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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

November 14, 2001

Larry W. Powers, Director  
Spartanburg County Detention Center  
950 California Avenue  
Spartanburg, South Carolina 29303-2184

Re: Jailers as law Enforcement Officers

Dear Mr. Powers:

In a letter to this Office, you have requested clarification of the "authority and legal standing in the performance of their duties" of jail officers. Specifically you ask the following questions:

1. Are officers employed at the jail (specifically the Spartanburg County Jail) considered regularly salaried law enforcement officers?
2. If it is established that jail officers are regularly salaried law enforcement officers with the authority to make custodial arrest, does such authority extend to any crime committed in the officers' presence while they are performing their official duties, excluding minor traffic offenses?
3. Is such authority limited to within the jail, or does it extend outside of the jail where officers have a legitimate right to be in the performance of their duties?
4. Under Applicable South Carolina State law, individuals who murder a "peace officer" are subject to imposition of the death penalty. Since jail officers are "peace officers" would the murder of a detention/jail officer qualify as a death penalty case?

**Law/Analysis**

Generally, a county jailer's status as a peace officer is set out in S.C. Code Ann. §23-1-145. That Section provides as follows:

*Request Letter*

Employees of any county or municipal jail, prison, work camp or overnight lockup facility, while performing their officially assigned duties relating to the custody, control, transportation or recapture of any inmate or prisoner in this State, shall have the status of peace officers anywhere in the State in any matter relating to the custody, control, transportation or recapture of such inmate or prisoner. Provided, that for the purposes of this section no trustee shall be considered an employee.

This Office has on many occasions addressed the jailer's power and authority under this section of the Code. This Office has issued previous opinions stating that, while on duty, jailers or detention officers "possess the status of any other peace officer or law enforcement officer" and that "... jail employees have the authority to make arrests without a warrant of individuals reasonably suspected of having committed a felony or when the facts and circumstances which are observed by such employees provide probable cause to believe that a crime has been freshly committed." See, for example OP. ATTY. GEN. (Dated December 5, 1996). With Section 23-1-145 and our previous opinions as a backdrop, I will address each of your questions in turn.

#### Question 1

I have been unable to locate any statute or South Carolina judicial opinion where the term "*regularly salaried* law enforcement officers" is defined or assigned any specific significance. Accordingly, the phrase must be given its plain and ordinary meaning and reviewed in the context in which it is used.

As mentioned above, this Office has previously equated jailer or detention officer with "law enforcement officer." Further, when jailers are acting within the scope of their assigned duties, their law enforcement authority is quite broad. See OP. ATTY. GEN. (Dated March 19, 1986). A jailer or detention officer's status as a peace officer or law enforcement officer, however, is conditional. A jailer has the status of peace officer only when a jailer is performing his officially assigned duties and in matters related to his officially assigned duties. Therefore, it cannot be said that a jailer or detention officer is, in all respects, the functional equivalent of a certified law enforcement officer with full powers. See 23A S.C. Code Ann. Regs. 38-007 (Department of Public Safety certifies law enforcement officers with full powers as Class 1 officers and local detention facility officers [jailers] as Class 2 officers). Unlike jailers or detention facility officers, law enforcement officers with full powers (Class 1) may exercise those powers at all times, even if off duty. See OP. ATTY. GEN. (Dated April 3, 1975 & reaffirmed September 15, 2000).

As the jailer's status as a law enforcement officer is conditional, the conditions or

circumstances surrounding a particular event would have to be analyzed in determining an answer to your first question.

### Questions 2&3

Section 23-1-145 states, in pertinent part that, while performing their official duties, jailers "... shall have the status of peace officers anywhere in the State in any matter relating to the custody, control, transportation or recapture of [any] inmate or prisoner." This Office has previously opined that, as Section 23-1-145 is a penal statute, it must be strictly construed. See OP. ATTY. GEN. (Dated October 18, 1994). Strictly construing the language of Section 23-1-145, it cannot be said that jailers' arrest authority extends to "any crime committed in the officers' presence." Rather, their arrest authority would extend to those crimes related to "... the custody, control, transportation or recapture of [any] inmate or prisoner." Once it is established, however, that jailers are performing their official duties and the matter is related to those duties, their law enforcement authority is quite broad and their power to arrest would extend anywhere in the State, including areas outside the jail. See OP. ATTY. GEN. (Dated March 19, 1986).

Further, as you note in your letter, South Carolina law provides that citizens have the power to arrest in certain circumstances. Recently, in State v. McAteer, 340 S.C. 644, 532 S.E.2d 865 (2000), our Supreme Court considered the scope of the State's laws with regard to a citizen's arrest and held:

.... there is no common law right to make warrantless citizen's arrests of any kind and that such rights as exist are created by statute in South Carolina.

The Court in McAteer noted that the provisions allowing for citizens' arrests are found in S.C. Code Ann. §§17-13-10 and 17-13-20. Section 17-13-10 enumerates the circumstances under which any person may arrest a felon or thief as follows:

Upon (a) view of a felony committed, (b) certain information that a felony has been committed or (c) view of a larceny committed, any person may arrest the felon or thief and take him to a judge or magistrate, to be dealt with according to law.

Additionally, S.C. Code Ann. §17-13-20 provides the following:

A citizen may arrest a person in the nighttime by efficient means as the darkness and the probability of escape render necessary, even if the life of the person should be taken, when the person:

(a) has committed a felony;

- (b) has entered a dwelling house without express or implied permission;
- (c) has broken or is breaking into an outhouse with a view to plunder;
- (d) has in his possession stolen property; or
- (e) being under circumstances which raise just suspicion of his design to steal or to commit some felony, flees when he is hailed.

Therefore, even if not on duty, jailers, as do private citizens, have the power to arrest anywhere in the State for any crime covered by either Section 17-13-10 or 17-13-20.

#### Question 4

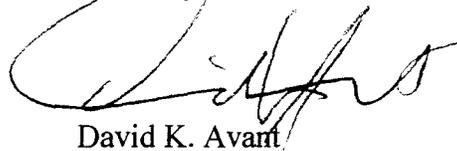
In South Carolina, a murder accompanied by any one of a number of statutory aggravating circumstances can subject the offender to the death penalty. S.C. Code Ann. §16-3-20(7) list as an aggravating circumstance the following:

The murder of a federal, state, or local law enforcement officer, peace officer or former peace officer, corrections employee or former corrections employee, or fireman or former fireman during or because of the performance of his official duties.

As mentioned above, we have previously opined that, while on duty, jailers or detention officers "possess the status of any other peace officer or law enforcement officer." It is therefore my opinion that the murder of a jailer while on duty or because of the performance of his duties could subject the offender to the death penalty pursuant to Section 16-3-20(7).

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant  
Assistant Attorney General