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Jan 17 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

David J. Mason, Individually and as Class Representative.....Petitioner

vs.

Town of Surfside Beach, SC; City of North Myrtle Beach, SC;
and P2 of SC, LLC, d/b/a Pivot Parking Respondents

SUMMONS

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber or subscribers at their office at Suite 209, The Courtyard, 1500 U.S. Highway 17 North, Surfside Beach, South Carolina 29587, within Twenty (20) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid; the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

KELAHER, CONNELL & CONNOR, P.C.

s/Gene M. Connell, Jr.

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January 17, 2025
Surfside Beach, South Carolina

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COMPLAINT

The Plaintiff, complaining of the Defendants herein, would show and allege unto this Honorable Court as follows:

1. The Plaintiff David J. Mason is a citizen and resident of Horry County in the State of South Carolina.
2. The Defendant Town of Surfside Beach is a body politic, duly organized and incorporated and operating within Horry County.
3. The Defendant City of North Myrtle Beach is a body politic, duly organized and incorporated and operating within Horry County.
4. The Plaintiff is informed and believes that Defendant P2 of SC, LLC is a corporation organized and existing pursuant to the laws of the State of Florida and doing business in Horry County, South Carolina and other counties in this State, as Pivot Parking and providing parking ordinance enforcement for both municipalities. (Hereinafter referred to as Pivot Parking.)

5. That further upon information and belief Defendant Pivot Parking contracts with other cities, counties, towns and municipalities in South Carolina to enforce parking ordinances throughout the state.
6. The things complained of herein occurred in the County of Horry County and this court has jurisdiction over the parties herein, and venue is proper.
7. The Defendant municipalities and other municipalities contracted with the Defendant Pivot Parking for it to provide enforcement of their parking ordinances. The Defendant Pivot Parking, by and through its employees, officers or agents patrols the streets of the municipalities looking for violators of the ordinance, writes tickets for the violators, and collects the fines. The municipalities and Defendant Pivot Parking then split the fines based upon a formula in their contracts.
8. The law of the State of South Carolina does not permit a municipality of this State to contract with a private entity to enforce the municipality's parking ordinance as it is a prohibited delegation of the municipality's police powers. (See opinion of the South Carolina Attorney General's Office dated November 15, 2024 referenced herein and made a part hereof.) (Exhibit 1)
9. On or about October 19, 2024, the Plaintiff was issued a citation for a parking violation in the Town of Surfside Beach, which was issued by Defendant Pivot Parking in the amount of \$200.00.
10. The Plaintiff is informed and believes that the process of allowing a private entity to police parking violates the laws of the State of South Carolina, including those procedures by which Pivot Parking is the entity to which there can be an appeal by a plaintiff or others who have received a ticket. That Plaintiff makes reference to and attaches hereto as Exhibit

1 an opinion of the Attorney General's Office of the State of South Carolina finding that this scheme is illegal and unconstitutional.

11. The Plaintiff, David J. Mason, brings this case individually and on behalf of himself and all other similarly situated who received a parking citation from the Defendants. That upon information and belief the Town of Surfside took in over \$1 million dollars in parking fines by contracting with Pivot Parking last year as per an interview with Gerald Vincent in the *My Horry News*.
12. The Class is so numerous that joinder is impracticable. As an example, if each parking ticket was \$200.00 in the Town of Surfside, and it took in \$1 million dollars this past fiscal year, there would be over 5,000 class members who were ticketed in the Town of Surfside, that other class members would include individuals from other cities, towns and/or counties who use Pivot Parking and that the class could number in the tens of thousands.
13. There are questions of law or fact common to the Class, including, but not limited to, the legality of the Defendants' actions under the South Carolina Constitution, statutory law, and common law.
14. The claims of the named Plaintiff are typical of the claims of the Class.
15. The representative party will fairly and adequately protect the interests of the Class and he has retained counsel experienced in complex and class litigation.
16. The Class is defined as all persons who were cited for parking violations in any city or county or towns in South Carolina which contracted with Defendant Pivot Parking to enforce their parking ordinances from 2017 to 2024.

17. Further, upon information and belief, the Class consists of individuals who paid or received parking tickets and those individuals only appeal process is through Pivot Parking with no independent judicial review by a court.

AS A FIRST CAUSE OF ACTION
(Injunctive Relief)

18. The Plaintiff hereby reiterates and realleges each and every allegation of the above paragraphs as though more fully and completely set forth herein at length.

19. Plaintiff and Plaintiff Class are informed and believe that they are entitled to immediate injunctive relief to stop all cities, towns or counties in South Carolina from continuing to enforce their parking ordinances and collect fines for parking violations by using Defendant Pivot Parking, as such is in violation of the Constitution and laws of the State of South Carolina.

20. Plaintiff and Plaintiff Class are informed and believe that they will suffer irreparable harm without an injunction in that they are forced to pay fines to a private entity that is illegally enforcing municipalities' parking ordinances that includes collecting fines and an appeal process not to the municipalities' court system but to the private entity.

21. Plaintiff and Plaintiff Class are informed and believe that there is a strong likelihood that they will succeed on the merits of their case as per the opinion of the Attorney General attached hereto as Exhibit 1.

22. Plaintiff and Plaintiff Class request that injunctive relief be issued and that all monies previously collected for parking tickets be paid into a separate trust account and held pending the outcome of this case.

AS A SECOND CAUSE OF ACTION
(Action for Declaratory Judgment)

23. The Plaintiff hereby reiterates and realleges each and every allegation of the above paragraphs as though more fully and completely set forth herein at length.
24. Plaintiff individually, and on behalf of the Class, pursuant to S.C. Code Ann. §15-53-20 et seq., prays this Court declare the actions of the Defendants as prohibited delegation of its police powers delegated by the State Legislature and in violation of the Constitution, constituting ultra vires acts, and violative of the statutes, including, but not limited to, S.C. Code Ann. §5-7-30 relevant hereto.
25. Plaintiff individually, and on behalf of the Class, requests that this Court declare that the Defendants have violated their rights.
26. Plaintiff and Plaintiff Class are also informed and believe that they are entitled to an Order of such declaration that prohibits the Defendant from further perpetrating unlawful delegation of their police powers to a private entity and requiring the Defendants to refund the illegal fines from the Plaintiff and Plaintiff Class.
27. Plaintiff is further informed and believes the Court should order that all cities, towns, and counties who have employed Pivot Parking to enforce their parking ordinances to refund the Plaintiff and all Plaintiff Class members for all parking fines collected in violation of the statutory law and Constitution of the State of South Carolina, to not only include the Defendant Town of Surfside Beach and the City of North Myrtle Beach, but any other city, town or county who has hired Pivot Parking.
28. That the Court declare that the process by which a city enforces parking ordinances through a private company such as Pivot Parking is illegal since a municipality's police powers cannot be conferred to a private entity and only a municipality and its police force may

regulate parking as the police power may not be delegated to a private entity pursuant to South Carolina law.

WHEREFORE, the Plaintiff prays for judgment as follows:

- A. That the Court certify a class of all individuals who have paid a parking violation in any city, town or county of the State of South Carolina and whose parking ordinances are enforced by Pivot Parking.
- B. That a common fund be formed and that any money in any city, county or state budget or account currently being held in such account cannot be used for any municipal, county or town budget pending the outcome of this case.
- C. That the Court issue its order finding that a private entity such as Pivot Parking cannot enforce the parking ordinances of a city, town or county in South Carolina.
- D. That all cities, towns and counties in South Carolina which have collected monies through a contract with Pivot Parking be ordered to refund those monies to the Class members and that Pivot Parking also be ordered to refund any monies it has collected currently in its accounts through this Class to all Class members.
- E. That this court permanently enjoin all cities, towns and counties in South Carolina from employing Pivot Parking to enforce its parking ordinances and that refunds be issued to all Class members through this Class for three years prior to the date of the filing of this lawsuit.
- F. That all parking revenues collected by the Town of Surfside Beach and City of North Myrtle Beach and any other city, town or county in South Carolina be held in trust and that city, town or county pending the outcome of this lawsuit and that such monies be refunded to those Class members who paid the tickets.

G. That Plaintiff have attorney's fees and costs against these Defendants pursuant to SC Code 15-77-300.

KELAHER, CONNELL & CONNOR, P.C.

s/Gene M. Connell, Jr.

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EXHIBIT 1

**South Carolina Attorney General Opinion
November 15, 2024**



ALAN WILSON
ATTORNEY GENERAL

November 15, 2024

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

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"?

Law/Analysis

As mentioned in prior opinions, a municipality's police powers are conferred to them by the Legislature primarily through section 5-7-30 of the South Carolina Code (Supp. 2023). Moreover, our courts and the Legislature recognize regulating parking falls under this authority. Owens v. Owens, 193 S.C. 260, 8 S.E.2d 339, 342 (1940) (recognizing a municipality's authority to regulate parking); S.C. Code Ann. § 56-5-710 (2018) (specifying local authorities have the power to regulate parking "with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power . . ."). For reasons explained below, because regulating parking involves the exercise of a municipality's police powers, we do not believe such authority can be delegated to a private entity.

As you mentioned in your letter, we considered whether a municipality's police powers may be delegated to a private entity in prior opinions issued by this Office. In a 1980 opinion, we considered whether a municipality had 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 121077 (S.C.A.G. Mar. 6, 1980). We determined:

Generally, the State’s police power may be delegated by the legislature to a municipality, but the legislative reach of that authority must be strictly construed. McQuillan, Municipal Corporations, Vol. 6, § 24.39 at 557. Further, a municipality has no greater powers in passing an ordinance relative to the police power than those delegated to it by the legislature. Henderson v. City of Greenwood, 172 S.C. 16, 172 S.E. 689 . . . It has long been the law in this State that no municipality may by contract part with the authority delegated it by the State to exercise the police power, Sammons v. City of Beaufort, 225 S.C. 490, 83 S.E.2d 153. Here the State has delegated the power of law enforcement to its municipalities and the municipality may not part with that power by contract with a private security agency.

Id.

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. Because exercising police power is a discretionary function, we concluded “governmental entities are precluded from delegating their police powers to individuals or private entities.” Id.

In our research, we also found a 2012 opinion similarly concluding a homeowner’s association’s private security force did not have law enforcement authority to enforce beach rules on public property. Ops. Att’y Gen., 2012 WL 5376055 (S.C.A.G. Oct. 19, 2012). In the opinion, we cited to the 2010 opinion referenced above as well as a 2008 opinion finding a special tax district did not have the ability to contract with a private company to provide law enforcement. Based on these opinions, we again found local governments cannot delegate their police powers to private entities absent constitutional or statutory authority. Id.

“This Office recognizes a long-standing rule that we will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law.” Op. Att’y Gen., 2009 WL 959641 (S.C.A.G. Mar. 4, 2009). As our prior opinions conclude, local governments are without the ability to delegate police powers without constitutional or statutory authority. Finding no constitutional or statutory authority allowing municipalities to delegate parking enforcement, which we find is an exercise of their police powers, we do not believe municipalities can delegate this authority to a private entity.

Conclusion

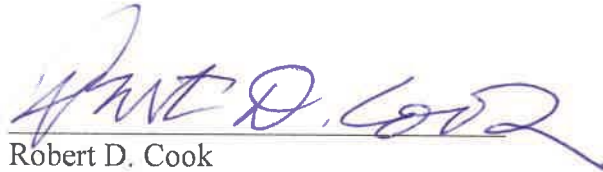
Parking enforcement involves the exercise of a municipality's police powers. Based on prior opinions of this Office, police power may not be delegated to private entities absent legislative or constitutional authority. Finding no such authority, we do not believe a municipality may delegate parking enforcement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

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General