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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

May 29, 1997

Thomas M. Boulware, Esquire
Barnwell City Attorney
Post Office Box 248
Barnwell, South Carolina 29812

Re: Informal Opinion

Dear Tom:

You have asked for an opinion regarding the following issue:

[t]he Barnwell County Sheriff's Department has approached [the City of Barnwell and the Town of Williston]... and has asked that they participate in a multiple law enforcement agreement whereby each municipality would agree to have two police officers, one of whom would be the Chief of Police, who would be prepared to participate in the investigation of violent crimes so that, in effect, if there was a violent crime committed in the City of Barnwell, two officers from the Town of Williston could participate in the investigation of that crime, along with the Barnwell County Sheriff's Department which would obviously have jurisdiction. In the alternative, if the Sheriff's Department had a violent crime which had occurred in the county, it could call upon both the Town of Williston and the City of Barnwell to send its violent crime investigative team to the scene to assist the Sheriff's Department.

Your concern with this arrangement is "whether or not such an agreement would be authorized under the terms and provisions of Section 23-1-215 et seq." Specifically, you state that:

Thomas M. Boulware, Esquire
Page 2
May 29, 1997

[m]y initial concern would be the fact that a violent crime may not traverse jurisdictional limits and, therefore, may not come within the scope of Section 23-1-215. Assuming that the three governmental entities could enter into a written contractual agreement wherein and whereby additional manpower could be provided in the form of a violent crime investigative team, would this team have the powers of arrest in the event they were beyond their jurisdictional limits? For instance, if the city of Barnwell's team was asked to participate in an investigation of a violent crime in an unincorporated area and, in the course of that investigation, was required to make an arrest, would the arrest be lawful if it related to the particular matter being investigated? Would an arrest be lawful during the investigation if it related to a collateral matter to the actual investigation?

LAW/ANALYSIS

S.C. Code Ann. Section 23-1-215 provides for agreements between multiple law enforcement jurisdictions for criminal investigation. Subsection (A) of this provision states that:

[i]n the event of a crime where multiple jurisdiction, 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...

Subsection (B) grants an officer working outside his jurisdiction law enforcement authority "for the purpose of investigation, arrest or any other activity related to the criminal activity for which the agreement was drawn." Subsection (D) states that "[t]he agreement shall terminate at the conclusion of the investigation of which it was executed." Several important principles of statutory construction are pertinent to your inquiry. First and foremost, is the time-honored tenet that the primary guideline to be used in the interpretation of statutes is to ascertain and give effect to the intention of the legislature. Belk v. Nationwide Mut. Ins. Co., 271 S.C. 24, 244 S.E. 2d 744 (1978). A statute as a whole must receive a practical, reasonable and fair interpretation, consonant

Thomas M. Boulware, Esquire
Page 3
May 29, 1997

with the purpose, design and policy of the lawmakers. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). The words used therein should be given their plain and ordinary meaning. Worthington v. Belcher, 274 S.C. 366, 244 S.E.2d 148 (1980). The interpretation should be according to the natural and obvious significance of the wording without resort to subtle and refined construction for the purpose of either limiting or expanding the statutes operation. Greenville Baseball v. Beardon, 200 S.C. 363, 20 S.E. 2d 813 (1942).

In Op. Atty. Gen., Op. No. 94-38 (June 21, 1994), this office concluded that "Section 23-1-215 may be construed to authorize agreement between multiple law enforcement agencies for drug enforcement purposes." The thrust of that opinion was that where illegal drug activity was concerned, a multi-jurisdictional force could be organized for combating drug activity generally rather than merely organizing such a force for one specific crime. We further noted that:

[i]t is generally recognized that illegal drug activity requires enhanced law enforcement efforts. See, e.g., S.C. Code Section 14-7-1610 (authorization for the state grand jury, to investigate drug offenses). In many cases drug offenses have significance in more than one jurisdiction. Cooperation between law enforcement agencies is a means of responding to illegal drug activity. Moreover, we have been informed that several law enforcement agencies in this state have entered into multi-jurisdictional drug enforcement agreements pursuant to Section 23-1-215.

In my judgment, the reasoning of this opinion would also apply to a violent crime task force as you have described it. It has been stated with accuracy that "[v]iolent crime and the use of illicit drugs go hand-in-hand, and attempts to control one without controlling the other may be fruitless." United States v. Michael K., 90 F.3d 340 (9th Cir. 1996). Moreover, Section 16-1-60 defines "violent crimes" to include drug trafficking. In addition, it is my understanding that Section 23-1-215 was enacted in response to the murder of Sherry Smith inasmuch as it was determined that such violent crimes often required the need for coordination between overlapping or separate jurisdictions.

While subsection (1) does state that "[t]he agreement shall terminate at the conclusion of the investigation for which it was executed," in my judgment, just as it is reasonable to determine that the investigation of illegal drug activities is a continuous function of these law enforcement agencies, the same conclusion

Thomas M. Boulware, Esquire

Page 4

May 29, 1997

could be reached with respect to violent crime, particularly in light of the fact that drug trafficking and violent crimes are so intertwined and interrelated.

Of course, as I am sure you are aware, other statutory provisions are pertinent to your inquiry as well. In Op. Atty. Gen., Op. No. 88-46 (June 2, 1988), we discussed these provisions which are in addition to Section 23-1-215 at some length. There we stated as follows:

[s]everal state statutes authorize law enforcement activity by law enforcement officers outside their regular jurisdiction in certain instances. Pursuant to Section 23-1-210 of the Code, the intra-state transfer of municipal or county law enforcement officers on a temporary basis is authorized. Such statute specifically provides that:

[a]ny municipality or county law enforcement officer may be transferred on a temporary basis to work in law enforcement in any other municipality or county in this state under the conditions set forth in this section, and when so transferred shall have all the powers and authority of a law enforcement officer employed by the jurisdiction to which he is transferred.

Such provision states that prior to such a transfer, a written agreement must be entered into by the affected jurisdiction which states the conditions and terms of the 'temporary employment' of the officers who are transferred. Section 5-7-120 of the Code authorizes law enforcement officers to respond in cases of emergency to another municipality upon request. Such provision states:

[w]hen law enforcement officers are sent to another municipality pursuant to this section, the jurisdiction, authority, rights, privileges and immunities, including coverage under the workers compensation laws, which they have in the sender's municipality shall be extended to also include the area in which like benefits and authorities are or could be afforded to the law enforcement officers or

Thomas M. Boulware, Esquire
Page 5
May 29, 1997

the requesting political subdivisions.

Such section further provides that such officers who respond to requests for assistance have the same law enforcement authority as possessed by the law enforcement officers in the political subdivisions which requests assistance.... In an opinion dated February 15, 1985, this office determined that in such circumstances such officers would have the law enforcement authority established by Section 17-13-40 referenced above when responding to requests for assistance. This office also recognized in a June 20, 1984 opinion that Section 8-12-10 et seq. of the Code "...would permit the interchange of local governmental employees such as sheriffs' deputies between the counties." Consistent with such, Section 8-12-10 et seq. would also permit the interchange of city police officers. In an opinion dated May 17, 1978, this office referencing Section 6-1-20, Code of Laws of South Carolina, 1976, and Article VIII, Section 13 of the South Carolina Constitution determined that:

[t]he 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...[R]eading these...sections in conjunction enables an incorporated municipality to enter into a contractual arrangement with a county to provide law enforcement services to the municipality.

Thus, the various political subdivisions in Barnwell county which you have referenced in your letter would have a number of options for a joint agreement of the kind which you envision. Even should you choose not to pursue the Section 23-1-215 option, various state statutory provisions would enable you to put together the kind of violent crime task force which you contemplate.

In conclusion, in my opinion, Section 23-1-215 would permit the assemblage of the violent crime task force as envisioned in your letter. Admittedly, this conclusion is based upon my extrapolation from the result reached in Opinion No. 94-38 (June 21, 1994), referenced above. No Supreme Court decision has

Thomas M. Boulware, Esquire
Page 6
May 29, 1997

confirmed this authority as yet, but in my judgment the statute is sufficiently broad to cover violent crimes as a multi-jurisdictional occurrence.

However, even should you choose not to rely upon Section 23-1-215, notwithstanding the conclusion herein that it would authorize the agreement contemplated, the other statutory provision referenced herein would also provide authority to put together the kind of violent crime task force desired, based upon an agreement between the political subdivisions concerned. An agreement might, for example, conclude that the investigation of certain violent crimes constitute an "emergency" based upon inadequate manpower. Or an agreement could be worked out triggering the "transfer" of certain officers based upon the happening of certain violent crimes. Of course, the particular legal authority or statutory provision relied upon or the structure of the particular agreement drafted could be a matter within the discretion of the local subdivision in conjunction with their attorney.

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 remain

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/rbp