contempt.

The governing body of the municipalities or its agents may investigate any department of the municipal government and any office thereof and such governing body shall have the same power which a magistrate has to compel the attendance of witnesses and to require them to give evidence under oath in the same manner as is customary in the courts of this State. In case of contumacy of any person or refusal to obey a subpoena issued to any person, any circuit court of this State or circuit judge thereof within the jurisdiction of which the municipality is located, upon application by the governing body of the municipality or its designated agent, may issue to such person an order requiring him to appear before the governing body of the municipality to produce evidence if so ordered or to give testimony on the matter under investigation. Any failure to obey an order of the court may be punished as a contempt thereof. Subpoenas shall be issued in the name of the municipality and shall be signed by a majority of the governing body. Subpoenas shall be issued to such persons as the governing body may designate.

HISTORY: 1962 Code Section 47‑39; 1975 (59) 692.

LIBRARY REFERENCES

Municipal Corporations 167.

Westlaw Key Number Search: 268k167.

C.J.S. Municipal Corporations Section 369.

Attorney General’s Opinions

The Charleston City Police do not have the authority to issue parking summons for violations of Veterans Administration regulations. 1975‑76 Op Atty Gen, No 4458, p 316.

**SECTION 5‑7‑110.** Municipal police officers; contracting to provide police protection beyond corporate limits of municipality.

Any municipality may appoint or elect as many police officers, regular or special, as may be necessary for the proper law enforcement in such municipality and fix their salaries and prescribe their duties.

Police officers shall be vested with all the powers and duties conferred by law upon constables, in addition to the special duties imposed upon them by the municipality.

Any such police officers shall exercise their powers on all private and public property within the corporate limits of the municipality and on all property owned or controlled by the municipality wheresoever situated; provided, that the municipality may contract with any public utility, agency or with any private business to provide police protection beyond the corporate limits. Should the municipality provide police protection beyond its corporate limits by contract, the legal description of the area to be served shall be filed with the State Law Enforcement Division, the office of the county sheriff and the Department of Public Safety.

HISTORY: 1962 Code Section 47‑40; 1975 (59) 692; 1993 Act No. 181, Section 62.

CROSS REFERENCES

Officer convicted of permitting a prisoner to be taken by a mob forfeiting and being ineligible for office, see Section 16‑9‑440.

Power of police of municipal corporation to make arrest outside of corporate limits, see Section 17‑13‑40.

LIBRARY REFERENCES

Municipal Corporations 184, 188, 226.

Westlaw Key Number Searches: 268k184; 268k188; 268k226.

C.J.S. Municipal Corporations Sections 478 to 484, 486 to 487, 894 to 895, 897, 899 to 900.

Attorney General’s Opinions

“A farm which produces goods to be sold commercially” would qualify as a “private business.” S.C. Op.Atty.Gen. (August 14, 2013) 2013 WL 4636664.

Assuming the appropriate agreements are in place for expanded jurisdiction under Section 5‑7‑30, the town of Pelion appears to have both the authority to contract and jurisdiction to enforce contracts entered into under Section 5‑7‑110’s private business provision, regardless of whether the private business is located within three miles of the municipality’s corporate limits, so long as a description of the area to be served is filed with the appropriate county and state law enforcement agencies. S.C. Op.Atty.Gen. (August 14, 2013) 2013 WL 4636664.

The Pelion Police Department has the authority to contract with a private business outside of the town’s corporate limits in order to provide police protection. S.C. Op.Atty.Gen. (August 14, 2013) 2013 WL 4636664.

Discussion of the power of a municipality to disband its police department. S.C. Op.Atty.Gen. (July 11, 2012) 2012 WL 3057451.

The City of Columbia would be well within its authority to instruct the Chief of Police that an accident investigation involving an elected official be turned over to the Highway Patrol and to enact an ordinance that would allow future accident investigations to be turned over to the Highway Patrol when involving an elected official. S.C. Op.Atty.Gen. (May 6, 2010) 2010 WL 2320800.

Municipal police officers are empowered to exercise law enforcement authority over property leased by their municipality, including leased property located outside the municipal limits. 1989 Op Atty Gen, No. 89‑105, p 285.

Municipal police officers would be responsible for the enforcement of law upon real property leased by the state whenever that leased property is within the corporate limits of the municipality; as to property outside a municipal boundary, the county sheriff would have jurisdiction to enforce the laws within the county; law enforcement officers with statewide jurisdiction would have concurrent jurisdiction with those above. 1989 Op Atty Gen, No. 89‑76, p 201.

Whether or not a city police officer could exercise law enforcement authority outside the city limits and assist in the investigation of accidents and the control of traffic instant to a traffic accident at an intersection located just outside the city limits would depend on whether the officer was in pursuit of an offender or whether an agreement between jurisdictions pursuant to one of the referenced statutory provisions existed by which an officer was specifically authorized to act outside his jurisdiction. However, if a city police officer should answer a call outside his municipal jurisdiction, exclusive of such situations, the officer’s actions outside his jurisdiction would be limited to those of a non‑legal nature. Any actions beyond such could subject a municipality to liability and, thus, should be avoided. 1986 Op Atty Gen, No. 86‑79, p 248.

Police officer is considered “public official” for purposes of Section 16‑3‑1040, which prohibits persons from making threats to take life of or to inflict bodily harm upon public official or their immediate families. 1984 Op Atty Gen, No. 84‑103, p. 241.

Reserve police officers as public officers, may not receive compensation, by salary or otherwise, for services rendered absent specific statutory authorization. 1984 Op Atty Gen, No. 84‑21, p. 60.

A county or municipal law enforcement agency may, upon request, provide special police services in addition to those regularly provided to private business concerns, charge a fee, and utilize regular police equipment and personnel desiring to work overtime. 1978 Op Atty Gen, No 78‑39, p63.

Absent specific statutory authority, a municipality may not authorize its police officers to admit to bail one charged with violating City ordinances. 1974‑75 Op Atty Gen, No 4188, p 241.

NOTES OF DECISIONS

In general 1

1. In general

The jurisdiction of a municipal police officer, absent statutory authority, generally does not extend beyond the territorial limits of the municipality. This does not, however, affect an officer’s right to act as a private citizen beyond his or her jurisdiction. In such case, the officer’s actions are lawful if they could be properly undertaken by an ordinary citizen. State v. Harris (S.C. 1989) 299 S.C. 157, 382 S.E.2d 925.

**SECTION 5‑7‑120.** Municipalities authorized to send law enforcement officers to other political subdivisions of State upon request in emergency situations.

(A) The governing body of any municipality may upon the request of the governing body of any other political subdivision of the State, send any law enforcement officers to the requesting political subdivision in cases of emergency. A complete record of the request, together with the names of the officers sent, must be recorded in the minutes of the next regular or special meeting of the governing bodies of both the requesting and the sending political subdivisions. Failure to record the request at the next regular or special meeting of the governing bodies does not affect the applicability of the tort liability coverage. Expenses of the requested services may be borne by the requesting municipality.

(B) When law enforcement officers are sent to another municipality pursuant to this section, the jurisdiction, authority, rights, privileges, and immunities, including coverage under the workmen’s compensation laws, and tort liability coverage obtained pursuant to the provisions of Chapter 78 of Title 15, which they have in the sending municipality are extended to and include the area in which like benefits, authorities, and tort liability coverage are or could be afforded to the law enforcement officers of the requesting political subdivision. When so sent they have the same authority to make arrests and to execute criminal process as is vested by law in the law enforcement officers of the requesting political subdivision, but this section does not extend the effect of the laws of the sending political subdivision.

HISTORY: 1962 Code Section 47‑41; 1975 (59) 692; 1978 Act No. 435, Section 1; 1993 Act No. 36, Section 1.

LIBRARY REFERENCES

Municipal Corporations 188.

Westlaw Key Number Search: 268k188.

C.J.S. Municipal Corporations Sections 486 to 487.

Attorney General’s Opinions

Law enforcement officers who respond to requests for assistance pursuant to Section 5‑7‑120 have same law enforcement authority as possessed by law enforcement officers in political subdivision which has requested their assistance. 1985 Op Atty Gen, No. 85‑13, p 55.

The Town of Irmo’s depleted police force would constitute an “emergency” pursuant to Section 5‑7‑120, and they may request the assistance of the Lexington County Sheriff’s Department. 1983 Op Atty Gen, No. 83‑92, p. 155.

NOTES OF DECISIONS

In general 1

Construction with federal policy 2

1. In general

Forum selection clause in services contract between retailer and South Carolina maintenance contractor, calling for litigation of contractual disputes in Arkansas, was valid and enforceable; there was no evidence of fraud or overreaching, despite the parties’ alleged unequal bargaining power, holding the trial in Arkansas would not deprive contractor of its day in court, especially since at least one of its officers resided closer to Arkansas than to South Carolina, and enforcement of the clause was not against the strong public policy of South Carolina. Atlantic Floor Services, Inc. v. Wal‑Mart Stores, Inc., 2004, 334 F.Supp.2d 875. Contracts 127(4)

An undercover drug operation conducted by police officers outside their jurisdiction was lawful, even though Section 5‑7‑120 was not complied with, since the officers’ only activity outside their jurisdiction was the monitoring of conversations between informants and the defendant, which could have been done by private citizens, since an officer’s actions beyond his or her jurisdiction are lawful if they could properly be undertaken by an ordinary citizen; the fact that the officers planned the undercover drug operation while in their own jurisdiction did not affect the validity of their actions. State v. Harris (S.C. 1989) 299 S.C. 157, 382 S.E.2d 925.

2. Construction with federal policy

A state’s “disfavor” of forum selection clauses is not sufficient to rebut the strong federal policy in favor of forum selection clauses. Atlantic Floor Services, Inc. v. Wal‑Mart Stores, Inc., 2004, 334 F.Supp.2d 875. Contracts 141(1)

**SECTION 5‑7‑130.** Conflict of interests of municipal officer or employee.

Any municipal officer or employee who has a substantial financial interest in any business which contracts with the municipality for sale or lease of land, materials, supplies, equipment or services or who personally engages in such matters shall make known that interest and refrain from voting upon or otherwise participating in his capacity as a city officer or employee in matters related thereto.

Any city officer or employee who wilfully conceals such a substantial financial interest or wilfully violates the requirements of this section shall constitute malfeasance in office and upon conviction shall forfeit his office or position. Violation of this section with the knowledge express or implied of the person or corporation contracting with or making a sale to the city shall render the contract or sale voidable by the municipal governing body.

HISTORY: 1962 Code Section 47‑42; 1975 (59) 692.

CROSS REFERENCES

Municipal officers contracting with their municipal corporations, see Section 5‑21‑30.

LIBRARY REFERENCES

Municipal Corporations 231.

Westlaw Key Number Search: 268k231.

C.J.S. Municipal Corporations Section 906.

Attorney General’s Opinions

With respect to the employment of the Mayor by a law firm that serves as general obligation bond counsel for the City, regardless of whether Section 5‑21‑30 has been superseded, compliance with Sections 5‑7‑130 and 8‑13‑700 is still necessary. Pursuant to section 5‑7‑130, the Mayor must disclose his/her financial interests in the law firm and refrain from participating in any matter in his capacity as Mayor which involves services the law firm provides for the City. S.C. Op.Atty.Gen. (May 30, 2012) 2012 WL 2168288.

Mayor may not prohibit members of council from voting on an issue. Each member of municipal governing body is entitled to one vote each. Disqualification from voting due to potential conflicts of interest should be handled by following Section 5‑7‑130 or Section 8‑13‑460, whichever is appropriate. (Section 8‑13‑460 was repealed effective January 1, 1992; similar provisions are now found in Sections 8‑13‑700 and 8‑13‑735.) 1991 Op Atty Gen No 91‑37, p 97.

A county or municipal law enforcement agency may, upon request, provide special police services in addition to those regularly provided to private business concerns, charge a fee, and utilize regular police equipment and personnel desiring to work overtime. 1978 Op Atty Gen, No 78‑39, p 63.

**SECTION 5‑7‑140.** Extension of police jurisdiction and authority of municipalities bordering on high tide line or high water mark of navigable body of water.

(A) The corporate limits of any municipality bordering on the high‑tide line of the Atlantic Ocean are extended to include all that area lying between the high‑tide line and one mile seaward of the high‑tide line. These areas are subject to all the ordinances and regulations that may be applicable to the areas lying within the corporate limits of the municipality, and the municipal courts have jurisdiction to punish individuals violating the provisions of the municipal ordinances where the misdemeanor occurred in the area defined in this section.

(B) The corporate limits of any municipality bordering on the high‑water mark of a navigable body of water, other than the Atlantic Ocean, are extended to include all that area lying between the high‑water mark and the low‑water mark. These areas are subject to all of the ordinances and regulations that may be applicable to the areas lying within the corporate limits of the municipality, and the municipal courts have jurisdiction to punish individuals violating the provisions of the municipal ordinances where the misdemeanor occurred in the areas defined in this section.

HISTORY: 1962 Code Section 47‑43; 1975 (59) 692; 1986 Act No. 4576; 1996 Act No. 420, Section 3, and 1996 Act No. 443, Section 2.

LIBRARY REFERENCES

Municipal Corporations 188.

Navigable Waters 36(3).

Westlaw Key Number Searches: 268k188; 270k36(3).

C.J.S. Municipal Corporations Sections 486 to 487.

NOTES OF DECISIONS

Police power 1

1. Police power

It was within city’s police power to amend ordinance so as to restrict launching and beaching of motorized watercraft, including personal watercraft, on public beach; such restriction was reasonably related to promoting safety during summer tourist season when beaches were crowded, and ordinance limited motorized watercraft only during hours when beach was most used by public for swimming. Barnhill v. City of North Myrtle Beach (S.C. 1999) 333 S.C. 482, 511 S.E.2d 361. Municipal Corporations 595

Statewide statutes that preempted entire field of regulating watercraft on navigable waters did not preclude city from enacting ordinance that restricted launching and beaching of motorized watercraft, including personal watercraft, on public beach; state statutes regulated only activity “on the waters” and were silent regarding activities on public beaches, and because ordinance regulated activity on public beaches, it was not irreconcilable with those statutes. Barnhill v. City of North Myrtle Beach (S.C. 1999) 333 S.C. 482, 511 S.E.2d 361. Municipal Corporations 592(1)

**SECTION 5‑7‑145.** Lifeguard and safety services provided by coastal municipalities.

(A) Each municipality bordering on the Atlantic Ocean is authorized to provide lifeguard and other safety related services on and along the public beaches within its corporate limits. A coastal municipality may enact and enforce regulations it determines necessary for the safety of all persons on the beach.

(B) Lifeguard services may be provided using municipal employees or by service agreement with a private beach safety company.

If the municipality elects to provide the services by an agreement with a private beach safety company, the following conditions apply:

(1) the municipality shall follow the procedures of the State Procurement Code, as found in Chapter 35 of Title 11, or the procedures of the municipal procurement code, in the awarding of contracts with private beach safety companies;

(2) the agreement between the municipality and private beach safety company may last no longer than seven years;

(3) the municipality may grant the exclusive right to the beach safety company to rent only the beach equipment and to sell only the items to the public on the beach that are allowed by the municipality on the effective date of this section; provided, however, that on and after the effective date of this section there shall be no granting of the right to rent any additional tangible items, or to sell any beverages to the public on the beach, or otherwise, unless and until additional personnel are hired for the additional rentals and additional activities sufficient in number so that employees already employed on the effective date of this section will not be unduly burdened as determined by the appropriate municipal governing body;

(4) lifeguard personnel employed by the private beach safety company must be tested and certified as required by the municipality; and

(5) the conduct of the limited commercial activities granted to the private beach safety company shall not prevent or interfere in a substantial way with the peaceful, recreational use of the public beach by the general public.

(C) Nothing in this section enlarges, restricts, or infringes upon the existing rights of the owners of private property adjacent to the public beaches.

HISTORY: 1999 Act No. 113, Section 21.

LIBRARY REFERENCES

Municipal Corporations 233 to 236.

Westlaw Key Number Searches: 268k233 to 268k236.

C.J.S. Municipal Corporations Sections 901, 917 to 918, 925.

**SECTION 5‑7‑150.** Coastal municipalities’ criminal jurisdiction over piers and other structures and waters of the ocean.

Every coastal municipality has criminal jurisdiction over piers and other structures and the waters of the ocean, a sound, or an inlet within one mile of those portions of the strand within the corporate limits. The corporate limits of the municipality are extended in a straight line from the strand into the ocean, inlet, or sound from the point where the corporate limits of the municipality reach the high‑water mark of the strand. If an extension overlaps with the criminal jurisdiction of another political subdivision, the jurisdiction of each political subdivision extends to the equidistant point from the high‑water mark of each strand.

HISTORY: 1962 Code Section 47‑44; 1975 (59) 692; 1991 Act No. 133, Section 1.

LIBRARY REFERENCES

Navigable Waters 36(.5).

Westlaw Key Number Search: 270k36(.5).

C.J.S. Navigable Waters Sections 103, 105 to 107.

**SECTION 5‑7‑155.** Police jurisdiction over certain streets and highways along which municipal boundaries run.

If any portion of a street or highway is within the boundary of a municipality, the right of way of the street or highway not within the municipal boundary but touching the boundary is nevertheless considered to be within the boundary of that municipality for purposes of its police jurisdiction.

A street or highway which serves as the boundary between municipalities is under the police jurisdiction of both municipalities regardless of the municipality in which the street or highway is located.

HISTORY: 1987 Act No. 164, Section 1; 1989 Act No. 141, Section 1; 1994 Act No. 414, Section 1.

LIBRARY REFERENCES

Municipal Corporations 188.

Westlaw Key Number Search: 268k188.

C.J.S. Municipal Corporations Sections 486 to 487.

**SECTION 5‑7‑160.** Powers of municipality vested in council; quorum.

All powers of the municipality are vested in the council, except as otherwise provided by law, and the council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the municipality by law. A majority of the total membership of the council shall constitute a quorum for the purpose of transacting council business.

HISTORY: 1962 Code Section 47‑45; 1975 (59) 692; 1976 Act No. 623, Section 3.

LIBRARY REFERENCES

Municipal Corporations 60, 90.

Westlaw Key Number Searches: 268k60; 268k90.

C.J.S. Municipal Corporations Sections 138, 151, 231.

Attorney General’s Opinions

Discussion of the authority of the Simpsonville City Council to demote and reinstate its police chief. 2014 S.C. Op.Atty.Gen., (November 18, 2014) 2014 WL 6705715.

Arcadia Lakes Town Council may vote to allow a council member to fulfill his term who was mistakenly recorded in town council meeting minutes as intending to resign in six months. S.C. Op.Atty.Gen. (August 12, 2011) 2011 WL 3918169.

A city council cannot limit the length of service of a mayor or city council members in the absence of specific statutory authority providing therefor. 1988 Op Atty Gen, No. 88‑71, p 206.

Notes of Decisions

Contracts 1

1. Contracts

Alleged promises or representations made by city employees, such as supervisors and human resource employees, did not create a unilateral contract between city and retired firefighters and police officers for continuing free health insurance; retirees failed to show any action by the city council or city manager authorizing such contracts or granting the authority to these employees to enter the contract. Bishop v. City of Columbia (S.C.App. 2013) 401 S.C. 651, 738 S.E.2d 255, rehearing denied, certiorari denied, on remand 2015 WL 9999556. Municipal Corporations 187(2); Municipal Corporations 200(2); Public Employment 388(2); Public Employment 516(4)

**SECTION 5‑7‑170.** Salaries and expenses of mayor and councilmen determined by council through ordinance.

The council may determine the annual salary of its members by ordinance; provided, that an ordinance establishing or increasing such salaries shall not become effective until the commencement date of the terms of two or more members elected at the next general election following the adoption of the ordinance, at which time it will become effective for all members whether or not they were elected in such election. The mayor and council members may also receive payment for actual expenses incurred in the performance of their official duties within limitations prescribed by ordinance.

HISTORY: 1962 Code Section 47‑46; 1975 (59) 692; 1979 Act No. 98, Section 1.

LIBRARY REFERENCES

Municipal Corporations 162, 163.

Westlaw Key Number Searches: 268k162; 268k163.

C.J.S. Municipal Corporations Sections 372 to 374, 376, 378, 382 to 385, 390.

Attorney General’s Opinions

The salaries of council members must be changed on the commencement date of the terms of two or more members elected at the next general election following the adoption of an ordinance changing the salaries of the council members. S.C. Op.Atty.Gen. (May 5, 2014) 2014 WL 2538226.

Discussion of what documentation is the minimum documentation required for travel reimbursement by a municipality for a municipal councilmember. S.C. Op.Atty.Gen. (July 2, 2013) 2013 WL 3479878.

A quorum would be a majority of the council, which would be four (4) of the seven (7) members, and all members are authorized by statute to vote on issues regarding compensation and reimbursement. S.C. Op.Atty.Gen. (October 16, 2012) 2012 WL 5266017.

Per diems and whether or not to return reimbursement money paid on a per diem basis for town council members is not issue which should be voted on. S.C. Op.Atty.Gen. (October 16, 2012) 2012 WL 5266017.

Municipalities may voluntarily choose to participate in state health and dental insurance plans, but must defer to the Employee Insurance Program division with regard to the eligibility of a particular individual, and the municipality must contribute to the premiums of its eligible employees in an amount equal to what the State would contribute for State employees. S.C. Op.Atty.Gen. (August 3, 2011) 2011 WL 3918183.

The terms of Section 1‑11‑720 do not conflict with Section 5‑7‑170 because the decision as to whether or not municipal employees are covered under the state health and dental insurance plans is within the decision making authority of the municipality’s council. S.C. Op.Atty.Gen. (August 3, 2011) 2011 WL 3918183.

Under the provisions of Section 5‑7‑170 as amended, the mayor would be treated as a member of council and an increase in salary for the mayor would become effective the date specified in Section 5‑7‑170 of the Code. 1989 Op Atty Gen, No. 89‑15, p 41.

The expenditure of funds from the “House Approved Accounts” for expenses incurred by women members of the General Assembly attending meetings of the National Order of Women Legislators and black members of the General Assembly attending meetings of the National Black Caucus of State Legislators would be proper only if such expenses were incurred in furtherance of official state business. 1987 Op Atty Gen, No. 87‑84, p 224.

No state statutory or City Code provision explicitly requires submission of receipts to support the claim for reimbursement of actual expenses of a mayor or councilman incurred in the performance of their public duties. 1986 Op Atty Gen, No. 95, p 288.

It is impermissible for a municipality to increase or supplement the salary of a former Mayor and Councilman for several past years for the purpose of increasing his retirement benefits, as Section 5‑7‑170, 1976 Code of Laws, provides that salaries may be changed only prospectively to start at the beginning of the next term of office. 1976‑77 Op Atty Gen, No 77‑377, p 303.

Pursuant to Section 5‑7‑170, a salary change in a municipal council with members serving staggering terms takes effect upon the commencement of the terms of councilmen actually elected at the next general election following the change. 1976‑77 Op Atty Gen, No 77‑341, p 273.

The Spartanburg City Council is not authorized to enact an ordinance providing for the payment of travel and lodging expenses for the spouses of City Council members. 1976‑77 Op Atty Gen, No 77‑249, p 183.

NOTES OF DECISIONS

In general 1

1. In general

A clear, common sense reading of the language of Section 5‑7‑170 reveals that only actual expenses incurred by a mayor and city council members themselves in the performance of their official duties were contemplated, and that the legislature did not extend the statute’s application to spouses and other persons. The policy of a city to pay traveling expenses for the spouses of the mayor and city council members was not authorized under Section 5‑7‑170, nor does such payment constitute a valid public purpose. Brown v. Wingard (S.C. 1985) 285 S.C. 478, 330 S.E.2d 301. Municipal Corporations 163; Public Employment 365

**SECTION 5‑7‑180.** Mayor or councilman prohibited from holding other political office during term elected.

Except where authorized by law, no mayor or councilman shall hold any other municipal office or municipal employment while serving the term for which he was elected.

HISTORY: 1962 Code Section 47‑47; 1975 (59) 692.

CROSS REFERENCES

Constitutional provisions concerning municipal corporations, see SC Const, Art 8, Sections 1 et seq.

Officers and employees serving on regional council of government, see SC Const, Art 7, Section 15.

LIBRARY REFERENCES

Municipal Corporations 142.

Westlaw Key Number Search: 268k142.

C.J.S. Municipal Corporations Sections 337, 346.

Attorney General’s Opinions

Simultaneous service as a Loris City Councilmember and as a member of the Volunteer Fire Department of the City of Loris or as Fire Chief for the City of Loris Volunteer Fire Department would create a master‑servant conflict of interest and would violate this section. 2014 S.C. Op.Atty.Gen., (December 16, 2015) 2015 WL 9581245.

The mayor’s service as fire chief creates a master‑servant conflict of interest and would likely violate this section. 2014 S.C. Op.Atty.Gen., (May 27, 2015) 2015 WL 3533915.

An individual concurrently serving as both a mayor, and as a member of a county election commission, does so in violation of the prohibition on dual‑office holding. S.C. Op.Atty.Gen. (May 2, 2014) 2014 WL 2120885.

A mayor or council member may not serve as another city official. S.C. Op.Atty.Gen. (Oct. 24, 2013) 2013 WL 5955670.

No dual office holding violation for person elected to the Simpsonville City Council and who continues to serve as a firefighter for the City of Greer Fire Department and maintains a certification from the State Fire Marshal. S.C. Op.Atty.Gen. (Sept. 9, 2013) 2013 WL 5291571.

Service as a volunteer fireman for the City during term as a member of City Council violates Section 5‑7‑180; under Section 5‑7‑200(a), a violation of section 5‑7‑180 constitutes grounds for forfeiture of the office of mayor or councilman of a municipality. S.C. Op.Atty.Gen. (March 20, 2012) 2012 WL 1036294.

For Mayor to serve concurrently as mayor and a police officer of the Town of Norway is prohibited by Section 5‑7‑180, and pursuant to Section 5‑7‑210, Mayor could be required to forfeit his office for violating Section 5‑7‑180. S.C. Op.Atty.Gen. (March 16, 2012) 2012 WL 989298.

To serve concurrently as Mayor and Chief Constable of the Town of Norway is prohibited by Section 5‑7‑180, and the Mayor could be required to forfeit his office. S.C. Op.Atty.Gen. (March 5, 2012) 2012 WL 889084.

Simultaneous service as a member of City Council and as an instructor for the Recreation Department, even if compensation is declined, may still violate Section 5‑7‑180 or create a conflict of interest under the common law. S.C. Op.Atty.Gen. (Feb. 23, 2012) 2012 WL 682075.

**SECTION 5‑7‑190.** Mayor pro tempore elected from council membership.

Immediately after any general election for the municipal council, the council shall elect from its membership a mayor pro tempore for a term of not more than two years. The mayor pro tempore shall act as mayor during the absence or disability of the mayor. If a vacancy occurs in the office of mayor, the mayor pro tempore shall serve as mayor until a successor is elected.

HISTORY: 1962 Code Section 47‑48; 1975 (59) 692.

LIBRARY REFERENCES

Municipal Corporations 81, 149(1).

Westlaw Key Number Searches: 268k81; 268k149(1).

C.J.S. Municipal Corporations Sections 211, 361.

Attorney General’s Opinions

A court will likely find without the absence or disability of a city’s mayor any ordinance that places a mayor pro tempore instead of a mayor as the presiding officer at city council meetings violates Section 5‑7‑190. S.C. Op.Atty.Gen. (March 27, 2014) 2014 WL 1511520.

Section 30.33 of the Camden City Code is most probably in conflict with section 5‑7‑190 of the Code, to the extent that the recommendation of the Mayor is required for a selection of the City’s Mayor Pro Tempore. 1988 Op Atty Gen, No. 88‑49, p 146.

NOTES OF DECISIONS

In General 1

1. In General

Under Section 5‑7‑190, a mayor pro tempore was authorized to serve and vote as a member of a district commission in the absence of the mayor. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg (S.C. 1984) 283 S.C. 67, 321 S.E.2d 258. Municipal Corporations 168

**SECTION 5‑7‑200.** Grounds for forfeiture of office of mayor or councilman; filling vacancies in office.

(a) A mayor or councilman shall forfeit his office if he (1) lacks at any time during his term of office any qualification for the office prescribed by the general law and the Constitution; (2) violates any express prohibition of Chapters 1 to 17; or (3) is convicted of a crime involving moral turpitude.

(b) A vacancy in the office of mayor or council shall be filled for the remainder of the unexpired term at the next regular election or at a special election if the vacancy occurs one hundred eighty days or more prior to the next general election.

HISTORY: 1962 Code Section 47‑49; 1975 (59) 692.

CROSS REFERENCES

Filling of vacancies in county offices, see Section 4‑11‑20.

Filling of vacancies in membership of county governing body, see Section 4‑9‑90.

LIBRARY REFERENCES

Municipal Corporations 149(3), 156.

Westlaw Key Number Searches: 268k149(3); 268k156.

C.J.S. Municipal Corporations Sections 368, 421 to 422, 431, 437.

Attorney General’s Opinions

Discussion of residency and military deployment with respect to members of municipal councils. S.C. Op.Atty.Gen. (July 11, 2016) 2016 WL 3946156.

Service as a volunteer fireman for the City during term as a member of City Council violates Section 5‑7‑180; under Section 5‑7‑200(a), a violation of section 5‑7‑180 constitutes grounds for forfeiture of the office of mayor or councilman of a municipality. S.C. Op.Atty.Gen. (March 20, 2012) 2012 WL 1036294.

City council member vacates his office at time he ceases to be resident of city, and would continue to serve in de facto capacity until vacancy is filled. 1984 Op Atty Gen, No. 84‑118, p. 271.

Violation of Section 7206(1), Internal Revenue Code, Relating to income tax violations, involves moral turpitude and works a forfeiture of the office of any mayor or councilman convicted pursuant to Section 5‑7‑200. On appeal to county council, its inquiry is limited to the establishment of factual matters. The council may not relieve a convicted member of forfeiture of office if the fact of conviction is found. 1978 Op Atty Gen, No 78‑64, p 91.

A mayor suspended from public office upon indictment for a crime involving moral turpitude and subsequently convicted thereof, following which the office was declared vacant, may not become a candidate in an election for the unexpired term; he may however, seek re‑election following the expiration of the term which was interrupted by his suspension and conviction. 1978 Op Atty Gen, No 78‑55, p 80.

An advisory referendum may not be held to fill a vacancy on City Council as such an election is not provided for by Statute. 1974‑75 Op Atty Gen, No 3971, p 43.

If a special election for mayor is to be called because there are more than one hundred eighty days before the election, it must be called in sufficient time to permit the election to be held timely. 1994 Op Atty Gen, No. 94‑32, p. 77.

**SECTION 5‑7‑210.** Council as judge of election and qualifications of its members and of grounds for forfeiture of their office.

The council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office and for that purpose shall have power to subpoena witnesses, administer oaths and require the production of evidence. A member charged with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing, and notice of such hearing shall be published in one or more newspapers of general circulation in the municipality at least one week in advance of the hearing. Decisions made by the council under this section may be appealed to the court of common pleas.

HISTORY: 1962 Code Section 47‑50; 1975 (59) 692.

LIBRARY REFERENCES

Municipal Corporations 159.

Westlaw Key Number Search: 268k159.

C.J.S. Municipal Corporations Sections 423, 425, 428, 432, 436, 438, 440 to 442.

Attorney General’s Opinions

Discussion of residency and military deployment with respect to members of municipal councils. S.C. Op.Atty.Gen. (July 11, 2016) 2016 WL 3946156.

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

For Mayor to serve concurrently as mayor and a police officer of the Town of Norway is prohibited by Section 5‑7‑180, and pursuant to Section 5‑7‑210, Mayor could be required to forfeit his office for violating Section 5‑7‑180. S.C. Op.Atty.Gen. (March 16, 2012) 2012 WL 989298.

To serve concurrently as Mayor and Chief Constable of the Town of Norway is prohibited by Section 5‑7‑180, and the Mayor could be required to forfeit his office. S.C. Op.Atty.Gen. (March 5, 2012) 2012 WL 889084.

**SECTION 5‑7‑220.** Appointment and duties of municipal clerk.

The council under the council and mayor‑council forms of government or city manager under the council‑manager form shall appoint an officer of the municipality who shall have the title of municipal clerk. The municipal clerk shall give notice of council meetings to its members and the public, keep the minutes of its proceedings and perform such other duties as are assigned by council.

HISTORY: 1962 Code Section 47‑51; 1975 (59) 692; 1978 Act No. 435, Section 2.

LIBRARY REFERENCES

Municipal Corporations 131, 169.

Westlaw Key Number Searches: 268k131; 268k169.

C.J.S. Municipal Corporations Sections 355, 367, 371.

Attorney General’s Opinions

An individual serving as Elloree’s clerk of court as well as clerk of court and associate municipal court judge for another municipality would violate the constitutional prohibition against dual office holding. S.C. Op.Atty.Gen. (July 15, 2014) 2014 WL 3752136.

A person who performs the administrative duties of the Town of Pinewood might be a municipal clerk appointed pursuant to Section 5‑7‑220. A municipal clerk may not be assigned duties that infringe upon the statutory powers or duties of the mayor. A court might find that a municipal clerk exercising the duties you have described is infringing upon the powers or duties of the mayor. S.C. Op.Atty.Gen. (Jan. 13, 2012) 2012 WL 440544.

**SECTION 5‑7‑230.** Appointment or election of municipal attorney and judge of municipal court.

The city council may elect or appoint a municipal attorney and a judge or judges of the municipal court, whose duties shall be as prescribed by law. No mayor or councilman shall be so elected or appointed to serve as municipal judge during his term of office. The provisions of this section do not apply to a mayor who presides over a mayor’s court in his capacity as mayor as authorized in Section 5‑7‑90.

HISTORY: 1962 Code Section 47‑52; 1975 (59) 692.

CROSS REFERENCES

Municipal courts, generally, see Sections 14‑25‑5 et seq.

LIBRARY REFERENCES

Municipal Corporations 131, 142.

Westlaw Key Number Searches: 268k131; 268k142.

C.J.S. Municipal Corporations Sections 337, 346, 355, 367.

United States Supreme Court Annotations

Immunity, private attorney hired by city to participate in internal affairs investigation could assert qualified immunity in Section 1983 action, see Filarsky v. Delia, 2012, 132 S.Ct. 1657, 566 U.S. 377, 182 L.Ed.2d 662, rehearing denied 132 S.Ct. 2764, 567 U.S. 914, 183 L.Ed.2d 631, on remand 682 F.3d 1213. Civil Rights 1376(10)

Attorney General’s Opinions

A city council may ratify a mayor’s actions to authorize payment for the services of an attorney even though the services were improperly obtained. S.C. Op.Atty.Gen. (Nov. 18, 2010) 2010 WL 4982614.

A municipality may not employ an attorney in matters in which it is not directly interested or which lie outside its corporate affairs. 1976‑77 Op Atty Gen, No 77‑206, p 158.

The enactment of Code Section 47‑52 [1976 Code Section 5‑7‑230] makes the position of municipal attorney an office subject to Constitutional restrictions on dual office holding. 1976‑77 Op Atty Gen, No 77‑137, p 114.

Section 47‑52 [1976 Code Section 5‑7‑230] authorizes a municipal council to appoint a municipal judge and a municipal attorney rather than the Mayor appointing these positions. 1976‑77 Op Atty Gen, No 77‑6, p 18.

A mayor does not have authority to hire outside counsel without approval except in very extenuating circumstances. S.C. Op.Atty.Gen. (Nov. 18, 2010) 2010 WL 4982614.

**SECTION 5‑7‑240.** Council required to provide for independent annual audit of financial records and transactions of municipality and agencies funded by municipal funds.

The council shall provide for an independent annual audit of all financial records and transactions of the municipality and any agency funded in whole by municipal funds and may provide for more frequent audits as it deems necessary. Special audits may be provided for any agency receiving municipal funds as the municipality deems necessary. Such audits shall be made by a certified public accountant or public accountant or firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the municipal government or any of its officers. The council may, without requiring competitive bids, designate such accountant or firm annually or for a period not exceeding four years, provided, that the designation for any particular fiscal year shall be made no later than thirty days after the beginning of such fiscal year. The report of the audit shall be made available for public inspection. The council may in its discretion accept independent audits of municipal agencies and departments and include such audits in its general report of the audit of the municipality.

HISTORY: 1962 Code Section 47‑53; 1975 (59) 692; 1977 Act No. 109.

CROSS REFERENCES

Annual independent audit required by this section to include audit of uniform ordinance summons, see Section 56‑7‑80.

Publication of financial statements by certain towns, see Section 5‑21‑50.

LIBRARY REFERENCES

Municipal Corporations 885.

Westlaw Key Number Search: 268k885.

C.J.S. Municipal Corporations Sections 1628 to 1629.

Attorney General’s Opinions

The West Columbia City Council’s designation on March 1, 1977, of a CPA firm to conduct its annual audit for the 1976‑1977 fiscal year is valid, even though the designation was after the time proscribed in Section 47‑53. [1976 Code Section 5‑7‑240] 1976‑77 Op Atty Gen, No 77‑167, p 135.

A CPA may be employed to audit a municipality for more than four consecutive years. 1975‑76 Op Atty Gen, No 4481, p 342.

**SECTION 5‑7‑250.** Council meetings; rules and procedures for meetings; freedom of information; emergency ordinances.

(a) The council, after public notice shall meet regularly at least once in every month at such times and places as the council may prescribe by rule. Special meetings may be held on the call of the mayor or of a majority of the members.

(b) The council shall determine its own rules and order of business and shall provide for keeping minutes of its proceedings which shall be a public record.

(c) Procedures for meetings of a municipal governing body shall not conflict with the provisions of the general laws of the state with regard to freedom of information.

(d) To meet public emergencies affecting life, health, safety or the property of the people, council may adopt emergency ordinances; but such ordinances shall not levy taxes, grant, renew or extend a franchise or impose or change a service rate. Every emergency ordinance shall be enacted by the affirmative vote of at least two‑thirds of the members of council present. An emergency ordinance is effective immediately upon its enactment without regard to any reading, public hearing, publication requirements, or public notice requirements. Emergency ordinances shall expire automatically as of the sixty‑first day following the date of enactment.

HISTORY: 1962 Code Section 47‑54; 1975 (59) 692.

LIBRARY REFERENCES

Municipal Corporations 87, 92, 106(3).

Westlaw Key Number Searches: 268k87; 268k92; 268k106(3).

C.J.S. Municipal Corporations Sections 220, 222, 232 to 233, 261 to 262.

Attorney General’s Opinions

State law does not expressly require meetings of municipal or county governing bodies to be held within geographic confines of particular county or municipality. 1991 Op Atty Gen, No. 91‑24 p 73.

Unanimous consent of all members of city council present at a regular meeting is required to suspend temporarily the rules of procedure to allow the placement of business on the agenda during a meeting that was not previously included in the agenda. 1989 Op Atty Gen, No. 89‑54, p 137.

Notes of Decisions

Special meetings 1

1. Special meetings

Provision of town code requiring mayor’s approval of the agenda for regularly scheduled council meetings did not apply to special meetings called by a majority of council members; the very nature of a special meeting inherently controlled the content of that meeting’s agenda, and a requirement that the mayor approve the written agenda for a special would be incompatible with the very nature of a special meeting called by a majority of council members. Atkins v. Wilson (S.C.App. 2016) 417 S.C. 3, 788 S.E.2d 228. Municipal Corporations 87; Municipal Corporations 92

The actions of a public body at a special meeting may not exceed the scope of the purpose for which the meeting was called; this means that those who lawfully call the special meeting have a purpose for the meeting, and this purpose is the only item on which action may be taken. Atkins v. Wilson (S.C.App. 2016) 417 S.C. 3, 788 S.E.2d 228. Municipal Corporations 87

Majority of members of town council acted within their authority under state law and town code when they called two special meetings and published meeting agendas limited to the meetings’ purposes without first presenting the agendas to the mayor. Atkins v. Wilson (S.C.App. 2016) 417 S.C. 3, 788 S.E.2d 228. Municipal Corporations 87

**SECTION 5‑7‑260.** Acts of municipal council which are required to be done by ordinance.

In addition to other acts required by law to be done by ordinance, those acts of the municipal council shall be by ordinances which:

(1) Adopt or amend an administrative code or establish, alter or abolish any municipal department, office or agency;

(2) Provide for a fine or other penalty or establish a rule or regulation in which a fine or other penalty is imposed for violations;

(3) Adopt budgets, levy taxes, except as otherwise provided with respect to the property tax levied by adoption of a budget, pursuant to public notice;

(4) Grant, renew or extend franchises;

(5) Authorize the borrowing of money;

(6) Sell or lease or contract to sell or lease any lands of the municipality; and

(7) Amend or repeal any ordinance described in items (1) through (6) above.

In matters other than those referred to in this section council may act either by ordinance or resolution.

HISTORY: 1962 Code Section 47‑55; 1975 (59) 692.

LIBRARY REFERENCES

Municipal Corporations 105.

Westlaw Key Number Search: 268k105.

C.J.S. Municipal Corporations Sections 247 to 251.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 12.1, “Home Rule”‑The Power of Municipalities to Enact Regulations and Ordinances.

Attorney General’s Opinions

While section 5‑7‑260 provides that acts other than those enumerated may be “either by ordinance or resolution,” it leaves substantial discretion in city council as to the form that a resolution should take. The South Carolina Supreme Court has determined that a resolution is not different in substance from a simple motion. Op.Atty.Gen. (September 19, 2012) 2012 WL 4711422.

Discussion of the power of a municipality to disband its police department. S.C. Op.Atty.Gen. (July 11, 2012) 2012 WL 3057451.

A separate ordinance is not required to levy taxes if the adoption of a budget includes a provision levying taxes. 1979 Op Atty Gen, No 79‑36, p 50.

NOTES OF DECISIONS

In general 1

1. In general

City contract making one wrecker service the default towing company in the city was a “franchise” and, therefore, was unenforceable without an ordinance creating it, even though citizens could request other companies in limited circumstances; the city residents and businesses paid the company, and the contract allowed the company to make money from private citizens. Quality Towing, Inc. v. City of Myrtle Beach (S.C. 2001) 345 S.C. 156, 547 S.E.2d 862, rehearing denied. Municipal Corporations 683(1)

A town was not equitably estopped to deny the validity of a franchise agreement declared invalid under Section 5‑7‑270 because it lacked the 2 readings required to create an ordinance, even though the parties had performed under the agreement for 6 years, since the agreement was illegal as in contravention of a statute, and estoppel may not be based on an illegal act; the franchisor was not excused by its unawareness that the town’s act was in contravention of a statute since it was charged with the knowledge that the town’s power to grant franchises was limited by Sections 5‑7‑260(4) and 5‑7‑270. Berkeley Elec. Co‑op., Inc. v. Town of Mount Pleasant (S.C. 1992) 308 S.C. 205, 417 S.E.2d 579.

**SECTION 5‑7‑270.** Form and procedures for introducing and passing ordinances.

Every proposed ordinance shall be introduced in writing and in the form required for final adoption. Each municipality shall by ordinance establish its own rules and procedures as to adoption of ordinances. No ordinance shall have the force of law until it shall have been read two times on two separate days with at least six days between each reading.

HISTORY: 1962 Code Section 47‑56; 1975 (59) 692.

LIBRARY REFERENCES

Municipal Corporations 106(2).

Westlaw Key Number Search: 268k106(2).

C.J.S. Municipal Corporations Sections 256, 259.

Attorney General’s Opinions

A proposed municipal ordinance presented in redlined format would be in the form required for final adoption as required by this section and the Summerville Code. S.C. Op.Atty.Gen. (June 28, 2016) 2016 WL 3946155.

Discussion of the sale of land by municipalities. S.C. Op.Atty.Gen. (July 8, 2013) 2013 WL 3762707.

A municipal ordinance may be amended at the time of a second reading. 1986 Op Atty Gen, No. 86‑117, p 343.

Any town ordinances that have been properly adopted are valid and enforceable under the provisions of Section 5‑7‑270, Code of Laws, S.C., 1976, and there is no State law that requires codification of such ordinances. 1976‑77 Op Atty Gen, No 77‑298, p 225.

NOTES OF DECISIONS

In general 1

1. In general

The trial judge erred in admitting parol evidence to show that an electrical franchise agreement received the 2 readings required to create an ordinance where the minutes of the town council meeting at which the agreement was introduced showed that the franchisor requested the agreement and the mayor recommended deferring the request in order to study it, and the minutes of a later meeting showed that the resolution was granted; thus, the minutes were complete and unambiguous on their face, and showed that a formal reading never took place. Berkeley Elec. Co‑op., Inc. v. Town of Mount Pleasant (S.C. 1992) 308 S.C. 205, 417 S.E.2d 579.

A town was not equitably estopped to deny the validity of a franchise agreement declared invalid under Section 5‑7‑270 because it lacked the 2 readings required to create an ordinance, even though the parties had performed under the agreement for 6 years, since the agreement was illegal as in contravention of a statute, and estoppel may not be based on an illegal act; the franchisor was not excused by its unawareness that the town’s act was in contravention of a statute since it was charged with the knowledge that the town’s power to grant franchises was limited by Sections 5‑7‑260(4) and 5‑7‑270. Berkeley Elec. Co‑op., Inc. v. Town of Mount Pleasant (S.C. 1992) 308 S.C. 205, 417 S.E.2d 579.

**SECTION 5‑7‑280.** Adoption of standard codes or technical regulations in ordinances.

The council may adopt any standard code or technical regulations authorized under Section 6‑9‑60 by reference thereto in the adopting ordinance; provided, that the council shall hold at least one public hearing before the adoption of any such standard code or technical regulations. The procedure and requirements governing such ordinance shall be as prescribed for ordinances listed in Section 5‑7‑260 and subject to the provisions of Section 5‑7‑270.

Copies of any adopted code or technical regulations shall be made available by the municipal clerk for distribution or for purchase at a reasonable price.

HISTORY: 1962 Code Section 47‑57; 1975 (59) 692; 1982 Act No. 351, Section 2.

LIBRARY REFERENCES

Municipal Corporations 110.

Westlaw Key Number Search: 268k110.

C.J.S. Municipal Corporations Sections 277 to 280, 282 to 284.

**SECTION 5‑7‑290.** Municipal ordinances to be codified; public inspection.

Each municipal council shall provide by ordinance for the codification and indexing of all ordinances, either typewritten or printed, and the maintenance of ordinances in a current form reflecting all amendments and repeals. All ordinances as codified shall be available for public inspection at reasonable times.

HISTORY: 1962 Code Section 47‑58; 1976 Act No. 623, Section 1.

LIBRARY REFERENCES

Municipal Corporations 110.

Westlaw Key Number Search: 268k110.

C.J.S. Municipal Corporations Sections 277 to 280, 282 to 284.

**SECTION 5‑7‑300.** Collection of delinquent ad valorem property taxes by municipalities.

(A) All municipalities of the State may provide by ordinance a procedure for the collection of delinquent real and personal property taxes, except taxes on motor vehicles. The municipal governing body may provide for a penalty not exceeding fifteen percent of the taxes levied for nonpayment of these taxes payable when the taxes become delinquent. The property taxes levied, with any penalty added for nonpayment when due and costs of execution, are a lien upon the property upon which the tax is levied until paid. The lien is paramount to all other liens except the lien for county and state taxes. Payment of a lien for state or county taxes, without payment of a lien for municipal taxes, does not extinguish a lien for municipal taxes. For those municipalities that, as of the effective date of this sentence collect their delinquent municipal taxes without an agreement as to collection with a county, such payment makes the municipal lien a first lien on the property which shall continue in full force and effect until legally discharged.

(B) For the purpose of collecting delinquent real and personal property taxes, the municipal governing body may enforce payment against the property of delinquent property taxpayers to the same extent, and substantially in the same manner, as is provided by law for the collection of county property taxes and penalties, except that a municipal governing body may determine the municipality’s tax year, penalty dates, and the amount of penalty to be added on the penalty dates. Executions to enforce the payment of the taxes and penalties must be issued under the seal of the municipality and directed to the person designated by the municipal governing body for that purpose. All sales under and by virtue of that execution must take place at a public place in the municipality designated by ordinance, unless otherwise provided in subsection (D) if the sale is held in conjunction with the delinquent tax sale of the county.

(C) All expense of the levy, seizure, and sale must be added and collected as additional execution costs, and includes, but is not limited to, the expense of taking possession of real or personal property, advertising, storage, identifying the boundaries of the property, and mailing certified notices.

(D) A municipality may contract with the county for the collection of municipal taxes or for the collection of delinquent municipal taxes upon terms and conditions mutually agreeable to both the municipality and the county. If a municipality contracts with a county for collection of municipal taxes or delinquent municipal taxes, the provisions of state law that prescribe the procedure for collection of property taxes by counties must be followed. A delinquent tax sale for the purpose of collecting municipal taxes and held in conjunction with a delinquent tax sale for the purpose of collecting county taxes may take place at the public place in the county that is designated by the county.

(E) A municipality may contract by ordinance with an individual, firm, or organization to assist the municipality in collecting property or business license taxes.

HISTORY: 1987 Act No. 19 Section 1; 1988 Act No. 419; 2002 Act No. 179, Section 1; 2006 Act No. 238, Section 1, eff March 15, 2006.

Effect of Amendment

The 2006 amendment, in subsection (A), added the fifth and sixth sentences relating to municipal taxes and making a municipal lien a first lien.

CROSS REFERENCES

Taxpayer immunity from Year 2000 computer related billing delays or errors, see Section 12‑2‑85.

LIBRARY REFERENCES

Municipal Corporations 978.

Westlaw Key Number Search: 268k978.

C.J.S. Municipal Corporations Sections 1820, 1824 to 1825.

Attorney General’s Opinions

A municipality may enforce the payment of delinquent property taxes by execution and sale, however, a municipal tax lien is subordinate to a lien for county or state taxes; when property impressed with a municipal tax lien is sold by a county or the state, the municipality may bid at the sale to protect its lien or may pay the taxes owed the county or the state, thereby making its lien a first lien. 1989 Op Atty Gen, No. 89‑126, p 342.

Where a county conducts a tax sale to recover its delinquent county taxes and also, under a contract with a municipality, collects delinquent municipal taxes, the overage remaining after the county and municipal taxes are satisfied is held by the county and if not claimed within 5 years escheats to the general fund of the county. 1992 Op Atty Gen No. 92‑50.

**SECTION 5‑7‑310.** Provisions of Section 4‑9‑55 apply to general laws which affect municipalities.

The provisions of Section 4‑9‑55 apply to general laws enacted by the General Assembly which affect municipalities.

HISTORY: 1993 Act No. 157, Section 2.

LIBRARY REFERENCES

Municipal Corporations 73.

Westlaw Key Number Search: 268k73.

C.J.S. Municipal Corporations Section 190.