ALAN WILSON
ATTORNEY GENERAL

October 21, 2011

The Honorable Mike Forrester
Member, House of Representatives
287 Creekridge Drive
Spartanburg, SC 29301

Dear Representative Forrester:

We received your letter regarding county veterans' affairs officers. You note that this office has already issued several opinions regarding veterans' affairs officers (discussed below). You ask whether these opinions remain the opinions of this office. Additionally, you ask whether employees of a county veterans' affairs officer are county employees, and to whom these employees are accountable?

Law/Analysis

S.C. Code Ann. §25-11-40 governs the appointment and removal of county veterans' affairs officers. Subsection (B) of this provision states:

> [s]ubject to the recommendation of a majority of the Senators representing the county and a majority of the House members representing the county, the Director of the Division of Veterans Affairs shall appoint a county veterans' affairs officer for each county in the State, whose term of office shall begin July first of each odd-numbered year and shall continue for a term of two years and until a successor shall be appointed.

This provision further provides:

> [q]ualifications shall be determined by the county legislative delegation upon a majority vote of the Senators representing the county and a majority of the House members representing the county. A county veterans' affairs officer is subject to removal for cause at any time by a majority of the Senators representing the county and a majority of the House members representing the county.

You reference an opinion of this office dated March 1, 1966, wherein we addressed whether county service officers (now referred to as county veterans' affairs officers) were either state or county officers. The opinion analyzed the law concerning the master-servant relationship, and then concluded that county service officers were county officers rather than state officers. The conclusion was based on

the manner in which county service officers were appointed, and who exercised control over the officers. The opinion included the following:

> [a]lthough the State Service Officer makes the appointments of the various county service officers, he has no power to select them. The County delegations make the selections and the State Service Officer appoints the persons they select. Funds for the payment of salaries of service officers are appropriated by the State, forwarded to the county treasurers who actually pay out the funds. County Service Officers are subject to removal at any time by a majority of the county delegations from the respective counties. The State Service Officer has no control over the County Service Officers except to require reports from time to time. He has no authority to tell them what to do or how to perform their duties. Thus, the authority for selecting and removing County Service Officers rests with a majority of the county delegations of the various counties (including the Senator for selection). Apparently, the county delegations have the right of control of the Service Officers' conduct. The State Service Officer has none and exercise none except to require reports from time to time.
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> Based on the foregoing, it appears that County Service Officers are county officers. See 1960-61 Opinions, Attorney General, Opinion No. 1099, p.171; 56 CJS Master & Servant, § 3(5).

We reaffirmed our conclusion that county veterans' affairs officers are county officers in subsequent opinions of this office. See, *e.g.*, Ops. S.C. Atty. Gen., October 27, 1998, February 3, 1972. Additionally, in opinions dated December 2, 2009, June 13, 2008, April 11, 2001, and October 27, 1998, we recognized that §25-11-40 is clear that county veterans' affairs officers, although considered county officers, serve at the pleasure of the county delegation. Therefore, we advised that the authority to remove a county veterans' affairs officer rests with the county delegation. See also Op. S.C. Atty. Gen., March 29, 1971 [stating that 1962 Code §44-604 (now §25-11-40) provides for the appointment of county veterans' affairs officers upon the recommendation of a majority of the Senators and a majority of the House Members representing a county; this is not the same as a recommendation by the county legislative delegation, which was the extent of the power given to the county council giving county council the power to make all appointments previously made upon the recommendation of the County legislative delegation].

You note another opinion dated April 11, 1984, wherein we addressed to whom the county veterans' affairs officers are accountable. Again, we concluded a county veterans' affairs officer is not under the control of the State Director. We determined that, because §25-11-40 provides that a county veterans' affairs officer is subject to removal at any time by the county delegation, he is accountable to the county delegation that selects him in accordance with §25-11-40 (B). Referring to the relationship between the State Director and the county veterans' affairs officer as set forth in §25-11-50,[1] the opinion concluded:

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[1]Section 25-11-50 provides:

> [t]he State Service Officer has no control over County Service Officers except to require reports from time to time. He has no authority to tell them what to do or how to perform their duties. Thus, the authority for selecting and removing County Service Officers rests with a majority of the delegation of the various counties . . . Apparently, the county delegations have the right of control of conduct of the Service Officers' conduct. The State Service Officer has none and exercises none except to require reports from time to time.

Relevant to your inquiry, we refer to our opinion dated October 27, 1998. Therein, we addressed whether the 1966 opinion may be interpreted to mean that "a county veterans' affairs officer is a county employee entitled to all rights and privileges thereof as established by county policy," specifically, county personnel system policies as set forth in §4-9-30(7).

We considered the question in light of the issues addressed by the South Carolina Supreme Court in Heath v. Aiken County, 295 S.C. 416, 368 S.E.2d 904 (1988). There, the Court concluded that deputy sheriffs are not "county employees" for purposes of the personnel policies and grievance procedure set out in §4-9-30(7). The Court explained that:

> [t]he county governing powers set out in Section 4-9-30 are "subject to the general law of this State ..." The "general law" on deputy sheriffs is well-settled in South Carolina: a deputy serves at his sheriff's "pleasure." Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979); see S.C. Code Ann. § 23-13-10 (1976). Section 23-13-10 also holds the sheriff "answerable for neglect of duty or misconduct in office of any deputy." Section 23-13-50 empowers a deputy sheriff to perform "any and all of the duties appertaining to the office of his principal," *i.e.* the sheriff (emphasis in original). A deputy, then, acts as his sheriff's agent under South Carolina law. [footnote omitted]. See, *e.g.*, Willis v. Aiken County, 203 S.C. 96, 26 S.E.2d 313 (1943).
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> The county personnel policy at issue here included such elements as working hour limitations, attendance and leave regulations, and work schedule assignments. Implementation of such policies would afford Council a degree of day-to-day control over deputies irreconcilable with the common and statutory law of this state. A deputy's "serv[ice] at the sheriff's pleasure," Rhodes v. Smith, supra, entails not only how long he serves, but how he serves. We

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> [t]he Director of the Division of Veterans' Affairs shall establish uniform methods and procedure for the performance of service work among the several county officers, maintain contact and close cooperation with such officers, and provide assistance, advice and instructions with respect to changes in law and regulations and administrative procedure in relation to the application of such laws and he may require from time to time reports from such county veterans affairs officers, reflecting the character and progress of their official duties.

> therefore hold that for purposes of personnel system policies under Section 4-9-30(7), the legislature did not intend the term "employees" to include deputies. The statutory grievance procedure is similarly inapplicable to deputies. First, as stated above, deputies are not "employees" for purposes of Section 4-9-30(7). Next, the statutes establishing the relationship between sheriff and deputy should not be "considered as repealed by a later general statute unless there is a direct reference to the former statute or the intent of the legislature to repeal the earlier statute is implicit." Rhodes v. Smith, supra, 273 S.C. at 16, 254 S.E.2d at 50. Section 4-9-30(7) is general; it "speaks in a broad generalization referring only to elected officials." Anders v. County Council for Richland County, 284 S.C. 142, 144, 325 S.E.2d 538, 539 (1985). In Anders, we held that Section 4-9-30(7) is subordinate to a statute specifically stating that employees of a solicitor serve at his "pleasure."
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> We therefore reject the argument that Section 4-9-30(7)'s grievance hearing limits a sheriff's "previously unbridled pleasure." Rhodes v. Smith, supra. Nothing in the statute itself implies such a limitation was intended by the legislature. To the extent the circuit court's order included deputies as county "employees" under Section 4-9-30(7), it is reversed.

Heath, 368 S.E.2d at 905-06. Heath thus presented a statutory challenge to a sheriff's authority over his deputies. It pitted one statutory priority [§4-9-30(7) - county grievance procedures] against another [§23-13-10 - deputy's service at sheriff's pleasure]. Heath stands for the proposition that a sheriff's hiring and firing of deputies is "unreviewable" in terms of a council-implemented grievance procedure.

Likewise, in Anders v. County Council for Richland County, 284 S.C. 142, 325 S.E.2d 538 (1985), the chief investigator of the Solicitor's Office was terminated by the Solicitor. The investigator challenged the termination through an appeal to the Richland County Council, arguing that he was wrongfully terminated. The circuit court reinstated him. To the South Carolina Supreme Court, the Solicitor contended that §1-7-405, which states that employees of a Solicitor serve at his "pleasure," controlled. The Court agreed with the Solicitor. Referencing Rhodes v. Smith, the Court stated:

> [i]t is apparent that Section 1-7-405 controls. This section specifically applies to Solicitors. On the other hand, Section 4-9-30(7) speaks in a broad generalization referring only to elected officials. The language of Section 1-7-405 gives a solicitor broad power to fire employees. See Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979) [construing S.C. Code Ann. §23-13-10 (1976) which gives similar power to Sheriffs].

Anders, 325 S.E.2d at 539; see also Morris v. South Carolina Workers' Compensation Comm'n, 370 S.C. 85, 634 S.E.2d 651 (2006) [holding that §42-3-60 protects the employing commissioner's right to control the hiring and firing of court reporters].

In our October 27, 1998, opinion, we again recognized that although county veterans' affairs officers are county officers, but concluded they are not "county employees" for purposes of a county's personnel policies. We reasoned that a court would reach a conclusion similar to the Heath Court, because

a county veterans' affairs officer serves at the pleasure of the appointing authority and may be removed at any time by this authority. We concluded: ". . . while a county veterans affairs officer may be considered a 'county employee' in a particular set of circumstances, it is likely that a court would conclude that these circumstances would not include classification as a 'county employee' for purposes of Section 4-9-30(7)."

We note that §4-9-30(7), which is part of the Home Rule legislation, gives counties certain powers. It authorizes county governing bodies:

> to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government. This employment and discharge authority does not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government. Any employee discharged shall follow the grievance procedures as established by county council in those counties where the grievance procedures are operative, retaining all appellate rights provided for in the procedures. . . . [Emphasis added].

Cleary, as discussed above, a county veterans' affairs officer is one whose appointment is made by an authority outside county government. Illustrative of this point is the decision of the South Carolina Supreme Court in Fowler v. Beasley, 322 S.C. 463, 472 S.E.2d 630 (1996). In Fowler, a citizen brought an action against the county legislative delegation and others to prevent an appointed school board candidate from being seated on the county school board due to alleged violations of the Freedom of Information Act ("FOIA"). A majority of the delegation made the recommendation to fill the unexpired vacancy. Among other arguments, the appellants contended the Charleston County Legislative Delegation was not capable of being sued in its own name, as the Delegation had not been established as a corporate body such that the failure to serve the individual members of the Delegation deprived the circuit court of jurisdiction. Id., 472 S.E.2d at 632. The Court rejected this contention, concluding that an unincorporated association may be sued under the name by which it was generally known without naming the individual members of the association. Further, the Court noted that where the summons and complaint were delivered to the Delegation's secretary at its Charleston office, the Delegation, as a state agency, was properly served in accordance with Rule 4(d)(5), SCRCP. The Court concluded, "[c]ontrary to appellants' contention, nothing in the rule requires each individual in an agency to be served. Although representatives of commissions, delegations and boards are often named individually, there is no requirement in the rules they be so named and there are numerous cases in which individual members have not been named." Id.

Of particular relevance to your question is the opinion of this office dated September 6, 2005, wherein we addressed the authority of the Georgetown County Administrator over the employees of the Georgetown County Board of Elections and Registration, and the Georgetown County Veteran's Affairs Director or the Director's subordinate. Therein, we noted that §§ 4-9-610 *et seq.* provide for the council-administrator form of government. Pursuant to §4-9-620, "[t]he council shall employ an administrator who shall be the administrative head of the county government and shall be responsible for the administration of all the departments of the county government which the council has the authority to

control." We further note that, according to §4-9-630, county administrators are charged with the responsibility of hiring county employees. However, interpreting well-settled rules of statutory construction, we concluded in the 2005 opinion that:

> the administrator in a council-administrator form of government is responsible only for the administration of those departments "which the council has the authority to control." Inasmuch as it is to be assumed that for purposes of this opinion the appointment authority for . . . the Georgetown County Veteran's Affairs Director is the Georgetown County Legislative Delegation and not the county council, in my opinion, the county administrator would have no authority over these two departments or offices.

In an opinion dated August 8, 1991, we addressed whether magistrates can hire and discharge county employees assigned to his office. We referred to a prior opinion dated October 26, 1989, which dealt with the question of whether an employee discharged from employment by a magistrate is entitled to a grievance hearing. The opinion, citing §4-9-30(7), concluded that ". . . such an employee is not entitled to . . . [a] . . . hearing because she was 'employed in a department or agency of county government under the direction of [an] elected official or an official appointed outside county government.'" In the 1991 opinion, we noted that magistrates, who are appointed by the Governor with the advice and consent of the Senate, "would be an 'official appointed by an authority outside county government.'" We thus concluded:

> Section 22-8-30 of the Code states that counties are to provide personnel necessary for the proper operation of a magistrates court, that these employees are to be county employees and that these employees must be paid by the county. Therefore, while employees of a magistrate's office are considered "county employees" and are paid by the county, any decision regarding the actual hiring and discharge of these employees is a decision of an individual magistrate pursuant to Section 4-9-30(7).

See also Op. S.C. Atty. Gen., January 8, 2007 [advising that a county council may not terminate employees of an elected official].

Also noteworthy is the opinion of the South Carolina Court of Appeals in Eargle v. Horry County, 335 S.C. 425, 517 S.E.2d 3 (Ct. App. 1999), *aff'd*, 344 S.C. 449, 545 S.E.2d 276 (2001). In Eargle, a county auditor sought a declaration that the county administrator lacked the power to suspend, even briefly, several of the auditor's employees. The Court was compelled to construe the provisions of §4-9-30(7). Relying on §44-9-650, providing that "the county administrator shall exercise no authority over any elected officials of the county whose offices were created either by the Constitution or by the general law of the State," and §4-9-30(7), the Court held that under South Carolina law, a county administrator had no authority to suspend the employees of a county auditor, an elected official. The court recognized that antagonism could develop and doubtless there might "be some tension between the elected officials and the county governing body." Id., 517 S.E.2d at 6.

The Fourth Circuit Court of Appeals also recognized the stringent barrier erected by §4-9-30(7) to a county's exercise of authority over employees of county-elected officials. For example, in Amos-

Goodwin v. Charleston County Council *et al.*, 161 F.3d 1 (4th Cir. 1998) (1998 WL 610650), eight Charleston County probate court clerks of court brought a civil rights action under 42 U.S.C. §1983 against Charleston County and its Council, alleging politically-motivated termination. The district court dismissed the claims against the County defendants on the grounds that, because the plaintiffs were employees of the probate judge and not of the County, the County defendants could not have wrongfully terminated them. The Fourth Circuit affirmed, relying on §4-9-30(7) for the proposition that the County defendants had no authority over the personnel actions of probate court employees. The Court held that, "because Appellants were employees of an elected official, the probate judge, and were not county employees, they were not entitled to a grievance hearing under §4-9-30(7)." Id., 1998 WL 610650 at 1.

Conclusion

We thus adhere to the prior opinions of this office and so advise that a county veterans' affairs officer is county officer serving at the pleasure of the county delegations. A county veterans' affairs officer is thus accountable solely to this authority, and may be removed by a majority of the Senators and House members serving on the county delegation. Because a county veterans' affairs officer is appointed by an authority outside county government, he is not a "county employee" for purposes of a county's personnel policies pursuant to §4-9-30(7). Additionally, it is the opinion of this office that a county veterans' affairs officer, not a county administrator or council, is responsible for the administration of his office, including his employees. Thus, while employees of a county veterans' affairs officer are considered "county employees" and are paid by the county, any decision regarding the actual hiring and discharge of these employees is a decision of the county veterans' affairs officer. Further, because these employees are employed "under the direction of . . . an official appointed by an authority outside county government," a court would likely conclude they are not county employees entitled to all rights and privileges established by county policies.

If you have any further questions, please advise.

Very truly yours,

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Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

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