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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

March 1, 2005

Thomas M. Boulware, Esquire
Attorney for the Town of Williston
and the City of Barnwell
19 Jefferson Street
Barnwell, South Carolina 29812

Dear Mr. Boulware:

In a letter to this office you indicated that the Town of Williston and City of Barnwell have been requested by the Barnwell County Sheriff's Department to enter into what is entitled a "Multiple Law Enforcement Agency Criminal Investigation and Mutual Aid Agreement". As to the Town of Williston, the agreement states in part:

Whereas, Section 23-1-215 of the Code of Laws of South Carolina (1976), as amended provides that under certain circumstances concerning criminal activity involving multiple jurisdictions, law enforcement officers are authorized to exercise jurisdiction in the investigation of crimes and the apprehension of criminals within other counties or municipalities pursuant to written agreement, and

Whereas, Section 23-20-10 et seq. of the Code of Laws of South Carolina known as the Law Enforcement Assistance and Support Act specifically allows written agreements between law enforcement agencies to provide multi-jurisdictional services to one another to promote the public safety, including but not limited to patrol services, crowd control, traffic control, and other emergency service situations, and

Whereas, Article VIII, Section 13 of the South Carolina Constitution and other laws authorize counties and municipalities to provide for the joint administration of functions and exercise of powers; and

Whereas, the Barnwell County Sheriff's Office and the Town of Williston Police Department desire to enter into an agreement for the purpose of securing to each other the benefits of joint criminal investigation and mutual aid in the event of disasters, civil disorders, pursuit of criminal suspects, missing persons, and other emergency situations; and

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Whereas, the purpose of this agreement is to define the scope of such joint efforts and mutual aid and the responsibilities of the parties hereto....

The agreement calls for the rendering of assistance involving the temporary transfer of law enforcement officers from one party's jurisdiction to another. Such agreement states:

Assistance. The assistance to be rendered pursuant to this agreement shall solely involve the temporary transfer of law enforcement officers from one party's jurisdiction to the other. During the period of transfer, each transferred law enforcement officer shall have all the powers and authority of a law enforcement officer employed by the law enforcement agency to which he is transferred to the maximum extent permitted by Section 23-1-215, and Section 23-20-10 et seq. Code of Laws of South Carolina (1976), as amended, and all other applicable laws, and may exercise such powers and authority in the geographical jurisdiction of that agency.

Such agreement further states:

Requests for Assistance. The temporary transfer of law enforcement officers may be requested and effected in response to any law enforcement related need including, but not limited to, the following:

- emergency situations;
- civil disorders;
- natural or man-made disasters;
- vehicle or other pursuits of criminal suspects;
- location of missing persons; or
- criminal activities involving both or multiple jurisdictions.

As set forth, the agreement specifically references S.C. Code Ann. § 23-1-215 (1989) and S.C. Code Ann. § 23-20-10 et seq. (2004). Section 23-1-215 states:

(A) In the event of a crime where multiple jurisdictions, either county or municipal, are involved, law enforcement officers are authorized to exercise jurisdiction within other counties or municipalities for the purpose of criminal investigation only if a written agreement between or among the law enforcement agencies involved has been executed. This limitation on law enforcement activity shall not apply to any activity authorized by § 17-13- 40.

(B) Any law enforcement officer working under this agreement is vested with equal authority and jurisdiction outside his resident jurisdiction for the purpose of

investigation, arrest, or any other activity related to the criminal activity for which the agreement was drawn.

(C) The agreement authorized in subsection (A) does not affect or reduce the compensation, pension, or retirement rights of any officer and the officers shall continue to be paid by the county or municipality where they are permanently employed. The bond for any officer operating under the agreement shall include coverage for his activity in the municipality or county covered by the agreement in the same manner and to the same extent provided by bonds of regularly employed officers of that municipality or county.

(D) The agreement authorized by this section may be terminated in writing at the discretion of any of the law enforcement agencies involved. The termination must be delivered or mailed to the appropriate agencies with return receipt requested. The agreement shall terminate at the conclusion of the investigation for which it was executed.

(E) The respective governing bodies of the political subdivisions, wherein each of the law enforcement agencies entering into the agreement authorized in subsection (A) is located, must be notified by its agency of the agreement's execution and termination. The notification must be in writing and accomplished within seventy-two hours of the agreement's execution and within seventy-two hours of the agreement's termination.

Section 23-20-30 states:

(A) The General Assembly recognizes the need to promote public safety and further recognizes that there may be situations where additional law enforcement officers are needed to maintain the public peace and welfare. Therefore, the General Assembly authorizes a law enforcement agency of this State to enter into contractual agreements with other law enforcement providers as may be necessary for the proper and prudent exercise of public safety functions. Public safety functions include traditional public safety activities which are performed over a specified time period for patrol services, crowd control and traffic control, and other emergency service situations. All contractual agreements shall adhere to the requirements contained in Section 23-20-40.

(B) Nothing in this chapter may be construed to alter, amend, or affect any rights, duties, or responsibilities of law enforcement authorities established by South Carolina's constitutional or statutory laws or established by the ordinances of South Carolina's political subdivisions, except as expressly provided for in this chapter.

Reference in the proposed agreement is also made to "other laws" which authorize joint administration of functions and the exercise of powers between counties and municipalities. Such "other laws" could include several other state statutes which allow for expanded jurisdiction for law enforcement officers outside of their regular jurisdictions. See: S. C. Code Ann. § 23-1-210 (1989)

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(temporary transfer of law enforcement officer to work in another municipality or county); S.C. Code Ann. § 17-13-40 (2003) (expanded law enforcement jurisdiction when in pursuit of offender); S.C. Code Ann. Section 5-7-120 (2004) (municipalities authorized to send law enforcement officer to other political subdivisions upon request in emergency situations¹). In an opinion of this office dated January 19, 1998, it was determined that S.C. Code Ann. §17-13-45 (2003) was "...another statute which extends police jurisdiction to respond to distress calls from an adjacent jurisdiction." An opinion of this office dated May 17, 2001 determined that pursuant to Section 17-13-45, a municipal officer would be authorized to respond to a distress call from a highway patrolman. The opinion commented that "(a)s the language of Section 17-13-45 places no limitation on the source of the distress call, a municipal officer would be authorized to respond to such a call from a highway patrolman." Therefore, Section 17-13-45 also serves as a basis for expanded territorial jurisdiction of a law enforcement officer.

This Office has previously opined that Article VIII, § 13 of the State Constitution authorizes contractual cooperative law enforcement services between jurisdictions and political subdivisions. See Op. Atty. Gen., May 20, 1996. Such constitutional provision, referenced in the proposed agreement cited by you, provides in pertinent part that:

- (A) Any county, incorporated municipality, or other political subdivision may agree with the State or with any other political subdivision for the joint administration of any function and exercise of powers and the sharing of the costs thereof.
- (B) Nothing in this Constitution may be construed to prohibit the State or any of its counties, incorporated municipalities, or other political subdivisions from agreeing to share the lawful cost, responsibility, and administration of functions with any one or more governments, whether within or without this State ...

As to such constitutional provision authorizing any county, municipality or other political subdivision to agree "for the joint administration of any function and exercise of powers and the sharing of the costs thereof", in an opinion, dated May 17, 1978, we advised that a Sheriff's Department could contract with a municipality to provide police protection, stating:

¹As to what circumstances would constitute an "emergency", an opinion of this Office dated December 5, 1983 referenced the following definitions:

(t)he term 'emergency' is 'an unusual or abnormal condition beyond the control of the [requesting municipality] and a condition beyond [its] reasonable power to remove or overcome. It may arise from causes other than casualty or unavoidable accident or act of God . . . Our Supreme Court has used the definition from Websters' New International Dictionary to define 'emergency' as 'an unforeseen occurrence or combination of circumstances which calls for immediate action or remedy; pressing necessity; exigency . . .

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The ability of political subdivisions to enter into an agreement for the joint administration, responsibility and sharing of the costs of services with other political subdivisions is granted by Article VIII, Section 13, of the South Carolina Constitution and Section 6-1-20, Code of Laws of South Carolina, 1976. I believe reading these above sections in conjunction enables an incorporated municipality to enter into a contractual arrangement with a county to provide law enforcement services to the municipality.

While the authority of political subdivisions to enter into contracts is granted by such constitutional provision, it is my opinion that such provision does not on its own authorize any additional jurisdictional authority to law enforcement officers outside their statutorily granted jurisdiction, either that statutorily granted within the boundaries of their political subdivision or the expanded jurisdiction granted by the statutes referenced above which authorize various means to expand the jurisdiction of these officers.

As to the statutory provisions noted above, when interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

In your letter you questioned whether the referenced statutory provisions allow for a response to "any law enforcement related need" as spelled out in the Requests for Assistance provision of the referenced agreement. You have specifically asked whether or not the proposed agreement itself can grant authority to municipal police officers where and when such authority is not specifically granted by statute. You also asked whether or not this agreement can supplant or supercede the other statutory requirements of statutes which specifically grant additional jurisdictional authority.

As to your questions, in my opinion, any agreement cannot grant law enforcement officers any additional jurisdictional authority other than that specifically granted by statute. The statutes referenced previously are quite specific in their grant of additional jurisdictional authority. An agreement cannot in my opinion supplant or supercede the statutory authority which specifically grant additional jurisdictional authority to these officers.

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As to Section 23-1-215 specifically cited in the proposed agreement, expanded jurisdiction is granted "for the purpose of criminal investigation only". Such expanded authority is limited to "the purpose of investigation, arrest or any other activity related to the criminal activity for which the agreement was drawn." As to agreements pursuant to Section 23-1-215, an opinion dated June 2, 1988 described the authority conferred upon law enforcement by this provision as being "limited to the specific criminal investigation contemplated by the agreement entered into by the jurisdictions involved." An opinion dated February 17, 1994 indicated that the authority granted by Section 23-1-215 "should probably be limited to the specific criminal investigation contemplated by the agreement entered into by the jurisdictions involved...."

Section 23-20-30 grants additional jurisdiction as necessary for the "exercise of public safety functions" which include traditional public safety activities which are performed over a specified time period for patrol services, crowd control, traffic control, and other emergency service situations. Other statutory provisions cited above are also specific in granting expanded jurisdiction for scenarios such as the actual transfer of an officer to work in another political subdivision (Section 23-1-210); when in pursuit of an offender (Section 17-13-40); in emergency situations (Section 5-7-120); and in response to distress calls (Section 17-13-45).

You have asked whether Section 23-20-30 authorizes a contract between a county and a municipality to transfer a municipal officer "in response to any law enforcement need" including, but not limited to, emergency situations; civil disorders; natural or man-made disasters; vehicle or other pursuits of criminal suspects; location of missing persons; or criminal activities involving both or multiple jurisdictions.

As noted, Section 23-20-30

...authorizes a law enforcement agency of this State to enter into contractual agreements with other law enforcement providers as may be necessary for the proper and prudent exercise of public safety functions. Public safety functions include traditional public safety activities which are performed over a specified time period for patrol services, crowd control and traffic control, and other emergency service situations.

In my opinion, Section 23-20-30 does not authorize the transfer of a municipal officer in response to any law enforcement need. Instead, an agreement is authorized for the "exercise of public safety functions" such as those specified in the statute. To read such provision as authorizing a transfer for "any law enforcement need" would render the other statutory provisions noted above specifying expanded law enforcement jurisdiction in specific situations as meaningless. It is my opinion that such was not the purpose of the legislature in enacting Section 23-20-30. Again, reference is made to "public safety functions" which "include traditional public safety activities which are performed over a specified time period" such as those activities specifically noted. Unless an activity was within such a category, it would not be authorized pursuant to the agreement. In answer to your

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question of whether the agreement would control or would the statute control, in my opinion, the statute would control.

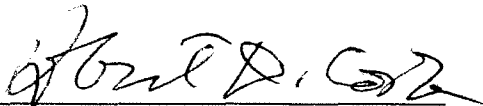
With kind regards, I am,

Very truly yours,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General