1973 S.C. Op. Atty. Gen. 229 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4392, 1976 WL 23010

Office of the Attorney General

State of South Carolina
Opinion No. 4392
July 12, 1976

***1 In Re: Magistrates' Constables, Right to Carry Pistol, 1976 Act of the General Assembly [R 785]**

Neal Forney, Esquire
Director
Judicial Education
South Carolina Court Administration
Post Office Box 11788
Columbia, South Carolina 29211

Dear Mr. Forney:
You have submitted several questions relative to a 1976 Act of the Generally Assembly [R 785] having to do with certain training required of full-time magistrates' constables, and to the privilege possessed by such constables to carry pistols while on duty.

I.

WHAT TRAINING IS REQUIRED OF MAGISTRATES' CONSTABLES BEFORE THEY MAY CARRY PISTOLS?

Section 1 of the Act reads in part:
'—magistrates' constables who have received the required training by the South Carolina Law Enforcement Division as set forth in this act [emphasis added],—.'

No further reference to 'required training' is set forth in the Act, except provisions of Section 2, which state that all full-time magistrates' constables shall attend the South Carolina Criminal Justice Training Academy within one year from the effective date of the Act or from initial date of employment.

Reading the Act as a whole, as must be done, the only reasonable interpretation of the language of Section 1 quoted is that the Act requires attendance by magistrates' constables at the Academy before they will be privileged to carry pistols on duty.

The next phase of the question is directed to the course of instruction required by the Act. It is my understanding that the Academy offers only one basic course of instruction [8 weeks], except for specialized post-graduate courses. It must be assumed that the General Assembly was possessed of such information. There being no language in the Act to indicate anything else, it is the opinion of this Office that if the Act is valid the training that must be undergone is the basic 8-week course of instruction.

Section 3 of the Act provides that the Chief of SLED is empowered to promulgate rules and regulations to implement the provisions of the Act. It is a cardinal rule of constitutional law that the Legislature may not delegate its law-making power to an administrative agency without carefully set out guidelines. An administrative agency may implement the

provisions of an act of the Legislature, but it is Constitutionally prohibited from doing so where the required guidelines and standards are not set forth.

With respect to the question of the Chief of SLED making rules and regulations providing for a course of training to be completed by magistrates' constables, either at SLED or the Academy, there is no provision of the Act to be implemented by the Chief. No administrative agency or executive can implement a provision that does not exist.

II.

WHAT PROVISIONS OF THE ACT IS THE CHIEF OF SLED EMPOWERED TO IMPLEMENT?

Section 1 of the Act provides that SLED may deny the pistol privilege for specified reasons after hearing, one of the reasons being the use of a pistol in a manner not consistent with accepted law enforcement procedures as determined by the Chief.

***2** It is the opinion of this Office that the Chief may inter alia promulgate rules for notice and hearing on denial of the privilege, and that he may [and should] reduce to writing and promulgate rules defining accepted law enforcement procedures.

III.

MUST A MAGISTRATE'S CONSTABLE ATTEND THE ACADEMY BEFORE HE MAY BE AUTHORIZED BY SLED TO CARRY A PISTOL?

There is nothing in the Act directing or permitting SLED to authorize a constable to carry a pistol. The Act itself grants the privilege upon certain conditions. The Chief of SLED may deny the privilege for cause, but there is no requirement or provision that he authorize such activity.

IV.

WHAT FUNDS SHALL BE USED TO PAY FOR MAGISTRATES' CONSTABLES' ACADEMY TRAINING?

Section 53–46.1, 1962 Code of Laws of South Carolina, as amended, provides the source of funds for operation of the Academy [portion of fines levied], and Section 53–44 sets forth those persons eligible for the training offered [law enforcement officers]. It is the opinion of this Office that the subject Act [R 785] amends Section 53–44 to include as eligible recipients of Academy training full-time magistrates' constables.

GENERAL

I.

It is probable that Section 2 of the Act is directory only, and not mandatory. Section 53–44, 1962 Code of Laws of South Carolina, as amended, requiring certain law enforcement officers to attend the Academy, provides that if they do not do so as required by the Section, their authority as law enforcement officers is terminated. The Act [R 785] contains no such provision with reference to magistrates' constables.

If Section 2 is directory only, this means that magistrates' constables would not be disqualified from performing the duties of their office if they fail to obtain the required training.

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II.

Section 4 of the Act appears to be meaningless:
'Section 4. Nothing in this act shall have the effect of infringing upon the authorities now possessed by constables pursuant to common law.'

Magistrates' constables under the laws of this State were created by the Constitution and are regulated by the Constitution and the statutes of the State. Such office was unknown to the common law.

Common law constables had full law enforcement authority, and had no official connection with a court.

It would be a contradiction to construe Section 4 as recognizing that magistrates' constables and common law constables are one and the same, because, if that were true, magistrates' constables would have authority to carry pistols as law enforcement officers, and there would be no reason for the Act.

III.

It is entirely possible, and I comment thereabout without stating it as opinion of this Office, that the entire Act [R 785] is invalid because of its vagueness. In my opinion, it is not possible to ascertain from the language of the Act what the General Assembly intended to accomplish. When an act of a legislative body is ambiguous, resort may be had to pertinent facts outside the act itself to determine legislative intent. 'Ambiguous' means to have two or more possible meanings, however, and the rule may not be used to supply language and meaning that is entirely lacking.
Yours very truly,

***3** Joseph C. Coleman
Deputy Attorney General

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