

1984 S.C. Op. Atty. Gen. 241 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-103, 1984 WL 159910

Office of the Attorney General

State of South Carolina

Opinion No. 84-103

August 23, 1984

*1 The Honorable Robert J. Harte

Solicitor

Second Judicial Circuit

Post Office Box 2327

Aiken, South Carolina 29801

Dear Solicitor Harte:

In a letter to this Office you questioned whether a police officer is included within the definition of a 'public official' as set forth in [Section 16-3-1040, Code of Laws of South Carolina](#), 1976, as amended. Such section states that:

'It shall be unlawful for any person to knowingly and wilfully deliver or convey to a public official any letter or paper, writing, print, missive, document or electronic communication or any verbal or electronic communication which contains any threat to take the life of or to inflict bodily harm upon the public official, or members of their immediate families.'

Also, pursuant to [Section 16-3-1040](#), 'public official' is defined in part as '. . . any elected or appointed official . . . of a . . . municipality. . . .'

In your letter you particularly referenced a situation involving a threat made to certain Blackville police officers during a recent arrest. You also included a copy of portions of the Blackville City Code which provides that

'[t]he Chief of Police and all members of the . . . (police) . . . department shall be duly appointed by and hold office at the pleasure of the Town Council'

Generally, it is well-recognized that penal statutes such as [Section 16-3-1040](#), *supra*, must be strictly construed. [State v. McCord](#), 258 S.C. 163, 187 S.E.2d 654 (1972). However, it is also recognized that the governing principle of statutory construction is to ascertain and put into effect the legislative intent from a reasonable interpretation of the words of a statute. [Carolina Amusement Company v. Martin](#), 236 S.C. 558, 115 S.E.2d 273 (1960).

As referenced, the Blackville City Code calls for the appointment of members of the Blackville police department. Such is consistent with the provisions of Section 5-7-110; Code of Laws of South Carolina, 1976, which state that '[a]ny municipality may appoint or elect as many police officers, regular or special, as may be necessary for the proper law enforcement in such municipality'

In examining your question as to whether Blackville police officers are 'public officers' for purposes of [Section 16-3-1040](#), *supra*, it is important to note that police officers have been construed to be 'public officers' in other contexts. In construing the dual-office provisions of the [State Constitution, Article XVII, Section 1A](#), this Office has determined that the position of police officer is an office. See: *Ops. Atty. Gen.* dated March 13, 1984, February 10, 1984, October 20, 1984, and August 3, 1964. In [Edge v. Town of Cayce](#), 187 S.C. 171, 197 S.E. 216 (1938), the South Carolina Supreme Court referenced the following definition in determining that the police chief of a municipality is a public officer:

'[o]ne who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent'

*2 The Court noted that a municipal corporation is a part of the sovereign power of the State and its chief of police is charged with preserving the peace and order of the town and with enforcing the laws of the municipal corporation. See also: 16 McQuillin Municipal Corporations (3rd Ed.), Section 45.11, pp. 562–563. The determination could similarly be made that a municipal police officer, such as a Blackville police officer, is a public officer.

In [State v. Crenshaw](#), 274 S.C. 475, 266 S.E.2d 61 (1980), the State Supreme Court was concerned with the question of whether city police officers were ‘officers’ for purposes of [Section 16–9–220, Code of Laws of South Carolina](#), 1976, which prohibits the acceptance of bribes by officers. The Court stated that in distinguishing between an ‘officer’ and an ‘employee’ criteria to be considered are:

‘. . . whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond and oath are prescribed or required; whether the one occupying the position is a representative of the sovereign; among others . . .’ 274 S.C. 475 at 478.

Referencing such criteria, the Court concluded that a police officer was an officer for purposes of [Section 16–9–220](#). See also: [McClain v. Arnold](#), 275 S.C. 282, 270 S.E.2d 124 (1980).

Referencing the above, it appears that a police officer may be considered a ‘public official’ for purposes of [Section 16–3–1040](#), supra. However, in evaluating your situation, consideration could also possibly be given to the provisions of [Section 16–9–320, Code of Laws of South Carolina](#), 1976, as amended, which provide criminal penalties for individuals who resist lawful arrest.

If there are any questions, please advise.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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