6866 Library

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

November 3, 2000

The Honorable Tommy R. Mims
Sheriff, Sumter County
Law Enforcement Center
107 East Hampton Avenue
Sumter, South Carolina 29150

Dear Sheriff Mims:

Thank you for your letter of February 8, 2000, which was referred to me for response. In your correspondence, you ask questions about the legality of Ordinance 84-107 passed by the Sumter County Council in 1984, that devolved the duties of the sheriff over the jail to the County Council.

This Act reinforced S.C. Code Ann. § 55-410 (1962) that gave control over the Sumter County jail to the "governing body of the county," and released the sheriff of custody and control of the jail. Although § 55-410 had not been repealed by the General Assembly or struck down by a court, Sumter County passed Ordinance 84-107, "confirming that Sumter County, S.C., is the holder of all the powers and duties formerly held by the sheriff relating to the custody of the Sumter County Jail . . . ."

In his concurring opinion in Roton v. Sparks, 244 S.E.2d 214 (1978), Justice Gregory addressed your concern of county government control over the county's jail. Justice Gregory opined that "the question of control over the jail was outside the scope of a county's authority under Home Rule." See S.C. Op. Atty. Gen., February 4, 1997. Justice Gregory, in Roton v. Sparks, opined as follows:

> The governing body of a county takes legislative action by ordinance. Section 4-9-130, 1976 Code of Laws of South Carolina. Section 4-9-30 delineates the scope of the counties' ordinance-making power and states in part:
>
> > . . . each county government within the authority granted by the Constitution and subject to the general law of this State shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof: . . .

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, S.C. 29211-1549 • TELEPHONE: 803-734-3970 • FACSIMILE: 803-253-6283

Request Letter

> While I do not doubt the counties possess the requisite authority to construct and operate a multipurpose law enforcement facility that includes a jail within its physical structure, that authority is 'subject to the general law of this State' which provides:
>
> > The sheriff shall have custody of the jail in his county . . . Section 24-5-10.
>
> Section 24-5-10 has not been repealed by either specific legislative enactment or necessary implication, and cannot be repealed by a county ordinance. It should not be repealed by judicial fiat. Roton v. Sparks, 244 S.E.2d 214, 215 (1978).

This office concluded in a prior opinion that the General Assembly has maintained control over jails through the enactment of legislation such as § 55-410 and that this legislation was in fact, in effect. "[O]nly the General Assembly may alter or modify the method of governance and maintenance of the Sumter County Detention Facility." See S.C. Op. Atty. Gen., February 4, 1997. While that opinion addressed the effect of Section 55-410 on the control of the Sumter County Detention Center, and did not comment on Sumter County Ordinance 84-107 specifically, the implication from our reading of Roton v. Sparks is that the Home Rule Act does not grant authority to a county government to remove the custody and control of the county jail from the sheriff.

A recent decision by the South Carolina Supreme Court now creates doubt about the constitutionality of Section 55-410 as well. In Henry v. Horry County, 514 S.E.2d 122 (1999), the Sheriff of Horry County brought a declaratory judgment action against county officials in order to request custody and control of the detention center. Then Justice Toal, opined the following:

> There is no dispute that the General Assembly could enact special laws pursuant to art. VII, § 11 to construct and arrange county governments. As recognized by the cases following the 1935 amendment to art. III, § 34, this power was limited in its scope so as not to conflict with the general laws of this state. . . . [T]he acts taking custody of the Horry County jail away from the Sheriff were unconstitutional when passed as special legislation because they were in direct conflict with the general law. Henry v. Horry County, 514 S.E.2d 122, 125 (1999).

The statute in question was similar to Section 55-410. The general law, one that has applied to the entire state for more than 95 years, has been that the "sheriff shall have custody of the jail in his county . . ." S.C. Code Ann. 24-5-10 (1976). This law was in effect, as Section 55-401, when Section 55-410 was enacted. Article III, § 34 (IX) of the South Carolina Constitution states the following: ". . . where a general law can be made applicable, no special law shall be enacted." Therefore, under the reasoning expressed by the Supreme Court in Henry v. Horry County, the constitutionality of Section 55-410 is now questionable. In light of this decision by the Supreme Court of this State, the prior opinion of this office dated February 4, 1997 is hereby amended.

This office can only comment upon potential constitutional problems, and I suggest you seek redress from the courts of this State, by way of a declaratory judgment action, if you wish to take custody of the jail in your county.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

RDC/an