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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

December 4, 1987

The Honorable Joyce C. Hearn
Member, House of Representatives
1300 Berkeley Road
Columbia, South Carolina 29205

Dear Representative Hearn:

By your letter of November 24, 1987, you have requested the opinion of this Office relative to establishing either a county police force or a joint city-county police force by a county council in the first instance or a city council-county council joint effort in the second instance.

You have advised that if a county council were to create a county police force, the functions of said police force would duplicate the functions of the county sheriff's department, thereby reducing the sheriff's duties to those of process serving and similar functions. The county police force would be under the direct supervision of a county police commission to be appointed by county council. If a county council and city council were to jointly create such a joint police force, such would have the same effect on the duties of the sheriff; the supervision of the joint police force would be by a joint city-county police commission to be appointed jointly by city council and county council.

Presumably, such an undertaking would involve changes in appropriations of funds to the sheriff's department, in addition to limiting the duties of the sheriff's department. In such case, Section 4-9-30(5) of the Code of Laws of South Carolina (1976, as revised) contains a relevant proviso:

[P]rovided, further, that 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

The Honorable Joyce C. Hearn

Page 2

December 4, 1987

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 proviso has been interpreted in a number of opinions previously issued by this Office. Enclosed are opinions dated August 3, 1987; August 14, 1985; June 16, 1986 (with supporting memorandum attached); May 13, 1980; May 17, 1978; and February 7, 1978, for your use. These opinions discuss the limitations of a county council over elected officials such as a sheriff, particularly with respect to the proviso cited above.

In addition, it must be noted that the sheriff is a constitutional officer whose powers may be abridged, varied, or modified by the General Assembly. See Op. Atty. Gen. dated April 3, 1967, copy enclosed.

To summarize the foregoing, any action contemplated by a county council acting by itself or jointly with a city council must follow the provisions of Section 4-9-30(5) of the Code and further must be mindful of the statutory duties of the sheriff which may be altered only by the General Assembly.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/rhm

Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions