



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

November 17, 1998

Jeffrey B. Moore, Executive Director
South Carolina Sheriffs' Association
P. O. Box 21428
Columbia, South Carolina 29221-1428

Re: Informal Opinion

Dear Mr. Moore:

You indicate in a letter to this Office that there "is confusion and disagreement among the sheriffs concerning the subject of statewide jurisdiction." By way of background, you state that

[i]t is felt by some that due to the sheriffs' constitutional status, and lacking any statutory prohibition to the contrary, they currently, as well as historically, enjoy statewide jurisdiction. Others, on the other hand, have looked to both the statute and the court to determine their jurisdictional status. As a result, they have come to the conclusion that this jurisdictional authority, with certain exceptions as provided by law, is confined to the boundaries of their respective counties.

SCSA, would appreciate the Attorney General's opinion concerning this issue, as we are currently considering legislation that would grant a sheriff, and his deputies, statewide jurisdiction.

Law / Analysis

As you have noted, the Office of Sheriff is a constitutional office. Art. V, Section 24 of the State Constitution provides that

[t]here shall be elected in each county by the electors thereof a clerk of the circuit court, a sheriff, and a coroner All of these officers shall serve for terms of four years and until their successors are elected and qualify. The General Assembly shall provide by law for their duties and compensation

A number of statutes relate to the authority and jurisdiction of a sheriff and his deputies. S.C. Code Ann. Sec. 23-13-60, for example, provides that

[t]he deputy sheriffs may for any suspected freshly committed crime, whether upon view or upon prompt information or complaint, arrest without warrant and, in pursuit of the criminal or suspected criminal, enter houses or break and enter them, whether in their own county or in an adjoining county.

Section 23-13-70 further states that “[t]he deputy sheriffs shall patrol **the entire county** at least twice a week by sections assigned to each by the sheriff, remaining on duty at night when occasion or circumstances suggest the propriety thereof to prevent or detect crime or make an arrest.” (emphasis added). In addition, § 23-15-70 authorizes a sheriff or his deputy to “call out the bystanders or posse comitatus **of the proper county** to his assistance (emphasis added). Pursuant to § 23-15-80, the sheriff or his deputy is required to “attend all the circuit courts that may be held **within their respective counties** and enforce such rules as such courts may establish.” (emphasis added). Section 23-15-100 mandates sheriffs and deputy sheriffs to execute all legal orders directed to them by the governing bodies of their respective counties. In other words, the various statutes relating to the jurisdiction of a sheriff or deputy sheriff clearly indicate that such jurisdiction is limited to that county in which the sheriff is elected and serves.

Opinions of the Attorney General and South Carolina case law is in accord. A February 4, 1980 Opinion of the Attorney General states as follows:

[i]nasmuch as the officer in question would in fact be a duly qualified Lexington County deputy sheriff, he would be

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restricted to the powers and duties of a deputy sheriff generally. As to your question of whether such a deputy sheriff would have jurisdiction in both Lexington and Richland Counties, Section 23-13-60, Code of Laws of South Carolina, 1976, provides as to deputy sheriffs generally:

(t)he deputy sheriffs may for any suspected freshly committed crime, whether upon view or upon prompt information or complaint, arrest without warrant and in pursuit of the criminal or suspected criminal, enter houses or break and enter them, whether in their own county or in an adjoining county

Therefore, based on the above, a Lexington County deputy sheriff would be authorized to arrest without warrant while in 'hot pursuit' as referenced by Section 23-13-60 in Richland County. This authority however should not be construed to authorize any additional jurisdiction than that expressly specified by the statute.

I am unaware of any other statutory authority which would permit any other official acts by such a deputy sheriff in Richland County. By Section 23-13-50, Code of Laws of South Carolina, 1976, 'a duly qualified deputy sheriff may perform any and all of the duties appertaining to the office of his principal.' In the case of DuRant v. Brown Motor Company, 147 S.C. 88, 144 S.E. 705 (1928), the Supreme Court in holding that a county sheriff is without authority to make seizure in replevin outside his county quoted the following:

'(a)t common law a sheriff has no jurisdiction beyond the borders of his own county, the rule being that the acts of an officer outside of his county or bailiwick are unofficial and necessarily void, unless expressly or impliedly authorized by some statute.' 147 S.C. at 92.

Therefore, with reference to the authority of

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Section 23-13-50 and inasmuch as a sheriff's jurisdiction is limited to his own county as expressed above, a deputy sheriff's jurisdiction would similarly be limited to his own county except as specifically authorized by statute, as by Section 23-13-60.

See also, Op. Atty. Gen., Op. No. 84-70 (June 20, 1984); Op. Atty. Gen., June 21, 1995 (Informal Op.) [police officer limited to his own jurisdiction except where authorized by specific statute].

Our Supreme Court has held that where a Sheriff is acting as an officer of the court, such status may place him in a unique position with respect to the Sheriff's jurisdiction. The case of State v. Brantley, 279 S.C. 215, 305 S.E.2d 234 (1983) is particularly instructive. In Brantley, the trial judge was presiding over a guilty plea proceeding in Hampton County. Learning that the Sheriff of Jasper County was in possession of certain records, the judge asked the Solicitor's Office to notify the Jasper County Sheriff to appear in court with the records at a designate time. The Sheriff refused to appear, choosing to send the records via a deputy. Upon the Sheriff's failure to be present, the trial judge had word sent back to the Sheriff to appear in court the next morning "without fail." However, the Sheriff again refused.

The trial court found the Sheriff in contempt of court. On appeal, the Sheriff argued that the lower court erred in holding him in contempt because he had received no subpoena or subpoena duces tecum and because he was sheriff in an adjoining county rather than the county where court was being held."

The Supreme Court found the Sheriff's arguments to be without foundation, however. Reasoning that the order directed to the Sheriff was binding, the Court stated:

[t]he court's order was valid, was directed to appellant in his official capacity as an officer of the court, and his wilful failure to comply constituted a constructive contempt of court, which tended to "obstruct and embarrass or prevent the due administration of justice." Long v. McMillan, et al., 226 S. C. 598, 609, 86 S.E.2d 477 (1955).

279 S. C. at 217. Clearly, however, the Court's decision hinged upon the Sheriff in his

capacity as an officer of the court, rather than any suggestion that the Sheriff possessed statewide jurisdiction generally.

The confusion regarding the Sheriff's jurisdiction apparently stems from recent cases considering the question of whether the Sheriff is a "state" or a "county" officer. Most recently, in Cone v. Nettles, 308 S. C. 109, 417 S.E.2d 523 (1992), the Supreme Court of South Carolina found that sheriffs and their deputies are state officers. The Courts reasoning was based upon Gulledge v. Smart, 691 F.Supp. 947 (D.C.S.C.), aff'd., 878 F.2d 379 (4th Cir. 1989). The Court in Cone stated:

[i]n Gulledge, the court concluded that in South Carolina sheriffs and deputies are state, not county, officials, noting that:

- (1) the South Carolina constitution establishes the office of sheriff and the term of office. S.C. Const. art. V, § 24;
- (2) the duties and compensation of sheriffs and deputies are set forth by the General Assembly;
- (3) their arrest powers are related to state offenses; and
- (4) the Governor of South Carolina has the authority to remove a sheriff for misconduct and fill the vacancy.

Based upon these factors, the court found that the State has the "potential power of control" over the office of sheriff, qualifying the sheriff as a state official. Moreover, a deputy, as an agent of the sheriff, is also "more closely connected to the state than to the county," hence, a state official. 691 F.Supp. at 955.

Further, in Heath v. County of Aiken, 295 S.C. 416, 368 S.E.2d 904 (1988), this Court held that deputies are not employees of the county and, accordingly, not covered by county personnel policy and procedure.

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Given this authority, we hold that Deputy Frier is a state
official

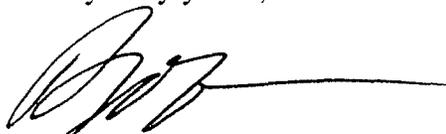
308 S. C. at 112. It should be noted that even though the Court in Gulledge concluded that the Sheriff in South Carolina was a state officer for purposes of the 11th Amendment, still the Court also recognized that “. . . the sheriff’s territorial jurisdiction, **namely county-wide**, is in effect prescribed by the legislature through the statutory designation of county boundary lines.” (emphasis added). Thus, the Court deemed it not inconsistent to hold the Sheriff was a State officer, but that the Sheriff’s jurisdiction is “county-wide”.

Based upon the foregoing, it is my opinion that, notwithstanding the referenced cases, the territorial jurisdiction of the Sheriff is limited to his county except where functioning as an officer of the Court or pursuant to some other specific statute enabling the Sheriff to possess authority outside his county.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/ph