

# 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. 29211-1549  
TELEPHONE: 803-734-3970  
FACSIMILE: 803-253-6283

February 1, 1995

The Honorable McKinley Washington, Jr.  
Senator, District No. 45  
610 Gressette Building  
Columbia, South Carolina 29202

Re: Informal Opinion

Dear Senator Washington:

By your letter of January 30, 1995, to Attorney General Condon's office, you have advised that an individual is considering offering as a candidate for the office of sheriff. You have advised that the individual is a constable "who has a high school diploma and was certified as a law enforcement agent by the S. C. Criminal Justice Academy over 17 years ago," and that the individual "continues to receive annual training from the Academy to upgrade his certificate." You have asked whether this individual is qualified for the office of sheriff.

In further inquiry, we have learned from officials at South Carolina Law Enforcement Division (SLED) and from the individual that he is considered a "group 3" constable. He took a 48-hour training course in 1981 and has undertaken a nine-hour in-service on an annual basis.

We are advised by SLED officials that a "group 3" constable is a voluntary, or honorary, position appointed by the Governor. Such a constable can assist local law enforcement officials if local officials request approval of such assistance by SLED and SLED grants the approval; it is our understanding that such approval is granted on a "per case" basis and that an individual so approved must work with a certified law enforcement officer. "Group 3" constables are authorized to carry a concealed weapon. A 48-hour training course is required, as well as in-service training on an annual basis.

The Honorable McKinley Washington, Jr.  
Page 2  
February 1, 1995

Section 23-11-110, S. C. Code Ann., details the qualifications to be met by a sheriff. As to education and experience, subsection (5)(a) requires, as one alternative, that the sheriff have "obtained a high school diploma ... and have at least five years' experience as a certified law enforcement officer ... ." For purposes of §23-11-110, a "certified law enforcement officer" is defined as "a person who has been issued a certificate as a law enforcement officer pursuant to Section 23-23-50." Section 23-11-110 was most recently amended by Act No. 19 of 1993, effective July 1, 1993 but not actually implemented until March 1994 when preclearance was received from the United States Department of Justice under the Voting Rights Act of 1965, as amended.

Section 23-23-50 authorized the Law Enforcement Training Council to issue or authorize the issuance of indicia of certification for law enforcement officers or other persons trained under the provisions of Article I, Chapter 23, of Title 23. The term "law enforcement officer" was defined in §23-23-10(D)(1) to be:

an appointed officer or employee hired by and regularly on the payroll of the State or any of its political subdivisions, who is granted statutory authority to enforce all or some of the criminal, traffic, and penal laws of the State and who possesses, with respect to those laws, the power to effect arrests for offenses committed or alleged to have been committed.

It is extremely doubtful that a "group 3" constable would meet this definition of "law enforcement officer," as a "group 3" constable is a volunteer or auxiliary type person rather than a paid, regularly employed officer or employee. Moreover, it is observed that §23-23-50 was repealed by Act No. 181 of 1993, §1617(A), effective July 1, 1993.

In place of former §23-23-50, §23-6-400 et seq. was adopted pursuant to Act No. 181 of 1993, §343. The definition of "law enforcement officer" formerly at §23-23-10(D)(1) is now found at §23-6-400(D)(1), with the language unchanged. Former §23-23-50 is now §23-23-440 and, as did its predecessor, authorizes the Law Enforcement Training Council to issue, or authorize to be issued, indicia of certification ("compliance and qualification") to "law enforcement officers or other persons trained under the provisions" of Article 9, Chapter 6, of Title 23. Again, it is extremely doubtful that a "group 3" constable would be a "law enforcement officer" for purposes of these training statutes.

Appointment of "group 3" constables is effected pursuant to §23-1-60, which provides in relevant part:

The Honorable McKinley Washington, Jr.  
Page 3  
February 1, 1995

The Governor may, at his discretion, appoint such additional ... constables ... as he may deem necessary to assist in the detection of crime and the enforcement of any criminal laws of this State, ... . All persons appointed under the provisions of this section shall be required to furnish evidence that they are knowledgeable as to the duties and responsibilities of a law-enforcement officer or shall be required to take such training in this field as may be prescribed by the chief of the South Carolina Law-Enforcement Division.

It is our understanding that constables undergo one of several types of basic training: a 48-hour course, a six-week course, or an eight-week course. The constables who are actually employed as law enforcement officers undergo the eight-week course at the Criminal Justice Academy, as we understand it. Voluntary constables (i. e., "group 3" constables) undergo a 48-hour training course. The individual's resume indicates that he "completed course in criminal justice at Charleston Air Base" and that he "completed many other courses required by S. C. Criminal Justice Academy" including annual in-service training. It is our further understanding that the individual is not considered "certified" through the Criminal Justice Academy, according to Academy personnel.

Due to the reference to §23-23-50 (now §23-6-440) in §23-11-110, and the definition of "law enforcement officer" contained in §23-23-10(D)(1) (which is now §23-6-400(D)(1)), it is my advice that a "group 3" constable who has been through only a 48-hour training course (with annual in-service), who does not appear to meet the definition of "law enforcement officer" for purposes of the training statutes, who is apparently not certified according to the provisions of now Article 9, Chapter 6, of Title 23, does not possess the qualifications required by statute to be elected sheriff.

I trust that the foregoing is satisfactorily responsive to your inquiry. If you need additional assistance or a formal opinion should be required, please advise.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General