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The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3970

May 8, 1989

John H. Tiencken, Jr., Esquire
County Attorney for Berkeley County
P. O. Box 1118
Moncks Corner, South Carolina 29461

Dear Mr. Tiencken:

You have requested an opinion of this Office regarding expenditures from the 1988-1989 Berkeley County Sheriff's budget for overtime for officers in the Sheriff's department. By the term "officers" I assume you are referring to deputies within the Sheriff's Department. In your letter you indicated that the budget presently provides that a certain amount be allocated to fund overtime requirements for the current fiscal year. However, since the implementation of the budget, the Sheriff has expended sums in excess of the allocated amount. You commented that due to requirements of federal law requiring payment for work performed by an individual, any action to stop unbudgeted expenditures may violate federal requirements. You have asked the following questions:

- (1) May the Berkeley County Council by its Budget Ordinance limit the overtime expenditures by the Sheriff for his personnel?
- (2) In the event an unauthorized over-expenditure of the overtime budget occurs, is the County Council required to pay the sums which exceed the budgeted amount?
- (3) If the County Council is required to pay the sums in excess of the budgeted amount, does the County Council have recourse for such over-expenditures?

In the enactment of the Home Rule Act, now codified as Sections 4-9-10 et seq. of the Code, the General Assembly granted county councils broad authority and discretion to appropriate funds for county purposes. See, 1984 Op. Atty. Gen., No. 84-66, June 11, 1984. Pursuant to § 4-9-30(5), a county council is authorized to:

... assess property and levy ad valorem property taxes and uniform services charges, including the power to tax different areas at different

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rates related to the nature and level of governmental services provided and to make appropriations for functions and operations of the county, including, but not limited to appropriations for ... public safety, including police and fire protection

Typically, a county council pursuant to such provision appropriates funds annually for the operation of a county sheriff's department.

In an opinion dated February 7, 1978 this Office commented that "... while it is true that the council exercises totally the budgetary authority of ... (a) ... county and, consequently, can decrease, increase or otherwise alter appropriations for specific county offices and functions ... nevertheless, it cannot so decrease the appropriations of an elected official's office as to prevent the proper functioning thereof" However, the opinion further stated that whether or not a council by the budgetary process prevented the proper functioning of an elected official's office is a factual matter which cannot be determined by this Office.

In enacting the Home Rule Act, the General Assembly recognized the unique status of a sheriff as the chief law enforcement officer of a county and presumably also recognized his status as a constitutional officer. See, Article V, § 20 of South Carolina Constitution (1895 as amended); Trammell v. Fidelity & Cas. Co., 45 F.Supp. 366 (D. S. C. 1942). A proviso contained in § 4-9-30(5) states:

... if any appropriation relative to police protection would result in reorganization or restructuring of a sheriff's department or, if any appropriation relative to police protection would limit the duties of the sheriff or provide for police protection duplicating the duties and functions presently being performed by a sheriff, it shall not take effect until the qualified electors of the county shall first approve the appropriation by referendum called by the governing body of the county.

This Office has not attempted to define precisely the meaning of the terms used in this proviso, i.e. words such as "reorganization" or "restructuring" or "limit[ing]" or "duplicating" the "duties and functions" of a sheriff. However, in Roton v. Sparks, 270 S.C. 637, 639, 244 S.E.2d 214 (1978), the State Supreme Court applying this proviso stated that its provisions are "plain" and "clear". In another opinion, the Court while referencing the provision, did not

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expressly define all situations where a referendum would be necessary. See: Graham v. Creel et al., 289 S.C. 165, 345 S.E.2d 717 (1986).

In an opinion of this Office dated August 3, 1987, it was stated that the word "reorganization" is generally defined as:

... the alteration of the existing structure of governmental entities (as bureaus or legislative committees) and the lines of control or authority between them, usually to promote greater efficiency and responsibility.

Webster's Third New International Dictionary. The word "restructure" generally means to give "new structure or organization to". "Reorganization" in a similar context has also been defined as "the planned elimination, addition or redistribution of functions or duties in an organization." 5 C.F.R. § 351.203(g). Whether a court would apply these generally accepted definitions is not known. However, this Office has previously stated that regardless of whether the "reorganization" or "restructuring" results in an expansion or diminution of a sheriff's duties or functions, if such reorganization or restructuring occurs, a referendum is necessary. Op. Atty. Gen. May 17, 1978.

The State Supreme Court held in Roton that where a particular duty or function of a sheriff is prescribed by general law, § 4-9-30(5) requires a referendum if such duties or functions are to be altered by county council. [sheriff's function as jailer] But see, concurring opinion of Gregory, J. [where general law prescribes duties of sheriff, county council may not alter, regardless of § 4-9-30(5) and referendum requirements]. In Graham, the Court ruled that a referendum was not necessary where the duties or functions of a sheriff's department were not affected in any manner in circumstances where an ordinance was enacted devolving the functions of a county police commission upon a county council and/or county administrator. The Court has also previously held that a sheriff possesses absolute control over the discharge of his deputies despite county grievance procedures and county council's authority pursuant to § 4-9-30(7). Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979). See also, Anders v. Co. Council for Richland Co., S.C. _____, 325 S.E.2d 538 (1985); Ops. Atty Gen. January 24, 1985; December 11, 1985.

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In certain limited instances, this Office has advised that a referendum pursuant to § 4-9-30(5) is necessary. This Office has stated that where the provision of contract law enforcement services by a sheriff to a municipality results in appropriations which reorganize or restructure a sheriff's department, a referendum is necessary pursuant to § 4-9-30(5). Op. Atty. Gen., May 17, 1978. This Office has also concluded that where a local enactment of the General Assembly has transferred the management of the county jail to the county governing body and the governing body desires to transfer such management back to the sheriff, § 4-9-30(5) and its referendum provision would prevent any such transfer prior to a referendum. Op. Atty. Gen. May 13, 1980.

This Office has questioned whether a county council possesses the authority to remove a particular deputy sheriff by not appropriating funds for his position. Op. Atty. Gen., August 14, 1985 (copy enclosed). While noting that a county council "is vested with discretion in dealing with any appropriations from the standpoint of general economic and efficiency concerns," the opinion noted that a sheriff possesses both statutory and common law authority to discharge his deputies. The opinion also referenced § 4-9-30(5) and the need for its requirements to be followed. It was noted that use of the appropriations process to "remove" a particular deputy "could be construed as indirectly terminating a particular deputy sheriff's position which is a position the county council is not empowered to abolish directly." But see, Simon v. Del Vitto, 403 A.2d 1335 (Pa. 1979).

In Heath v. County of Aiken, 295 S.C. 416, 368 S.E.2d 904 (1988) the State Supreme Court dealt with the question of the applicability to deputies of county personnel policies developed pursuant to Section 4-9-30(7) of the Code, which deal with issues such as working hour limitations, attendance and leave regulations and work schedule assignments. In its decision the Court stated

(i)mplementation of such policies would afford ... (county) ... council a degree of day-to-day control over deputies irreconcilable with the common and statutory law of this state. A deputy's "service at the sheriff's pleasure" ... (recognized by the Court in Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979)) ... entails not only how long he serves, but how he serves.

The Court therefore concluded that deputies were not included for purposes of personnel system policies as set forth in Section 4-9-30(7).

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In the referenced August 3, 1987 opinion it was further stated that

... we deem that the purpose of the proviso contained in § 4-9-30(5) is to protect a sheriff's status as the chief law enforcement officer of a county. Clearly, his role as chief law enforcement officer cannot be altered unless the people of the county approve. It has been stated that "the internal operation of the sheriff's office ... is a function which belongs uniquely to the chief law enforcement officer of the county."

On the other hand, ... the proviso must also be interpreted with common sense... It must be construed so as to give effect, not only to the Legislature's intent to preserve a sheriff's role as the county's chief law enforcement officer, but also to give county council wide discretion in the appropriation of funds to county agencies... Obviously, not every appropriation by county council which impacts upon a sheriff's office, such as a reduction or increase in appropriations or equipment, can reasonably be deemed to be a "reorganization" or "restructuring" of the sheriff's department, thus requiring a referendum prior to implementation... (A) court would have to decide on a case by case basis whether an appropriation of county council will have the effect of altering a sheriff's role as the chief law enforcement officer of the county, or instead, merely represents a valid and legitimate exercise of council's legislative power in the area of appropriation of funds and funding of county agencies.

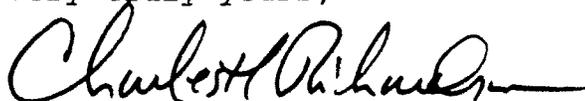
Consistent with these prior opinions, any action by the Berkeley County Council through its budgetary process cannot interfere with the Sheriff's role as chief law enforcement officer in his county. However, as noted in the referenced 1978 opinion, any review by this Office of the budgetary process and how it impacts on an elected official is a factual matter which consistent with the policy of this Office cannot be determined by an opinion. Of course, any requirements of federal law must be observed. However, again, the question of the applicability of federal law to a particular situation is a factual matter which is beyond the scope of an

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opinion of this Office. As to the applicability of federal requirements, you may wish to contact the United States Department of Labor, Wage and Hour Division, 1835 Assembly Street, Columbia, South Carolina. That office routinely interprets the federal Fair Labor Standards Act.

With best wishes, I am

Very truly yours,



Charles H. Richardson
Assistant Attorney General

CHR/an

Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions