

The State of South Carolina

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November 6, 1992

The Honorable J. Al Cannon, Jr.
Sheriff, Charleston County
3505 Pinehaven Drive
Charleston Heights, South Carolina 29405-7789

Dear Sheriff Cannon:

In a letter to this Office you stated that incorporation is being considered for James Island. Assuming incorporation is approved and a city is formed, you questioned whether the city would be required to provide police protection to its residents. If the city does not provide police service to its citizens, you questioned the obligation of the sheriff to provide such service.

A primary function of a municipal corporation is the preservation of public peace and order. 62 C.J.S. Municipal Corporations, Section 134, p. 279. In keeping with such is the authority of a municipality to establish a police force. Pursuant to S.C. Code Ann. § 5-7-110

Any municipality may appoint or elect as many police officers, regular or special, as may be necessary for the proper law enforcement in such municipality and fix their salaries and prescribe their duties

Therefore a municipality is authorized to establish a law enforcement agency. However, I am unaware of any authority requiring a municipality to establish a police force.¹

¹An opinion of this Office dated March 6, 1980 determined that pursuant to Section 5-7-1010, the State has delegated certain of its police powers to a municipality but "the legislative reach of that authority must be strictly construed." The opinion indicated that while the statute authorizes a municipality to employ police officers, a municipality is
(continued...)

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As to your question regarding what obligation is there for a sheriff to provide police services if the city chooses not to provide such services, an opinion of this Office dated April 11, 1985, a copy of which is enclosed, recognized that pursuant to S.C. Code Ann. §§ 23-13-50 et seq. and 23-15-40 et seq.

The general law in this State presently requires a sheriff and his deputies to patrol their county and provide law enforcement services to its citizens.

Such is consistent with an opinion of this Office dated May 8, 1989 which recognized the status of a sheriff as the chief law enforcement officer of a county. The referenced 1985 opinion indicated that as a matter of public policy, a county is prohibited from contracting with a residential subdivision to provide additional law enforcement protection and services to that subdivision for a fee. The opinion cited the decision of the State Supreme Court in Green v. City of Rock Hill, 149 S.C. 234, 147 S.E.2d 346, 360 (1929) where it was stated "(a)s a general rule ... (a governmental body) ... may not contract with ... the public to discharge a purely public duty owed to the public generally."

However, the 1985 opinion further commented:

... while a county and county officials are not as a general matter obligated to perform services within the corporate limits of a city, the General Assembly has provided by statute for municipal residents to contract for county services in certain situations. Section 4-9-40 of the Home Rule Act authorizes a county to "perform any of its functions, furnish any of its services within the corporate limits of any municipality, situated within the county, by contract with any individual, corporation or municipal governing body, subject always to the general law and the Constitution of this State regarding such matters." (emphasis added). Such services cannot be provided, however where the service "is being provided by the municipality or has been budgeted or funds have been applied for" unless permission is given by the

¹(...continued)

without authority to contract with a private security agency for law enforcement purposes. See also: Opin. of the Atty. Gen. dated March 1, 1989.

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municipal governing body. See also, § 23-27-10 et seq. and § 4-9-30(5) [authorizes county to create special districts for police protection]

Another opinion of this Office dated May 17, 1978, a copy of which is also enclosed, stated

(t)here are currently no state statutes which would prevent ... (a sheriff's department) ... from offering contract law enforcement services to municipalities ... (within that same county) ... Both counties and incorporated municipalities have the ability to contract, a power given them by Sections 4-9-30(3) and 5-7-60 of the Code ... The 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 by Article VIII, Section 13 of the South Carolina Constitution and § 6-1-20, Code

The opinion concluded that such statutes enable an incorporated municipality to contract with a county to provide law enforcement services to the municipality.² The opinion further stated

(t)here are currently no state statutes which would preclude a municipality from making an appropriation in its budget for payment of law enforcement services to the county general fund with later disbursement to the sheriff's department ... (However) ... (e)nabling legislation would be necessary in order for the municipality to pay the same funds directly into the Sheriff's Department County budget account.

An opinion of this Office dated June 13, 1985, a copy of which is also enclosed, indicated that a county could create a special tax district for police protection. Citing the May, 1978 opinion, the opinion further indicated that a county and a political subdivision

²The opinion also cited S.C. Code Ann. § 4-9-30(5) which required a referendum if any appropriation would result in reorganization or restructuring of a sheriff's department. However, such provision was amended in 1991 pursuant to Act No. 114 and such provision was eliminated.

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could contract with one another to provide for the joint administration of services such as law enforcement. However, the opinion further stated:

We could caution ... that any contract between the county and a special tax district created for law enforcement purposes should take into account § 23-13-70 which mandates that sheriff's deputies patrol the entire county. Thus, even where the county decides to contract with a separate political subdivision ... care should be taken in drafting any such contract, not to limit the sheriff's discretion in the placement of his deputies or the providing of adequate personnel in other areas of the county. In short, any such contract must be consistent with the terms of Section 23-13-70.

On another point, the opinion again referencing Section 23-13-70 commented that "(t)he assignment of deputies within the county remains within the sheriff's discretion."

Referencing the above, it appears that while a sheriff, as chief law enforcement officer of a county is statutorily obligated to patrol his county, which presumably would include a municipality within that county, a sheriff, as a county official, is not generally considered to be obligated to provide specific services within a municipality. However, a sheriff could offer contract law enforcement services to a municipality.

If there is anything further, please advise.

Sincerely,

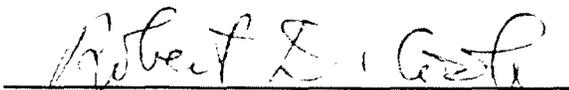


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Enclosures

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