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HAYNSWORTH
SINKLER BOYD

Code Enforcement Officers and Uniform Ordinance Summons

December 4, 2025

Municipal Association
of South Carolina

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3 RECENT DEVELOPMENTS

1. Private Enforcement of Municipal Ordinances
 - Senator Grohms – November 15, 2024 AG Opinion – 2024 WL 4894796 (S.C.A.G.)
2. Prosecution by Code Enforcement Officers
 - Senator Grohms – July 22, 2025 AG Opinion – 2025 WL 2147589 (S.C.A.G.)
3. Enforcing Property Maintenance Code





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PRIVATE ENFORCEMENT OF MUNICIPAL ORDINANCES

- Building Inspections
- Property Maintenance
- Parking Enforcement


Outsourcing
vs. In-house



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PRIVATE ENFORCEMENT OF MUNICIPAL ORDINANCES



"[T]he governing body of a county may appoint and commission as many code enforcement officers as may be necessary for the proper security, general welfare, and convenience of the county. 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 county. However, no code enforcement officer commissioned under this section may perform a custodial arrest . . .

S.C. Code Ann. § 4-9-145

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PRIVATE ENFORCEMENT OF MUNICIPAL ORDINANCES – 1994 OPINION

The State of South Carolina

Office of the Attorney General

January 24, 1994

Dennis J. Rhoad, Esquire
Attorney at Law
127 1/2 King Street
Charleston, South Carolina 29401

Dear Mr. Rhoad:

In a letter to this Office you questioned whether pursuant to S.C. Code Section 56-7-80 a municipality may authorize, appoint and empower security personnel, employed by a local community association to issue ordinance violation summons on a limited basis. You stated that the community association has employed licensed security personnel in the past to monitor public lands. Pursuant to an agreement the municipality would authorize, appoint and empower security personnel employed by the community association to issue code violation summons for violations of beach ordinances committed in the security personnel's presence.


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PRIVATE ENFORCEMENT OF MUNICIPAL ORDINANCES – 1994 OPINION

A prior opinion of this Office dated March 6, 1980 determined that pursuant to S.C. Code Section 5-7-110 a municipality is not authorized to contract with a private security agency for law enforcement purposes. The opinion stated that by such provision the State has delegated certain of its police powers to a municipality and such delegation limits the municipality to the employment or election of police officers.

1994 S.C. Op. Att'y Gen. 31 (1994)




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PRIVATE ENFORCEMENT OF MUNICIPAL ORDINANCES – 1994 OPINION

While you stated that the Town of Kiawah Island seeks to make an appointment pursuant to Section 56-7-80 and not Section 5-7-110 cited in the opinions, Section 56-7-80, while providing for the use of an ordinance summons by a "code enforcement officer," does not specifically provide separately for the establishment of the position by a municipality. Such may be contrasted with S.C. Code Section 4-9-145 which authorizes the appointment of code enforcement officers by a county.


1994 S.C. Op. Att'y Gen. 31 (1994)



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PRIVATE ENFORCEMENT OF MUNICIPAL ORDINANCES




"[T]he governing body of a county may appoint and commission as many code enforcement officers as may be necessary for the proper security, general welfare, and convenience of the county. 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 county. However, no code enforcement officer commissioned under this section may perform a custodial arrest . . .

S.C. Code Ann. § 4-9-145

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PRIVATE ENFORCEMENT OF MUNICIPAL ORDINANCES – 1995 OPINION




The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

Charles M. Cooper
Attorney General

May 23, 1995

Dear Mr. Rhoad:

You have advised that an agreement has been reached between the Town of Kiawah Island and the Kiawah Island Community Association, Inc. Such agreement would provide for the issuance of an ordinance summons by the Community Association's security force for violations of the Town's ordinances on the beach between the high-tide line and the low-tide line. You seek clarification regarding the legality of such an arrangement.



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PRIVATE ENFORCEMENT OF MUNICIPAL ORDINANCES – 1995 OPINION

By way of background, you state the following:

In 1993, the Town of Kiawah Island adopted a series of ordinances that governed conduct on the beach (e.g., prohibiting littering, non-permitted camp fires, fireworks, etc.). The Town of Kiawah Island does not employ a police force. The Community Association has a duly licensed premises security force that patrols the private property on the island, which is everything down to the high-tide line (virtually all the property behind the security gate is privately owned). Rather than employ a separate police force to patrol the beach, the Town requested that the security officers of the Community Association issue summons if they observed a violation of the town's beach ordinances while on the beach. Under the arrangement envisioned by the Town and the Community Association, the security officer would not arrest or detain anyone; the security officer would merely issue a summons.

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WHAT CHANGED BETWEEN 1994 AND 1995?

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CASE LAW CHANGE – DILLON'S RULE ABOLISHED

"Only recently, our Supreme Court, in *Williams v. Town of Hilton Head Island*, 311 S.C. 417, 429 S.E.2d 502 (1993), reaffirmed the considerable degree of autonomy that municipalities now enjoy." 1995 WL 367934, at *2 (S.C.A.G. May 23, 1995)

"This Court concludes that by enacting the Home Rule Act, S.C. Code Ann. § 5-7-10 et seq. (1976), the legislature intended to abolish the application of Dillon's Rule in South Carolina and restore autonomy to local government. We are persuaded that, taken together, Article VIII and Section 5-7-30, bestow upon municipalities the authority to enact regulations for government services, deemed necessary and proper for the security, general welfare and convenience of the municipality or for preserving health, peace, or order and good government, obviating the requirement for further specific statutory authorization so long as such regulations are not inconsistent with the Constitution and general law of the state."

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CASE LAW CHANGE – DILLON’S RULE ABOLISHED


“[I]n those earlier opinions, we did not consider the impact of Home Rule and particularly the abolition of Dillon’s Rule in the *Williams* case referenced above.”

1995 WL 367934, at *2 (S.C.A.G. May 23, 1995)

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LEGISLATIVE CHANGE



This past session, the General Assembly also created the position of “code enforcement officer” for municipalities, using virtually identical language. See, S.C. Code Ann. § 5-7-32.

1995 WL 367934, at *2 (S.C.A.G. May 23, 1995)

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STATUTORY CHANGE

“[T]he governing body of a **county** may appoint and commission as many code enforcement officers as may be necessary for the proper security, general welfare, and convenience of the **county**. 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 county. However, no code enforcement officer commissioned under this section may perform a custodial arrest . . .

S.C. Code Ann. § 4-9-145

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.

S.C. Code Ann. § 5-7-32

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CASE LAW AND STATUTORY CHANGES NOT PREVIOUSLY CONSIDERED

"Previous opinions of this Office addressing your question not only did not consider the effect of a municipality's Home Rule powers, most recently articulated in Williams, but were rendered prior to the enactment of § 5-7-32."

1995 WL 367934, at *2 (S.C.A.G. May 23, 1995)

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CONCLUSION – PRIVATE ENFORCEMENT OF MUNICIPAL ORDINANCES ALLOWED

In conclusion, it is our opinion that your proposed contract whereby private security guards are appointed as code enforcement officers would be valid.

So long as the municipality:

1. Limits the duties of these officers to those set forth in Section 56-7-80;
2. Insures that such officers do not have the power of custodial arrest; and
3. Maintains sufficient supervision and control over these officers by virtue of the contract, we believe this arrangement would withstand scrutiny.

1995 WL 367934, at *6 (S.C.A.G. May 23, 1995)

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DUTIES LIMITED TO § 56-7-80 & NO CUSTODIAL ARRESTS

- Counties and municipalities are authorized to adopt by ordinance and use an ordinance summons as provided herein for the enforcement of county and municipal ordinances.
- The uniform ordinance summons **may not be used to perform a custodial arrest.**

An ordinance summons must cite or cite a violation per summons and must contain at least the following information:

- (1) the name and address of the person or entity charged;
- (2) the name and title of the issuing officer;
- (3) the time, date, and location of the hearing;
- (4) a description of the ordinance the person or entity is charged with violating;
- (5) the procedure to post bond; and
- (6) any other notice or warning otherwise required by law.

This statute does not prohibit a county or municipality from enforcing ordinances by means otherwise authorized by law.

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SUFFICIENT SUPERVISION AND CONTROL



"We would add one additional word of caution, however. It goes without saying that the municipality could not abdicate its police power responsibilities to a private corporation."

1995 WL 367984, at *2 (S.C.A.G. May 23, 1995)

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ADMINISTRATIVE VS. DISCRETIONARY

- "A governmental body may contract with private entities to assist it in performing **administrative or ministerial functions**." *Op. S.C. Att'y Gen.*, 1986 WL 19 1974 (January 23, 1986).
- "As a general matter, it is well established that a state or political subdivision may **properly maintain supervision and control through the use of a contract, more specifically, a private corporation may be employed to carry a law into effect**." *Op. S.C. Att'y Gen.*, 2022 WL 10 39563, at *10 (S.C.A.G. Mar. 31, 2022).
- The "Court focused upon there being no **unlawful delegation of the fiduciary and discretionary powers** of the municipality with respect to control and management of the governmental department of the city." "In short, **the City's governmental powers had not been surrendered**." *Id.* (quoting *Green v. City of Rock Hill*), 149 S.C. 234, 147 S.E. 346, 360 (1929)).

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CASE BY CASE BASIS

"The validity of any specific contract is in large measure dependent upon the particular duties delegated to the corporation and the degree of control which the State maintains over it."

- Examples Cited in Opinion
 - SC Supreme Court upheld contract between city and private corporation for management of water plant.
 - SC Supreme Court upheld contract between private association and State concerning the management and operation of a grain elevator and storage facilities
 - Contract between municipality and two private universities relating to operation of the City's general hospital.
 - Georgia Supreme Court upheld a county contract which employed a private corporation to procure, manage, supervise and direct the personnel in the county's fire protection delivery service.

"In each of those instances, the governing body utilized a private entity to assist it in the performance of governmental functions, but maintained sufficient supervision and control over the entity to avoid the problem of unlawful delegation." 1995 WL 367984, at *6 (S.C.A.G. May 23, 1995)

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WHAT ABOUT MUNICIPAL PARKING ENFORCEMENT?

Can a municipality contract with a private company for parking enforcement?



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MUNICIPAL PARKING ENFORCEMENT

- Contracts between a municipality and private parking company for parking management and enforcement are commonplace in South Carolina.
- No South Carolina cases addressing the issue.

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OTHER STATES


Several Courts have ruled in favor of municipalities when a local government's third-party contract for parking enforcement was challenged.

- *Indep. Voters of Illinois Indep. Council Org. v. Ahmad*, 2014 IL App (1st) 123629, 13 N.E.3d 251, 252 (upholding a contract between the city and a private entity, which allowed the private concessionaire to issue parking citations). Specifically, *reversed*, the Illinois Court of Appeals affirmed a lower court's rejection and dismissal of Plaintiff's challenge that "the concession agreement violates the public purpose provision by illegally delegating the City's police power to issue parking tickets and citations" finding "numerous public benefits result from the concession agreement." *Id.*
- *Behm v. City of Cedar Rapids*, 922 N.W.2d 524 (Iowa 2019) (city did not unlawfully delegate its authority by having independent contractor operate city's automated traffic enforcement system and initiate enforcement proceedings)
- Parking meters, 7A McQuillin Mun. Corp. § 24:674 (3d ed. 2023) ("A city treasurer's decision to outsource duties of parking meter division has been upheld.")

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NOVEMBER 15, 2024 – AG OPINION



ALAN WILSON
ATTORNEY GENERAL

November 15, 2024

The Honorable Larry K. Grooms
Member
South Carolina Senate
P.O. Box 142
Columbia, South Carolina 29202

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HAYNSWORTH
SINKLER BOYD

NOVEMBER 15, 2024 – AG OPINION

Dear Senator Grooms:

We received your letter requesting an opinion of this Office concerning enforcement of municipal parking ordinances by private entities. In your letter, you explain:

It has come to my attention that the governing body of a coastal municipality has contracted with a private entity to enforce the municipality's parking ordinance. The private entity patrols the municipality's streets looking for violators of the ordinance, writes tickets for the violators, and collects the fines. The municipality and the private entity then split the fines based upon a formula in their contract.

Specifically, you ask: "Is it the opinion of your office that a municipality contracting with a private entity to enforce the municipality's parking ordinance is a prohibited delegation of the municipality's police powers?"

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NOVEMBER 15, 2024 – AG OPINION

The Opinion cites to a 1980 AG Opinion that said a municipality does not have the authority to contract with a private security agency allowing it to make arrests on public streets and public property.

Op. Att'y Gen., 1980 WL 121 077 (S.C.A.G. Mar. 6, 1980).

We know that code enforcement officers do not have the power of custodial arrests. S.C. Code Ann. § 5-7-32 ("no code enforcement officer commissioned under this section may perform a custodial arrest").

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NOVEMBER 15, 2024 – AG OPINION

You also mentioned our 2010 opinion addressing a county's ability to delegate its authority to enforce a county tree removal ordinance to a homeowner's association, Op. Att'y Gen., 2010 WL 3505050 (S.C.A.G. Aug. 4, 2010).

We acknowledged the county's ability to delegate zoning enforcement to code enforcement officers but found no authority allowing the county to further delegate zoning enforcement to a private entity Id.


We discussed powers that can and cannot be delegated, noting that ministerial duties can be delegated, but in the absence of constitutional or statutory authority, discretionary or quasi-judicial powers cannot be delegated.

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NOVEMBER 15, 2024 – AG OPINION

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November 15, 2024



Conclusion

Parking enforcement involves the exercise of a municipality's police powers. Based on prior opinions of this Office, police power may not be delegated to private entities absent legislative or constitutional authority. Finding no such authority, we do not believe a municipality may delegate parking enforcement to a private entity.

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HOW DID MUNICIPALITIES RESPOND TO THE AG OPINION?



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NEW ORDINANCE	
<p>WHEREAS, the City is solely responsible for establishing parking rules, regulations, violations, and the rates for its paid parking program, including parking fees, permit fees, and fines for violations, and has determined that contracting with a parking contractor to perform administrative functions is the most effective means to carry the City's parking ordinances into effect while maintaining sufficient supervision and control over the contractor's operations;</p> <p>WHEREAS, the City, through use of a contract, shall maintain sufficient supervision and control of any parking contractor to ensure that said parking contractor performs administrative functions to carry the City's parking ordinances into effect;</p> <p>WHEREAS, City Council finds that contracting with a private contractor for parking administration allows the City to allocate resources more efficiently and allows municipal staff to devote additional time to the City's core government functions and high-priority responsibilities;</p> <p>WHEREAS, the City Council finds that contracting with a private contractor for parking administration allows it to avoid significant costs associated with hiring and training internal staff and investing in sophisticated parking technology systems, thereby allowing for more efficient allocation of municipal resources and freeing up additional funding for local projects and amenities;</p> <p>WHEREAS, it is well established that a governmental entity may delegate substantial and administrative functions to a private contractor, so long as the government retains oversight and control, and the South Carolina Attorney General has recognized that while governmental bodies may not delegate quasi-judicial functions, they may properly delegate enforcement and administrative duties through a contractual agreement;</p>	
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HAYNSWORTH SINKLER BOYD	
NEW ORDINANCE	
<p>Sec. 8-2-12. Parking Contractors and Notice of Parking Violations.</p> <p>(a) The City may contract with a private entity (hereinafter referred to as a "parking contractor") to assist the City with administering and enforcing the City's parking ordinances and program. The City, through use of a contract, shall maintain sufficient supervision and control of the parking contractor to ensure that the parking contractor only performs administrative functions to carry the City's parking ordinances into effect.</p> <p>(b) The parking contractor shall administer the City's parking program at the direction of the City and in accordance with the City's parking ordinances. The City shall be solely responsible for establishing parking rules, regulations, violations, and the rates for its paid parking program, including parking fees, permit fees, and fines for violations.</p> <p>(c) Pursuant to S.C. Code 1976, § 5-7-32, City Council authorizes the Chief of Police to appoint employees of the parking contractor as code enforcement officers to administer and enforce the City's parking ordinances and programs. Code enforcement officers employed by the parking contractor may issue parking citations, collect payments, and perform other administrative duties as approved by City Council and in accordance with South Carolina law. Any employees of the parking contractor appointed as code enforcement officers shall not have the power of custodial arrest, and the City shall maintain sufficient supervision and control over any code enforcement officers by virtue of the contract with the parking contractor.</p>	
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HAYNSWORTH SINKLER BOYD	
NEW ORDINANCE	
<p>(d) Any employees of the parking contractor appointed as code enforcement officers whose duties include parking enforcement activities, including the issuance of parking citations or collection or handling of money, shall:</p> <ol style="list-style-type: none"> (1) undergo criminal background checks and drug testing to be conducted by the parking contractor. The results of the background checks and drug tests shall be provided to the Chief of Police; and (2) undergo a training program approved by the Chief of Police before they undertake any enforcement activities. <p>(e) All employees of the parking contractor must be appointed as code enforcement officers and approved by the Chief of Police before they engage in any parking enforcement activities, and their approval to engage in these activities can be withdrawn by the Chief of Police or City Council at any time.</p> <p>(f) The parking contractor shall not be entitled to any revenues generated by way of parking fines, parking citations, boot fees, or immobilization fees.</p>	
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UNIFORM ORDINANCE SUMMONS / PARKING CITATION

§ 56-7-80

Ordinance Language

An ordinance summons must cite only one violation per summons and must contain at least the following information:

(1) the name and address of the person or entity charged;

(2) the name and title of the issuing officer;

(3) the time, date, and location of the hearing;

(4) a description of the ordinance the person or entity is charged with violating;

(5) the procedure to post bond; and

(6) any other notice or warning otherwise required by law.

(G) This statute does not prohibit a county or municipality from enforcing ordinances by means otherwise authorized by law.

(b) The parking citation must cite only one violation and must contain at least the following information:

(1) The state, license plate number, and make of the vehicle in violation of this article;

(2) The name and title of the person issuing the citation;

(3) The date and time when the citation was issued;

(4) The nature and description of the parking violation observed;


(5) The date, time and location of the hearing; and

(6) Information advising the owner/driver of the vehicle that they must admit the violation and pay the penalty set forth in sections 8-2-14 or deny the violation and appear at the hearing in Municipal Court on the date and time provided on the citation, and advising that failure to do so may result in impoundment or immobilization of the vehicle.

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REVISED CONTRACT WITH PARKING CONTRACTOR



C. Relationship and Management Fee


3. Contractor has been authorized as the exclusive manager of the System and shall operate the System strictly at the direction of the City. Contractor acknowledges and agrees that it has no independent decision-making authority related to parking policy, enforcement, discretionary matters, or any aspect of ordinance administration beyond the scope of duties expressly set forth in this Agreement. Contractor's role is strictly administrative, and any matter requiring interpretation, policy determination, or discretion shall be referred to the City for resolution. Contractor shall not modify, alter, or exercise judgment regarding any aspect of the City's parking ordinances, enforcement procedures, or policies.

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REVISED CONTRACT WITH PARKING CONTRACTOR

All employees of the parking contractor designated as code enforcement officers shall:



d. Not engage in any discretionary decision-making related to the issuance, adjudication, modification, or dismissal of parking citations. Code enforcement officers shall not have the authority to alter citations, exercise independent judgment in determining penalties, or engage in any prosecutorial function. Any question of interpretation or discretionary enforcement shall be referred to the City for a final determination.

e. Not be employed as a code enforcement officer in any other municipality during their tenure under this Agreement. Contractor shall ensure strict compliance with South Carolina law regarding dual office holding to prevent any conflict of interest or jurisdictional issues.



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REVISED CONTRACT WITH PARKING CONTRACTOR

"[T]he police power of a municipal corporation cannot be exercised for private purposes or for the benefit of particular individuals or classes."
Willis v. Town of Woodruff, 200 S.C. 266, 20 S.E. 2d 699, 701 (1942).

E. Revenue

1. Contractor shall collect all revenues from the System, including parking fees and permit fees. However, all citation fines, boot fees, immobilization fees, and penalties shall be remitted in full to the City. Contractor shall have no entitlement or claim to any portion of citation-related revenue.

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PROSECUTION OF CASES BY CODE ENFORCEMENT OFFICERS



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PROSECUTION OF CASES BY CODE ENFORCEMENT OFFICERS

- *In re Unauthorized Prac. of L. Rules Proposed by S.C. Bar*, 309 S.C. 304, 422 S.E.2d 123 (1992).

– "We also take this opportunity to reaffirm the rule that police officers may prosecute traffic offenses in magistrate's court and in municipal court. Only the arresting officer may prosecute the case, although if the officer is new or inexperienced, he may be assisted at trial by one of his supervisors."

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PROSECUTION OF CASES BY CODE ENFORCEMENT OFFICERS

COURT

ADMINISTRATION

Court administration gave presentation in Berkeley County and told summary court judges that code enforcement officers **cannot** prosecute cases and that Summary Court Judges could get in trouble themselves by participating in this.

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2025 WL 21475 89 (S.C.A.G. JULY 22, 2025).

OFFICE OF THE ATTORNEY GENERAL

STATE OF NORTH CAROLINA

ALAN WILSON

ATTORNEY GENERAL

July 22, 2025

Dear Senator Grooms:

You seek an opinion as to who may prosecute a case in magistrate court for ordinance code violations. You note that a magistrate in Berkeley County "has been dismissing cases for ordinance code violations in the county if a code enforcement officer attempts to prosecute code violations in her court."

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2025 WL 21475 89 (S.C.A.G. JULY 22, 2025).

"The Supreme Court has never held that officers must possess the power to make custodial arrests in order to prosecute in Magistrate's Court. We know of no statute prohibiting such activity." 2025 WL 2147589, at *6 (S.C.A.G. July 22, 2025).

"Unlike a private party, a public officer, such as a Code Enforcement Officer, is sworn to uphold the law, and act in the interests of the community at large." *Id.*

"Accordingly, it is our opinion, based upon the previous criteria, that the Court would likely allow a Code Enforcement Officer to prosecute ordinance criminal violations in Magistrate's Court." *Id.*

"We understand the Court is very open to issuing its opinion regarding the practice of law in this area."

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ENFORCING PROPERTY MAINTENANCE CODES

November 2024

2024 LEGISLATIVE UPDATE

South Carolina Building Codes Council



NOTABLE CHANGES 1
TECHNICAL CHANGES 3
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THE COUNCIL WANTS TO REMIND YOU 8

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ENFORCING PROPERTY MAINTENANCE CODES

IMPACT ON CURRENT REGISTRANTS AND LICENSEES

For code enforcement officers, the registration cards issued by the Council will now reflect the technical changes noted above. Registrants will see the primary registration classification listed on the card, with each subclassification listed underneath. Below is an example of how the new cards will appear, and building officials will be responsible for ensuring that all employees are properly registered with the classifications for which they are employed.

As described in the technical changes section above, several existing registration classifications for code enforcement officers have been updated, and a new classification for property maintenance inspectors has been added. Those jurisdictions which have adopted the International Property Maintenance Code for enforcement must ensure that all employees enforcing that code have obtained the proper registration prior to January 1, 2025.

South Carolina Department of Labor, Licensing and Regulation
Building Codes Council

Certifies that

Joey Athletic Testigerson Jr.

Is registered as a

Residential Inspector

In the registered practice area(s)

RESIDENTIAL BUILDING RESIDENTIALMECHANICAL RESIDENTIAL PLUMBING


Registration No. 812

Issued Date: 08/02/2024 Expiration Date: 06/30/2025

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MASC WORKING ON CARVE OUTS



Municipal Association
of South Carolina


- MASC is currently working with LLR on a carve out for the nontechnical aspects of the property maintenance code
 - Overgrown grass;
 - Broken down vehicles;
 - Tires; and
 - Other "pretty police" items

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Stafford J. (Mac) McQuillin III
mmcquillin@HSBlawfirm.com
843-724-1120

ANY
QUESTIONS?



hsblawfirm.com

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