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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Municipalities - Parking Violations -
Municipal Courts - Fines - Tuscaloosa
County

If a defendant fails to appear on a parking ticket, a municipal judge may issue a supplemental summons advising that the defendant will be subject to arrest for contempt for again failing to appear. If the defendant fails to appear on the supplemental summons, the municipal judge may issue a warrant for the arrest of the defendant, and, if found in contempt, the defendant may be fined \$50 and placed in jail for up to five days.

If the defendant appears and a fine is imposed at the hearing, but the defendant fails to pay the fine, a municipal judge may issue a warrant for the arrest of the defendant under Rule 26.11 of the Alabama Rules of Criminal Procedure. The municipal judge may reduce the fine to an amount the defendant is able to pay; order the defendant's employer to withhold payments from wages to pay fines; or, subject to the limitations of Rule 26.11(i), place the defendant in jail until the fine is paid or no longer than one day for each \$15 of the fine.

As an alternative to Rule 26.11, a municipal judge may issue a warrant for the arrest of the defendant for contempt,

and, if found in contempt, the defendant may be fined \$50 and placed in jail for up to five days.

A municipality may bring a civil action to recover a fine on an adjudicated parking ticket that is subject to the twenty-year statute of limitations on an action on a judgment. A municipality has no authority to impose a late fee on an unpaid parking fine.

The courts must determine the validity of a municipal ordinance authorizing the use of a wheel-locking device and requiring payment of all unpaid parking tickets before an impounded or locked vehicle is released.

Dear Mr. Ennis:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Tuscaloosa.

QUESTIONS

1. Can a municipal court obtain jurisdiction over parking offenses generally or over the owner of the vehicle when the owner, summoned to appear before a magistrate for an unpaid parking violation, fails to appear?

2. Does a municipal court magistrate have authority to compel the owner of a ticketed vehicle to appear for traffic court created by municipal ordinance and to enforce payment of fines? If so, what penalties may be imposed for failure to appear?

3. May the City of Tuscaloosa impose criminal sanctions for failure to pay parking fines and for failure to appear for an administratively adjudicated parking court or municipal court docket?

4. May the city, as a part of its parking ordinance, authorize parking-control employees to cause vehicles to be impounded and towed when the owner fails to pay overdue parking tickets issued to the vehicle and require payment of all unpaid parking tickets related to that vehicle before the vehicle is released back to the owner? In the alternative, may a wheel-locking device be used for the same purpose?

5. Is an unpaid parking ticket a debt to the city, and can the city collect the parking ticket civilly by filing a civil action in a court of competent jurisdiction? Is there a maximum late fee penalty that a city can impose for unpaid parking fines after 30, 60, or 90 days? If an unpaid fine for a parking ticket can be collected civilly, what is the applicable statute of limitations?

FACTS AND ANALYSIS

Your request states as follows:

Violators of parking offenses of the City of Tuscaloosa are ticketed by city employees by leaving a ticket on the windshield of the vehicle.

Parking offenses are administratively processed as required by Rule 19(B) of the Alabama Rules of Judicial Administration

. . . .

The city has found it difficult to effectively enforce its parking ordinances. Overtime parking in the downtown area is a particular problem with many repeat violators ignoring the tickets, which causes complaints from downtown merchants who need the spaces for their customers.

Section 22-94 of the Code of Tuscaloosa prohibits overtime parking. It states that “[i]t shall be unlawful for any person to stop, stand or park a vehicle in any parking space for a period of time in excess of any time limit established

for such space.” Code of Tuscaloosa § 22-94 (1992). Section 22-91 authorizes the city to mark tires to regulate parking in time zones. Code of Tuscaloosa § 22-91 (1991).

Rule 19(B) of the Alabama Rules of Judicial Administration provides as follows:

(B) *Municipal Parking Offenses.* The [Uniform Traffic Ticket and Complaint] shall not be used to charge municipal parking offenses. ***Municipal parking offenses shall be processed administratively by each municipality.*** The governing body of a municipality shall have the power to establish a fine and cost schedule for the summary disposition of all municipal parking offenses. In municipalities retaining municipal courts, ***municipal court magistrates shall administratively process all municipal parking offenses wherein a dispute arises.*** In all other municipalities, the governing body of the municipality may designate city clerks or appoint administrative hearing officers, who shall be neutral and detached from law enforcement, ***to accept payment for parking tickets and to determine parking offense disputes.*** Within 14 days from any administrative decision of a contested case, a defendant may appeal such decision to the appropriate circuit court for a trial de novo in accordance with the provisions of Ala. Code 1975, Sections 12-11-30 and 12-14-70.

ALA. R. JUD. ADMIN. 19(B) (emphasis added).

Rule 19(B) limits the authority of the magistrate to accepting payment for parking tickets if a defendant chooses to plead guilty or adjudicating the offense when the defendant contests the ticket. Nor do the powers of magistrates set out at section 12-14-51 of the Code of Alabama and Rule 18 of the Alabama Rules of Judicial Administration include any further means of process after a parking ticket is issued. ALA. CODE § 12-14-51(c) (Supp. 2006); ALA. R. JUD. ADMIN. 18(I)(B)(2).

Municipal court magistrates, however, operate under the supervision of the municipal court. ALA. CODE § 12-14-50 (2006). Municipal parking offenses, as municipal ordinance violations, remain under the jurisdiction of the municipal court. Rule 3.1(c) of the Alabama Rules of Criminal Procedure

provides that the municipal court may issue more than one summons in a case. ALA. R. CRIM. P. 3.1(c).

Furthermore, this Office has stated that a person who fails to appear on a traffic citation may be arrested and jailed for contempt under section 12-14-31(a) of the Code of Alabama. Opinions to Honorable William Dennis Schilling, Municipal Judge, Pleasant Grove Municipal Court, dated June 26, 2000, A.G. No. 2000-179; and to Mr. R. C. Cheatham, City Manager, City of Anniston, dated April 16, 1980, A.G. No. 80-00340. Section 12-14-31(a) provides that a municipal judge may fine a person found in contempt \$50 and imprison the person up to five days. ALA. CODE § 12-14-31(a) (2006). Therefore, if a defendant fails to appear on a parking ticket, a municipal judge may issue a supplemental summons advising that the defendant will be subject to arrest for again failing to appear. If the defendant fails to appear on the supplemental summons, the municipal judge may issue a warrant for the arrest of the defendant; and, if found in contempt, the defendant may be fined \$50 and placed in jail for up to five days.

If the defendant appears and a fine is imposed at the hearing, but the defendant fails to pay the fine, a municipal judge may utilize the remedies for nonpayment of fines in Rule 26.11 of the Alabama Rules of Criminal Procedure. ALA. R. CRIM. P. 26.11. This Office has stated that the judge may issue an arrest warrant to obtain jurisdiction of the defendant for purposes of Rule 26.11. Opinion to Honorable George C. Simpson, District Judge, Clay County, dated May 6, 1987, A.G. No. 87-00170. After conducting an inquiry into the defendant's ability to pay under Rule 26.11(g), the judge may use one of the remedies listed in Rule 26.11(h) such as "[r]educing the fine to an amount the defendant is able to pay" [ALA. R. CRIM. P. 26.11(h)(1)] or "[o]rdering an employer to withhold payments from wages to pay fines" [ALA. R. CRIM. P. 26.11(h)(4)]. The judge may also "[d]irect that the defendant be incarcerated until the unpaid fine . . . is paid, subject, however, to section (i) of this rule." ALA. R. CRIM. P. 26.11(h)(3). Rule 26.11(i) contains a number of limitations on the incarceration remedy. For example, "in no event shall such period of incarceration exceed one (1) day for each fifteen dollars (\$15.00) of the fine." ALA. R. CRIM. P. 26.11(i)(1)(i).

As an alternative to exercising its authority under Rule 26.11, a municipal judge may also enforce fines by exercising its contempt power as discussed previously. Thomas Brad Bishop, *Municipal Courts, Practice and Procedure in Alabama* 87 (1991).

This Office has stated that a municipality may contract with a district attorney for the collection of municipal court fines through the district

attorney's restitution recovery division. Opinion to Honorable Randall I. Hillman, Executive Director, Office of Prosecution Services, dated May 6, 2003, A.G. No. 2003-139. The restitution recovery division statutes are located at sections 12-17-225, *et seq.*, of the Code of Alabama. ALA. CODE § 12-17-225 to 12-17-225.9 (2006). Section 12-17-225.6 provides that, "[i]n addition to the provisions of this division, all . . . fines . . . of a court of competent jurisdiction in this state, shall be considered civil judgments which can be recorded and enforced in the manner provided by law." ALA. CODE § 12-17-225.6 (2006). A claim to recover a fine on a parking ticket is subject to the twenty-year statute of limitations on an action on a judgment. ALA. CODE § 6-2-32 (2005). The Alabama Supreme Court has held that Rules 19(C)(2) and 20(E)(3) of the Alabama Rules of Judicial Administration authorize a municipal court to "increase the amount of the fine" for the failure to appear on a traffic or non-traffic ticket, respectively. *Wilkins v. Haggerty & Associates, Inc.*, 672 So. 2d 507 (1995). Rule 19(B), governing parking offenses, however, contains no similar grant of authority. Nor does research reveal any other provision of law authorizing a municipality to impose a late fee on an unpaid parking fine.

Section 22-10(a) of the Code of Tuscaloosa authorizes the city to impound vehicles parked for a length of time, which is prohibited by the Code of Tuscaloosa. Code of Tuscaloosa § 22-10(a) (1991). Section 22-10(b) requires the payment of a \$30 towing charge and \$5 per day storage charge to release an impounded vehicle. Code of Tuscaloosa § 22-10(b) (1991). You question whether the city may enact an ordinance authorizing the use of a wheel-locking device and requiring payment of all unpaid parking tickets before an impounded or locked vehicle is released.

Only a court of law may determine the validity of a municipal ordinance. Municipal ordinances are presumed to be valid until they are declared invalid by a court of law. *Storer Cable Communications v. City of Montgomery*, 806 F. Supp. 1518 (M.D. Ala. 1992); *Hurvich v. City of Birmingham*, 35 Ala. App. 341, 343, 46 So. 2d 577, 579 (1950). For this reason, it is the longstanding policy of this Office not to issue opinions on whether municipal ordinances conflict with state law. Opinions to Honorable Carl E. Chamblee, Jr., Municipal Judge, Trussville Municipal Court, dated March 20, 2000, A.G. No. 2000-104 (impoundment of motor vehicles where the operator does not have a valid driver's license); and to Honorable John G. Smith, Attorney, City of Tallassee, dated January 22, 1996, A.G. No. 96-00106.

CONCLUSION

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The courts must determine the validity of a municipal ordinance authorizing the use of a wheel-locking device and requiring payment of all unpaid parking tickets before an impounded or locked vehicle is released.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division