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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

March 1, 2005

The Honorable P. J. Tanner
Sheriff, Beaufort County
Post Office Box 1758
Beaufort, South Carolina 29901

Dear Sheriff Tanner:

In a letter to this office you referenced that Fripp Island, a gated community in your county, presently has a property owners' association governed armed security force regulated by SLED providing law enforcement to that Island. In order to save money, consideration is being given to disbanding that security force and replacing it by creating a "special police district". The authority for such is provided by S.C. Code Ann. §§ 23-27-10 et seq. (1989). You indicated that you do not believe that the creation of a special police district is the answer for law enforcement for Fripp Island citing possible duplication of services already provided by the Sheriff's office. You also questioned how the creation of a special police district interacts with or possibly contradicts existing statutes addressing the authority of the office of sheriff and the sheriff's position as chief law enforcement officer in the county. You have requested an opinion on the issue of the viability of Fripp Island creating a special police district and exactly what are the limits of your authority as sheriff over such a police district.

Sections 23-27-10 et seq. provide for special police districts for unincorporated areas. Section 23-17-10 states:

In order to provide adequate police protection for unincorporated villages or towns or thickly populated areas outside the limits of incorporated municipalities, special police districts may be created and established within any county in this State for any such unincorporated area.

Such districts are formed following the creation of a petition to establish a district signed by a majority of the resident landowners in the proposed district. Following such, an election of the qualified voters within such district voting on the question of establishing a special police district is held. See: Sections 23-27-20 and 27-23-30. If a majority of the voters are in favor of the creation of the district, a board of commissioners is created. Section 23-27-40. Section 23-27-120 provides that

The purpose of this chapter is to provide adequate police protection for unincorporated villages, towns and thickly populated areas outside of the limits of incorporated municipalities, and this chapter shall be liberally construed and interpreted to carry into effect such purpose.

It is further provided by Section 23-27-130 that

The rights, privileges and methods provided for in this chapter for the creation of special districts and the appointment of special deputy sheriffs are cumulative to all other ways and methods provided by law in this State.

This office has recognized the authority for the creation of special police districts in prior opinions of this office. See, eg, : Ops. Atty. Gen. dated February 11, 1997; November 6, 1992; June 5, 1987; July 7, 1976. Therefore, as to your question regarding the viability of Fripp Island creating such a district, there is clearly the basis for the creation of such by the voters of Fripp Island in the manner prescribed by statute.

As to your questions regarding your authority as sheriff over a special police district, pursuant to Section 23-27-60

The board of commissioners may recommend to the sheriff of the county the personnel for police duty within the district and fix the salaries therefor or it may recommend the discharge of any thereof. Upon such recommendation to him the sheriff may commission the person or persons so recommended as a special deputy sheriff or deputies, but if any person recommended be unsatisfactory to him the sheriff may request the board of commissioners to name others until satisfactory ones are agreed upon.

Therefore you, as sheriff, commission those individuals recommended to you as special deputies within such districts. However, as stated, if you were to find any such individual unsatisfactory, you could request the naming of another individual.

Section 23-27-80 states that:

The deputies so commissioned shall assume the general duties of law-enforcement officers within the district to which they are appointed and as such officers they shall have the same power and authority as to offenses committed within the district as deputy sheriffs have within the county. Persons arrested by a special deputy sheriff commissioned under the provisions of this chapter may be carried by such arresting officer before any magistrate in the county having jurisdiction over the district and there be charged for the offense and the cases shall be disposed of as provided by law.

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Consistent with such, the deputies in the special police district have general law enforcement authority consistent with that of deputy sheriffs.

As to your concerns that the creation of a special police district is in conflict with other statutes addressing the authority of a sheriff and his position as chief law enforcement officer in a county, as noted in an opinion of this office dated July 1, 2004, a sheriff's jurisdiction encompasses his entire county. An opinion of this office dated November 6, 1992 commented that

The general law in this State presently requires a sheriff and his deputies to patrol their county and provide law enforcement services to its citizens. Such is consistent with an opinion of this office dated May 8, 1989 which recognized the status of a sheriff as the chief law enforcement officer of a county.

See also: S.C. Code Ann. §§ 23-13-70 (1989) (duty of deputy sheriffs to patrol the entire county); Op. Atty. Gen. No. 88-90 supra (sheriff is chief law enforcement officer of county and deputy has full law enforcement authority in any area of his county, including an area under the protection of a properly licensed private security guard.). Therefore, while the creation of a special police district is authorized, the creation of such does not override the role of the sheriff as the chief law enforcement officer of a county or his responsibility and jurisdiction to patrol an entire county which would include the area of the special police district. As noted by Section 23-27-130, "(t)he rights, privileges and methods provided for in this chapter for the creation of special districts and the appointment of special deputy sheriffs are cumulative to all other ways and methods provided by law in this State." In my opinion such provision recognizes the authority of a sheriff as the chief law enforcement officer in his county.

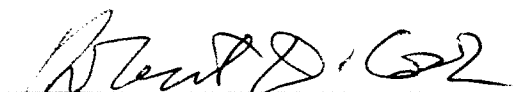
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General