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HENRY McMaster
ATTORNEY GENERAL

February 1, 2006

The Honorable P. J. Tanner
Sheriff, Beaufort County
P. O. Box 1758
Beaufort, South Carolina 29901

Dear Sheriff Tanner:

In a letter to this office you indicated that your department has been contacted by a company that utilizes laser radar and video technology to combat speeding violations. The technology captures the speed of a vehicle on video, documents the description of the vehicle to include the license plate number and then digitally stores the information. The license number is confirmed through the Department of Motor Vehicles and the registered owner is then mailed a citation. You indicated that the fines collected would go into the general fund of the county and there would be no criminal violation tracked or points assessed against the driver. Referencing such, you have questioned whether a county council is authorized to create an ordinance against speeding along with establishing civil penalties and remedies for that violation. You also questioned whether it is then legal for the law enforcement agency with jurisdiction to send citations to the registered owner by certified mail.

S.C. Code Ann. § 56-5-1520 provides for the state statutory offense of speeding. Pursuant to subsection (G), a violation of the speed limits established by such provision is a misdemeanor punishable by a fine or imprisonment.

Generally, pursuant to S.C. Code Ann. § 4-9-25,

[a]ll counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order and good government in them. The powers of a county must be liberally construed in favor of the county

Request
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and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.

Similarly, pursuant to S.C. Code Ann. § 4-9-30 counties "within the authority granted by the Constitution and subject to the general laws of this State" were given a list of enumerated powers. Included among these powers is the authorization

(14) to enact ordinances for the implementation and enforcement of the powers granted in this section and provide penalties for violations thereof...(However)...(n)o ordinance including penalty provisions shall be enacted with regard to matters provided for by the general law; except as specifically authorized by such general law....

Furthermore, Article VIII, Section 14 of the State Constitution relating to local government states that

(i)n enacting provisions required or authorized by this article, general law provisions applicable to the following matters shall not be set aside:...(5) criminal laws and the penalties and sanctions for the transgression thereof.

These provisions have been interpreted by the State Supreme Court to provide that local governments may not enact ordinances that impose greater or lesser penalties than those established by state law. City of North Charleston v. Harper, 306 S.C. 153, 410 S.E.2d 569 (1991); Terpin v. Darlington County Council, 286 S.C. 112, 332 S.E.2d 771 (1985). As stated in a prior opinion of this office dated December 5, 1990

Counties and municipalities are political subdivisions of the State and have only such powers as have been given to them by the State, such as by legislative enactment. Williams v. Wylie, 217 S.C. 247, 60 S.E.2d 586 (1950). Such political subdivisions may exercise only those powers expressly given by the State Constitution or statutes, or such powers necessarily implied therefrom, or those powers essential to the declared purposes and objects of the political subdivision. McKenzie v. City of Florence, 234 S.C. 428, 108 S.E.2d 825 (1959). In so doing, however, political subdivisions cannot adopt an ordinance repugnant to the State Constitution or laws.... Central Realty Corp. v. Allison, 218 S.C. 435, 63 S.E.2d 153 (1951); Law v. City of Spartanburg, 148 S.C. 229, 146 S.E. 12 (1928).

A prior opinion of this Office dated September 1, 1988 stated as to municipalities

...police ordinances in conflict with statutes, unless authorized expressly or by necessary implication, are void. A charter or ordinance cannot lower or be inconsistent with a standard set by law ... Even where the scope of municipal power

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is concurrent with that of the state and where an ordinance may prohibit under penalty an act already prohibited and punishable by statute, an ordinance may not conflict with or operate to nullify state law ... Ordinances lowering or relaxing statutory standards relative to offenses are void as in conflict with state law and policy....

Therefore, political subdivisions are free to adopt an ordinance as long as such ordinance is not inconsistent with or repugnant to general laws of the State.

As set forth, the General Assembly has addressed by State law the subject of speeding, the same matter which would be addressed by the proposed ordinance. Furthermore, it appears that there would be a conflict between the proposed ordinance and the State law prohibiting speeding in that there would be no criminal violation tracked or points assessed against the driver but, instead, there would be a civil penalty imposed. As a result, in my opinion, such a speeding ordinance would not be authorized.

As to your question of whether it would be legal for a law enforcement agency to send citations to a registered owner by certified mail, no State law authorizes the use of such process. I am enclosing copies of two prior opinions dated March 19, 1996 and October 31, 2002 in which the practice of using photo-radar technology to catch speeders was reviewed. The 1996 opinion comments that the General Assembly is the appropriate authority to authorize the use of a photo radar system.

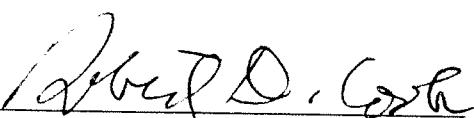
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General