



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

February 23, 2004

The Honorable Donald V. Myers
Solicitor, Eleventh Judicial Circuit
Lexington County Judicial Center
205 E. Main Street, Third Floor
Lexington, South Carolina 29072

Dear Solicitor Myers:

You have requested an opinion "concerning County Council's authority over a State Judicial Circuit Solicitor's Pre-trial Intervention Program's funds." By way of background, you have provided an opinion from the Executive Director of the State Commission on Prosecution Coordination Commission which concluded that a county governing body possesses no authority or control over a State Judicial Circuit Solicitor's Pretrial Intervention Program." Quoting from the Director's letter, he concluded:

- (a) A county governing body has no authority or control over a State Judicial Circuit Solicitor's Pretrial Intervention Program.
- (b) A county governing body has no authority or control over a State Judicial Circuit Solicitor's Pretrial Intervention Program funds.
- (c) A State Judicial Circuit Solicitor's Pretrial Intervention Program is a judicial circuit-wide program and is a separate legal entity from a county.
- (d) A State Judicial Circuit Solicitor's Pretrial Intervention Program and its funds are under the direct supervision and control of the State Judicial Circuit Solicitor.
- (e) The South Carolina Commission on Prosecution Coordination, a state agency, and the Pretrial Intervention Coordinator are charged with overseeing the administrative procedures, responsibilities, and duties of the State Judicial Circuit Solicitor's Pretrial Intervention Programs.

Law / Analysis

We agree with the analysis of the Executive Director of the Commission on Prosecution Coordination that a county governing body has no authority or control over a Pretrial Intervention Program.

The Pretrial Intervention program (PTI) is established by statutory enactment, codified at S.C. Code Ann. Section 17-22-10 et seq. PTI allows certain eligible offenders, upon completion of the Program to effect a noncriminal disposition of the charge or charges pending. § 17-22-150(a). The program is founded upon the Circuit Solicitor's broad prosecutorial discretion to dispose of criminal charges. See, State v. Ridge, 269 S.C. 61, 236 S.E.2d 401 (1977), and its operation is a matter largely left to that discretion. Section 17-22-30(A), for example, provides that "[e]ach circuit solicitor shall have the prosecutorial discretion as defined herein and shall as a matter of such prosecutorial discretion establish a pretrial intervention program in the respective circuits." Accordingly, the PTI Program is placed "under the direct supervision and control of the circuit solicitor" § 17-22-30(C).

Oversight of administrative procedures for the Circuit Solicitor's PTI program is delegated specifically to the Commission on Prosecution Coordination. § 17-22-30 (D). Pursuant to § 17-22-40, the Office of Pretrial Intervention Coordinator is established "to assist the solicitor in each judicial circuit in establishing and maintaining a pretrial intervention program." The coordinator and accompanying staff are employed by the Prosecution Coordination Commission and the office of coordinator is "funded by an appropriation to the Commission on Prosecution Coordination in the state general appropriation act." Id.

Offenders ineligible for PTI are enumerated in § 17-22-50. Statutory guidelines for eligibility are established by § 17-22-60. The Solicitor's office records relating to an offender, which may be required to demonstrate the offender's background and worthiness for admission under § 17-22-70, are protected by Federal Confidentiality Regulations 42 CFR part 2 and any other applicable federal, state or local regulations. Without question, the Solicitor, exercising his prosecutorial discretion, retains the authority to make the final determination regarding acceptance of an offender into the PTI program. Op. S.C. Atty. Gen., Op. No. 93-67 (October 13, 1993). Such decision is not reviewable by a court. State v. Tootle, 330 S.C. 512, 500 S.E.2d 481 (1998).

Likewise, the funding of the PTI program is provided for by state law. Such funds are largely under the Solicitor's direction and control as set forth in § 17-22-110. Funding is provided principally by fees from the applicant to the PTI program as established in such section. Pursuant to § 17-22-110,

[a]ll fees paid must be deposited into a special circuit solicitor's fund for operation of the pretrial intervention program. All fees or costs of supervision may be waived partially or totally by the solicitor in cases of indigency. The solicitor may also, if he

determines necessary, in situations other than indigency allow scheduling of payments in lieu of lump sum payment. In no case shall aggregate fees for application and participation in an intervention program exceed three hundred fifty dollars. However, in cases where the solicitor determines that referral to another agency or program is needed to achieve rehabilitation for a problem directly related to the charge, the defendant may be required to pay his participation in that special program, except that no services may be denied due to inability to pay.

Section 17-22-170 provides for penalties for the unlawful retention or release of information on an offender's participation in a pretrial intervention program.

In view of the fact that the PTI program is under the direction and control of the Circuit Solicitor, it is also helpful to examine generally the position of Solicitor under South Carolina law. The office of Solicitor is a constitutional office pursuant to Article V, § 24 of the South Carolina Constitution. Section 1-1-110 of the Code designates the Solicitor as part of the executive department of the State providing that

[t]he executive department of this State is hereby declared to consist of the following officers, that is to say: the Governor and Lieutenant Governor, the Secretary of State, the State Treasurer, the Attorney General and the solicitors, the Adjutant General, the Comptroller General, the State Superintendent of Education, the Commissioner of Agriculture and the Director of the Department of Insurance.

The Solicitor's position as part of the executive department of the State has long been recognized by our Supreme Court. See, State ex rel. Gasque v. Singleton, 100 S.C. 465, 84 S.E. 989 (1915); State v. Tootle, supra. Thus, Solicitors are deemed to be "state officers" rather than "county officers" and various state statutes governing the expenditure of state appropriated funds are applicable to solicitors. See, Op. S.C. Atty. Gen., July 12, 1983.

The circuit solicitor performs the prosecution of most criminal cases in his or her judicial circuit. State ex rel. McLeod v. Snipes, 266 S.C. 415, 223 S.E.2d 853 (1976). As our Supreme Court stated in State v. Addis, 257 S.C. 482, 186 S.E.2d 815 (1972), "[i]n every criminal prosecution the responsibility for the conduct of the trial is upon the solicitor and he must and does have full control of the State's case." The Solicitor is elected by the "qualified electors of the [judicial] circuit," rather than a particular county within that circuit. § 1-7-310.

Of course, counties do play a significant part in the funding of a Solicitor's office. Section 1-7-405 provides that "[e]ach solicitor may appoint as many assistant solicitors, investigators and secretaries as he deems necessary and whose salaries are provided by the counties of the circuit in which they serve." Moreover, § 1-7-407 states that "[e]ach solicitor shall enter into an agreement with a county within his circuit to administer the funds so provided and the funds shall be directed to the administering county. The administering county shall account for the receipt and disbursement

of the funds separately from any other funds administered by the county.” This same provision states that “[p]ersonnel employed under the Provisions of §§ 1-7-406 and 1-7-407 shall be employees of the administering county”

However, our Supreme Court has held that county employment procedures do not apply to the Solicitor’s employees. In Anders v. County Council of Richland, 284 S.C. 142, 325 S.E.2d 538 (1985), the Court concluded that the Solicitor’s discretion to remove employees at his discretion was not altered or limited by a statute authorizing county employees to appeal to county council upon termination. The Court noted that the efficient operation of the Solicitor’s office supported its conclusion that the statute allowing county employees to appeal to council upon termination is inapplicable.

Likewise, in this instance, we do not believe county council possesses any authority over the Pretrial Intervention program. Such program operates at the Circuit rather than at the county level. Its operation and control is placed within the discretion of the Circuit Solicitor, a state constitutional officer. Oversight of administrative procedures relating to the PTI program are delegated to the Commission on Prosecution Coordination, a state agency. Funding for the program is established by the General Assembly through fees paid by the applicant to the program.

While it is true that a county possesses authority pursuant to § 4-9-150 to provide for an annual audit of an agency funded by county funds and for special audits of an agency “receiving county funds as the county governing body considers necessary,” it appears that such provision is inapplicable here. The PTI program does not, to our knowledge, receive county funds, but is funded by funds in the form of fees generated by state statute from applicants to the program. See, § 17-22-110. In a previous opinion, dated November 24, 1976, we concluded that a county governing body possesses no authority to audit county alcohol or drug commissions, in large part because the funds supporting such programs were not “county funds” but funds generated pursuant to state statute for the sole purpose of funding the commissions. We deemed such funds to be “state funds” and thus not subject to audits by the county governing body. While this analysis is not controlling, it is instructive insofar as the PTI program is concerned.

Conclusion

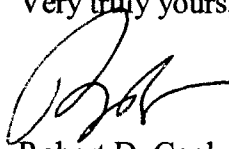
In summary, based upon the foregoing analysis, we agree with the Executive Director of the Commission on Prosecution Coordination that a county governing body possesses no control or authority over a Circuit Solicitor’s PTI program. The PTI program is a creature of State law and exists at the judicial circuit rather than at the county level. The PTI program is under the immediate supervision and control of the Circuit Solicitor who is a state officer rather than a county officer. Our Supreme Court has held that because the Solicitor is a member of the executive branch, a court possesses no authority over admission to the PTI program. State v. Tootle, *supra*. Moreover, funding for the PTI program is generated pursuant to state law at the judicial circuit level. It is our understanding that county funds are not involved. A previous opinion of this Office has concluded

The Honorable Donald V. Myers
Page 5
February 23, 2004

that under such circumstances, a county governing body possesses no authority to conduct an audit. There is, in short, simply little or no relationship between the county governing body and the Circuit Solicitor's PTI program. Instead, state law delegates to the Commission on Prosecution Coordination the responsibility for administration of the PTI program.

Accordingly, we agree with the conclusion of the Executive Director of the Commission on Prosecution Coordination that a county governing body has no authority or control over the Circuit Solicitor's PTI program.

Very truly yours,

A handwritten signature in black ink, appearing to read 'RDC', is written over the typed name.

Robert D. Cook
Assistant Deputy Attorney General

RDC/an