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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

February 4, 1997

Jerry A. Hyatt
Regional Administrator/Executive Director
Santee-Lynches Regional Jail System
1281 North Main Street
Sumter, South Carolina 29153

Re: Informal Opinion

Dear Mr. Hyatt:

You have asked "whether the statute concerning custody of the jail being the responsibility of the board of commissioners in Sumter County is current and applicable." You further state that

> [i]n the Code of Laws of South Carolina, Chapter 5, Section 24-5-10, a referral is made concerning Sumter County in the Case Notes at the end of that section, and reference is made to see Local Law Index. ... Also, if the sheriff requested custody of the jail and the county commission denied his request, what steps would the sheriff have to take to gain control and custody of the jail.

S.C.Code Ann. Section 55-410 (1962) provides as follows:

> [i]n Sumter County, the governing body of the county shall have the custody of the jail of the county and may appoint a jailer to keep it. The sheriff of said county shall be under no duty of keeping safely in prison any person delivered or committed to the jail or prison of the county according to law.

Request Letter

In an Opinion dated May 13, 1980, this Office addressed a similar situation relative to the Richland County jail. There, as here, a specific statute made the management and supervision of the County Jail the responsibility of the governing body of Richland County. We concluded that County Council possessed no authority to transfer the supervision and management of the County Jail back to the Sheriff of Richland County. We opined that

> [t]he office of sheriff is a constitutional office and can be regulated only in a manner prescribed by the State Constitution. Article V, Section 20, South Carolina Constitution. [now Section 24]. That section provides that the General Assembly shall provide by law for the duties and compensation of the county sheriff. Therefore, it must be said that the duties and powers of the sheriff may be varied, abridged or increased only at the pleasure of the Legislature. 1967 Opinion of the Attorney General No. 2252, page 59.
>
> ... Therefore, since the authority to manage and supervise the County Jail has been placed by statute in the Richland County Council, they may not, by ordinance, divest themselves of that power ... but must defer to the legislative enactment.

Accordingly, we stated in the 1980 Opinion that "only may the General Assembly act to alter ... responsibility by replacing the management and supervision of the County Jail from the County Council in the Sheriff."

It is the longstanding policy of this Office to defer to its prior opinion(s) unless such opinion is "clearly erroneous." In this instance, the 1980 Opinion is not clearly erroneous.

Section 4-9-170, which is part of the Home Rule Act, provides as follows:

> [t]he council shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution. Each council shall have such appointive powers with regard to existing boards and commissions as may be authorized by the General Assembly except as otherwise provided for by the general law and the Constitution, but this authority shall not extend to school districts, special purpose

> districts or other political subdivisions created by the General Assembly; provided, however, that beginning January 1, 1980, the council shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution, but this authority shall not extend to school districts, special purpose districts or other political subdivisions created by the General Assembly.

While it might be argued that after January 1, 1980, county council possessed authority to return control of the jail to the Sheriff, See, Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717 (1986), I would advise that until a court so rules expressly, the 1980 Opinion should continue to be followed.

Creel involved the authority of the county council in Horry County via á vis the County Police Commission. Commenting thereupon, our Supreme Court stated that

> [t]he General Assembly never repealed Secs. 53-551 through 53-566 S.C.Code Ann. (1962). It was not until January 1, 1980, therefore, that the Horry County Council was no longer prohibited from enacting ordinances in conflict with those sections. The Horry County Council then had three options under the Home Rule Act with respect to the operation of the Horry County Police Commission: (1) let it continue as it was being operated when Home Rule became effective in Horry County in 1976; (2) abolish the Horry County Police Department and devolve its powers and functions upon the Horry County Sheriff, subject to approval by a county-wide referendum pursuant to Sec. 4-9-30(6) S.C.Code Ann. (1976); or (3) otherwise provide by ordinance pursuant to its Home Rule powers. The Horry County Council chose to let the Commission continue from January 1, 1980 until April 16, 1981, when Ordinance 5-81 was passed pursuant to the Home Rule Act. We find that the appellants have correctly interpreted Subsection 3 of Act 283. [Home Rule Act].

289 S.C. at 168.

Reference must also be made, however, to Roton v. Sparks, 270 S.C. 637, 244 S.E.2d 214 (1978), a case dealing specifically with the Sheriff's control of the jail. In his

concurring opinion, Justice Gregory made it clear that the question of control of the jail was outside the scope of a county's authority under Home Rule. Justice Gregory wrote as follows:

> [a]ct No. 283 of the 1975 Acts of the General Assembly, the Home Rule Act, which was designed to effectuate the mandate of Article VIII Section 7 of the South Carolina Constitution, did not transfer absolute authority over all matters of local concern to the counties.
>
> 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: ... [emphasis in original].
>
> While I do not doubt the counties possess the requisite authority to construct and operate a multi-purpose law enforcement facility that includes a jail within its physical structure, that authority is "subject to the general law of this State" which provides:
>
> [t]he 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.

270 S.C. at 639-40. Moreover, Art. VIII, § 14 (6) of the South Carolina Constitution mandates that "general law provisions applicable to the following matters shall not be set aside: ... (6) the structure and the administration of any governmental service or function, responsibility for which rests with the State government or which requires statewide uniformity." It is also well recognized that "[t]he establishment and maintenance of a

corrections system is one of the essential responsibilities of government" which is "properly the province of the legislature". 72 C.J.S. Prisons, § 3.

The framers of the 1895 Constitution recognized this in Art. XII, § 2 which provides that

> [t]he General Assembly shall establish institutions for the confinement of all persons convicted of such crimes as may be designated by law, and shall provide for the custody, maintenance, health, welfare, education, and rehabilitation of the inmates.

Moreover, the General Assembly has maintained its control over local correctional facilities and jails through Title 24, Chapter 5 as well as through special enactment such as § 55-410.

Thus, in my judgment, § 55-410 remains in effect, and unless and until a court rules otherwise, it is my advice that only the General Assembly may alter or modify the method of governance and maintenance of the Sumter County Detention Facility. See, Brunson v. Hyatt, 409 F.Supp. 35 (D.S.C. 1976). I must caution that Creel renders this conclusion not free from doubt, however, and thus a declaratory judgment may be advisable.

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.

With kind regards, I am

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

RDC/ph