



HENRY McMASTER  
ATTORNEY GENERAL

September 1, 2009

Paul Gardner, Chief of Police  
Georgetown Police Department  
2222 Highmarket Street  
Georgetown, South Carolina 29440

Dear Chief Gardner:

In a letter to this office you questioned whether the Georgetown Police Department has original jurisdiction to engage in law enforcement activities on the navigable waters around the City of Georgetown. Reference was made to S.C. Code Ann. § 5-7-140 which states that

(A) [t]he corporate limits of any municipality bordering on the high-tide line of the Atlantic Ocean are extended to include all that area lying between the high-tide line and one mile seaward of the high-tide line. These areas are subject to all the ordinances and regulations that may be applicable to the areas lying within the corporate limits of the municipality, and the municipal courts have jurisdiction to punish individuals violating the provisions of the municipal ordinances where the misdemeanor occurred in the area defined in this section.

(B) The corporate limits of any municipality bordering on the high-water mark of a navigable body of water, other than the Atlantic Ocean, are extended to include all that area lying between the high-water mark and the low-water mark. These areas are subject to all of the ordinances and regulations that may be applicable to the areas lying within the corporate limits of the municipality, and the municipal courts have jurisdiction to punish individuals violating the provisions of the municipal ordinances where the misdemeanor occurred in the areas defined in this section.

Such provision was enacted as part of Act No. 443 of 1996. Subsection (B) would appear to be applicable to your question and inasmuch as you indicate that the Sampit River is a navigable body of water, in the opinion of this office, the corporate limits of the City of Georgetown which would border on the high-water mark of the Sampit River would be extended to include all that area between the high-water mark and the low-water mark. As noted, such areas would be subject to all municipal ordinances and regulations applicable to areas lying within the corporate limits of the municipality. The law enforcement authority of the police department would be consistent with such jurisdictional grant of authority. See: S.C. Code Ann. § 5-7-110 (municipal police officers "...shall

exercise their powers on all private and public property within the corporate limits of the municipality....”).

Such conclusion would be consistent with an opinion of this office dated September 7, 1983 which stated generally that “[a] check of a number of authorities indicates that while municipal corporations may exercise police power over navigable waters, the authority to do so must be delegated by the State.” Another prior opinion of this office dated August 3, 1971 held that generally, “...the municipality does not have jurisdiction over...(a)...tidal stream.” That opinion also determined further that “[t]he State has exclusive jurisdiction over these waters unless it expressly grants jurisdiction to a municipality.”

Another opinion of this office dated September 9, 1996 dealt with the question of the authority of the City of Isle of Palms as to Breach Inlet below the low water mark. Breach Inlet was described as a navigable body of water between Sullivan’s Island and the Isle of Palms. That opinion, noting an earlier opinion of this office, 1971 Op. Atty. Gen. No. 3157, stated that “[t]he general rule is that when a municipality is bounded by a tidal, navigable water course its territorial limits extend only to the low water mark.” Of course, Section 5-7-140(B), which has been amended, is specific as to the grant of authority of a municipality bordering on the high-water mark of a navigable body of water.

However, consistent with Section 5-7-140(B), I am unaware of any basis for the City of Georgetown to have jurisdiction as to the Sampit River itself. Generally, a sheriff is considered as having jurisdiction over the entire county, which in the opinion of this office, would include a navigable body of water. As set forth at 20 C.J.S. Counties § 22

[t]he jurisdiction of counties extends to the channel or middle of bodies of water that serve as boundaries between counties... Thus, unless a statute provides to the contrary, the county’s jurisdiction extends to the channel of any river that serves as a boundary between it and another county<sup>1</sup>...(However)...[a] county’s general jurisdiction extends to bodies of water entirely within its boundaries. A county can exercise

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<sup>1</sup>Such is consistent with S.C. Code Ann. § 4-3-5 which states that

[f]or purposes of describing the boundaries of counties...the center line of waterways is defined as: (1) for areas influenced by the tide, the center line is the line described by a series of points equidistant from the banks as delineated at mean high tide, except when an island is present; then the center line follows the main channel around the island and is the line described by a series of points equidistant from the banks of the main channel as delineated at mean high tide;....

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jurisdiction, subordinate to the jurisdiction of the state, from shore to shore over bodies of water entirely within its borders... (emphasis added).

See also: S.C. Code Ann. § 23-13-70 (“[t]he deputy sheriffs shall patrol the entire county...”).

Therefore, in the opinion of this office, the Georgetown County sheriff has jurisdiction over the entire county, including the Sampit River which I understand to be within the confines of the County. As a result, one means for the Georgetown Police Department to gain jurisdiction over this navigable body of water would be through one of the types of expanded law enforcement agreements authorized by State statutes and constitutional provisions which may be entered into with a sheriff’s department. See, e.g., S.C. Code Ann. § 23-1-215 (grant of authority for purpose of criminal investigation); § 23-20-30 (“...authorizes a law enforcement agency of this State to enter into contractual agreements with other law enforcement providers as may be necessary for the proper and prudent exercise of public safety functions..."); Article VIII, Section 13 of the State Constitution (“[t]he ability of political subdivisions to enter into an agreement for the joint administration, responsibility and sharing of the costs of services with other political subdivisions is granted...”). An opinion of this office dated March 1, 2005 stated, however, that “...any agreement cannot grant law enforcement officers any additional jurisdictional authority other than that specifically granted by statute...” As a result, you should contact your city attorney with regard to the feasibility of entering into a contractual agreement with the Sheriff’s Department pursuant to the available statutory and constitutional grants of authority in order for the Town to expand its jurisdiction to include the navigable waters around the City of Georgetown.

As to your question regarding an agreement with the State Department of Natural Resources so as to expand your jurisdiction, I am unaware of any provisions generally authorizing an agreement with DNR whereby the City would be granted jurisdiction to enforce its ordinances or State statutes as to navigable waters around the City. However, S.C. Code Ann. § 50-21-30 states that

(1) [t]he provisions of Title 50 and other applicable laws of this State shall govern the operation, equipment, titling, numbering, and all other matters relating thereto for watercraft and water devices using or held for use on the waters of this State; but nothing in this chapter may be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of watercraft; provided, that the ordinances or local laws shall be operative only so long as and to the extent that they are identical to provisions of this chapter, amendments thereto, or regulations issued thereunder.

(2) Any subdivision of this State may, at any time, but only after three days' public notice make formal application to the department for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules and regulations necessary or appropriate.

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(3) The department is hereby authorized to make special rules and regulations with reference to the operation of vessels on waters within the territorial limits of this State. (emphasis added).

While allowing for the adoption of ordinances for the statutorily-permitted purposes, such provision does not in itself grant general local law enforcement jurisdiction over navigable waters. However, S.C. Code Ann. § 50-21-80 states that

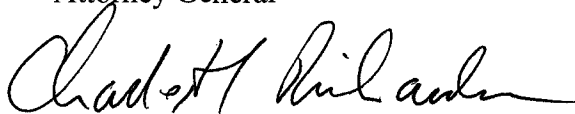
[a]ny person employed or elected by this State or political subdivision thereof, whose duty it is to preserve the peace or to make arrests or to enforce the law including, but not limited to, members of the sheriff's departments, state police, enforcement officers, deputies, or other qualified persons, upon recommendation of the appropriate agency, may be empowered to enforce the provisions of this chapter. The department shall be the agency primarily responsible for enforcement of all laws pertaining to boating. Any such person is empowered to issue a summons for appearance in court or before a magistrate or make arrest for violations of this chapter or of the regulations prescribed under it. (emphasis added).

“[T]his chapter” as used in such statute only provides statutes relating to the equipment and operation of watercraft. If there are any questions regarding the enforcement of such provisions, I would suggest that you contact the Department of Natural Resources.

With kind regards, I am,

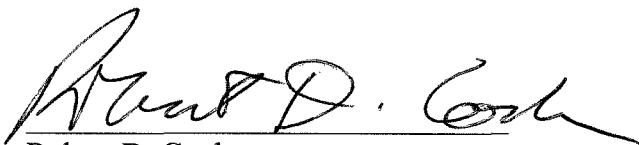
Very truly yours,

Henry McMaster  
Attorney General



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