



6443 Liberty

The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

January 21, 1998

The Honorable Johnny Mack Brown  
Sheriff, Greenville County  
4 McGee Street  
Greenville, South Carolina 29601

Re: Informal Opinion

Dear Sheriff Brown:

You have sought an Informal Opinion as to whether "Greenville County Council [can] ... by ordinance, return the operation, management, and control of the Greenville County jail back to me [as Sheriff]?" You provide the following information by way of background:

[i]n 1915, the Sheriff of Greenville County relinquished control and custody of the Greenville County jail. The General Assembly legislated Act 179 in 1935, abolishing the Charities and Corrections Commission, which operated the county jail at that time. When the Legislature abolished the Charities and Corrections Commission, it gave full and complete management of the county jail to the Board of Commissioners of Greenville County.

In 1980 (copy enclosed), I sent a letter to the Chairman of County Council, Melvin Pace, requesting that County Council accept powers and duties of the jail. By resolution, County Council accepted full and complete control of the county jail.

There is a possibility that the county jail could be transferred back to the supervision of this Office. I ran across an opinion

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by the Attorney General's Office, dated May 13, 1980, advising the Richland County Sheriff that the County Council of Richland could not transfer the operation of the jail back to the Sheriff of Richland County because of wording in the Home Rule Act, which reorganized or restructured the Office of Sheriff.

### Law / Analysis

I am enclosing a copy of an Informal Opinion rendered by this Office on February 4, 1997 which thoroughly addresses the issue you have raised. As you can see, even though the May 13, 1980 opinion remains the opinion of this Office, there is now considerable doubt as the ultimate resolution of this issue. The principal reason for the uncertainty is due to the Supreme Court's decision of Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717 (1986) which, of course, was decided well after the 1980 opinion was rendered. Creel involved the authority of the county council in Horry County vis à 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[t]he General Assembly never repealed Secs. 53-551 through 53-566 S.C. Code Ann.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) [including the authority for the commission to employ a jailer]. 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) [referendum requirement now repealed]; 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 appellants have correctly interpreted Subsection 3 of Act 283 [Home Rule Act].

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Thus, as stated in the 1997 Informal Opinion, the Creel case casts considerable doubt upon the 1980 opinion. Certainly, it can now be argued at least that county council does possess authority to return the jail to the Sheriff in light of its broad authority under Home Rule. The only way this issue can be resolved with finality is by way of declaratory judgment.

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/an  
Enclosure