



ROY COOPER  
ATTORNEY GENERAL

## State of North Carolina

Department of Justice  
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Reply to: David J. Adinolfi II  
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February 26, 2016

North Carolina District Attorneys  
c/o North Carolina Conference of District Attorneys  
901 Corporate Center Dr.  
Raleigh, N.C. 27607

### Re: City of Charlotte Local Ordinance

To North Carolina District Attorneys:

I have been assigned by North Carolina Attorney General Roy Cooper to respond to an inquiry from certain members of the General Assembly concerning the effect a local ordinance in the City of Charlotte may have on enforcement of criminal laws in North Carolina.

Put succinctly, the law mandates that a city ordinance shall be consistent with the Constitution and general laws of North Carolina. Whenever a city ordinance comes in conflict with the general laws, the ordinance must give way. The law has remained consistent on this point for approximately 129 years.

N.C. Gen. Stat. § 160A-174 provides the parameters of the cities' "[g]eneral ordinance-making power." It provides, in pertinent part:

(b) A city ordinance **shall** be consistent with the Constitution and laws of North Carolina and of the United States. **An ordinance is not consistent with State or federal law when:...**

(3) **The ordinance makes lawful an act, omission, or condition which is expressly made unlawful by State or federal law.**

N.C. Gen. Stat. § 160A-174 (b)(3)(Emphases added).

Municipal bylaws and ordinances **must be in harmony with the general laws of the State**, and **whenever they come in conflict** with the general laws, the bylaws and ordinances **must give way**. Washington v. Hammond, 76 N.C. 33 (1877); State v. Stevens, 114 N.C. 873, 19 S.E. 861

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(1894); State v. Williams, 283 N.C. 550, 196 S.E.2d 756 (1973)(Emphases added).

As discussed above, N.C.G.S. § 160A-174 grants cities general ordinance-making power. Local ordinances must, however, be in harmony with State law; whenever the two come into conflict, the former must bow to the latter. Town of Washington v. Hammond, 76 N.C. 33, 36 (1877) ("The true principle is that municipal by-laws and ordinances must be in harmony with the general laws of the State, and whenever they come in conflict with the general laws, the by-laws and ordinances must give way.").

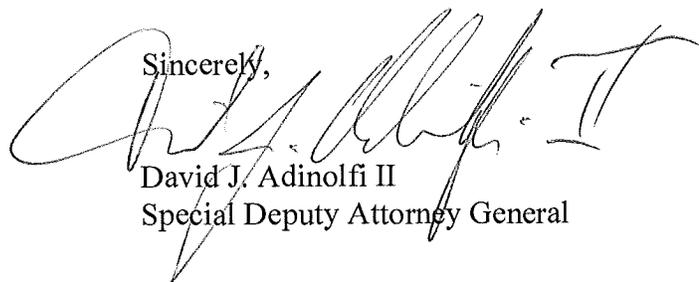
King v. Town of Chapel Hill, 367 N.C. 400, 411, 758 S.E.2d 364, 373, 2014 N.C. LEXIS 401, \*22-23, 2014 WL 2612603 (2014).

The General Assembly, in the North Carolina Constitution and General Statutes, has granted original jurisdiction of criminal matters to the District Attorneys. The District Attorneys have sole power to "prosecute in a timely manner in the name of the State all criminal actions and infractions requiring prosecution in the superior and district courts of his prosecutorial district, advise the officers of justice in his district." See N.C. Const. art. IV, § 18(1); N.C.G.S. § 7A-61; State v. Camacho, 329 N.C. 589, 406 S.E.2d 868 (1991); See also State v. Spicer, 299 N.C. 309, 311, 261 S.E.2d 893 (1980)("District attorneys have wide discretion in performing the duties of their office. This encompasses the discretion to decide who will or will not be prosecuted.").

Simply put, a District Attorney has the discretion to prosecute, or not to prosecute, any alleged crime occurring in his or her jurisdiction. The District Attorney's decision is unappealable.

As always, please feel free to contact our office with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Adinolfi II". The signature is fluid and cursive, with a large initial "D" and "A".

David J. Adinolfi II  
Special Deputy Attorney General