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The State of South Carolina



Office of the Attorney General

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September 22, 1994

Gerald T. Whitley, Jr.
Acting Horry County Police Chief
Horry County Police Department
Post Office Box 68
Conway, South Carolina 29526

Dear Chief Whitley:

You have advised that, by act of the General Assembly in 1959, the Horry County Police Commission was created to be the chief law enforcement agency in Horry County. As a result the powers of the sheriff in that county were greatly reduced. You have inquired as to the interpretation of S.C. Code Ann. § 16-23-50 and § 23-31-190 in light of the law enforcement circumstances existing in Horry County.

Section 16-23-50

This Code section provides criminal penalties for violations of Article I, Chapter 23 of Title 16, concerning criminal offenses involving weapons. Confiscation is provided for in subsection (C), which provides in relevant part:

In addition to the penalty provided in this section, the pistol involved in the violation of this article must be confiscated. The pistol must be delivered to the chief of police of the municipality or to the sheriff of the county, if the violation occurred outside the corporate limits of a municipality. The law enforcement agencies that receive the confiscated pistols may use them within their department, transfer them to another law enforcement agency for their lawful use, transfer them to the clerk of court or mayor who shall dispose of them

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as provided by Section 16-23-500, or trade them with a retail dealer

Section 23-31-190

This Code section likewise provides criminal penalties for violations of Article 3, Chapter 31 of Title 23, concerning the regulation of pistols. Confiscation is provided for in the third unnumbered paragraph:

In addition to the penalty provided in this section the pistol involved in the violation must be confiscated. The pistol must be delivered to the chief of police of the municipality or to the sheriff of the county, if the violation occurred outside the corporate limits of a municipality. The law enforcement agencies that receive the confiscated pistols may use them within their department, transfer them to another law enforcement agency, or destroy them. ...

Act No. 21 of 1959

By Act No. 21 of 1959, the General Assembly created the Horry County Police Commission and at the same time diminished the duties and responsibilities of the sheriff in that county. The Police Commission, by § 2 of that act, was granted exclusive jurisdiction over the jail. The county policemen appointed thereunder were to work in conjunction with the magistrates, serve magistrates' process, patrol and police the county in such places, points and sections and at such times as directed by the chief of county police. See §§ 2, 6. Powers of the county policemen were specified in § 9, which provides in part:

All of the county policemen shall have, over the entire county, the same rights, powers and authority as sheriffs, deputy sheriffs and constables to make arrests for violation of the criminal laws of this State. The county policemen are authorized to serve summons and complaints, to seize property and serve warrants of attachment, to seize chattels and serve papers in action of claim and delivery, The county policemen may summon a posse comitatus to assist in enforcing the law

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Section 16 provided that as of the effective date of the act there would be only two deputy sheriffs in Horry County; by contrast, the Police Commission was required to appoint a chief of police and eight county policemen, by § 2 of the act.¹

Discussion

As is pointed out in your letter, while the sheriff of Horry County is afforded certain powers under state law as a constitutional officer, the General Assembly saw fit in 1959 to limit those powers and devolve certain of those powers upon the newly-created police force in Horry County. Clearly, in Horry County, the county police force performs the vast majority of the functions ordinarily performed by a sheriff's department. As to enforcement of pistol laws, the county police force rather than the sheriff's department would have such responsibilities. The more reasonable reading of § 16-23-50 and § 23-31-190 would be for confiscated pistols to be delivered to the chief of the county police force if the pistol violation occurs outside municipal limits, as the county police force in Horry County is in the position to enforce laws in that jurisdiction, power exercised by the sheriff's department elsewhere in the state.

Such reasoning may be bolstered by rules of statutory construction. Courts are not always confined to the literal meaning of a statute; the real intent of the legislature will prevail over a literal interpretation, for example. South Carolina Dept. of Social Services v. Forrester, 282 S.C. 512, 320 S.E.2d 39 (S.C. App. 1984). The intent of these statutes seems to be that the law enforcement agency receiving the confiscated pistols would be able to use them, transfer them to another department, trade them, or the like as stated in the statutes; as the chief law enforcement agency of Horry County, the county police department is more likely to require weapons for its use, or to be in a position to use or trade a variety of weapons.

It is also observed that the original §§ 16-23-50 and 23-31-190 were a part of the same act, Act No. 330 of 1965. By that time of enactment, the county police force rather than the sheriff's department had been the law enforcement entity in Horry County for quite awhile. A court may construe a statute in light of the circumstances existing at the time of its enactment; when there is doubt or uncertainty as to legislative intent, the search for intent may go beyond the borders of the statute itself. Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956). These principles of statutory construction would permit a reasonable

¹ Provisions of this act are codified at S.C. Code Ann. § 53-551 et seq., 1962 Code of Laws. Since these local law provisions have not been repealed by the General Assembly or amended by Horry County Council, they are still effective. Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717 (1986).

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reading of these statutes to allow the chief of the Horry County Police to receive pistols confiscated in the non-municipal areas of Horry County, as the intent of the statutes seem to direct that confiscated pistols go to the chief law enforcement officer in the jurisdiction in which the pistol was involved in violation of the law.

Moreover, courts of this State give great weight to the interpretation of statutes by the agency charged with the enforcement of such statutes, particularly where such interpretation has been acquiesced in by the legislature. Etiwan Fertilizer Co. v. South Carolina Tax Com'n, 217 S.C. 354, 60 S.E.2d 682 (1950). As far as we are aware, the construction of the relevant statutes, as amended, so that confiscated pistols be turned over to the chief of Horry County police, has not been challenged, nor has the General Assembly seen fit to take corrective legislative action. We believe a court, if faced with the issue, could easily acquiesce in the longstanding interpretation placed on the statutes by the Horry County Police Commission and chief of county police, so that pistols confiscated due to the violation of the above statutes in non-municipal areas of the county would continue to be turned over to the chief of the Horry County police.

Conclusion

It is the opinion of this Office that, due to the unique circumstances existing in Horry County since 1959, pistols confiscated in the non-municipal areas of Horry County due to violation of the criminal statutes involving weapons should be turned over to the chief of the Horry County police force rather than the sheriff.

With kindest regards, I am

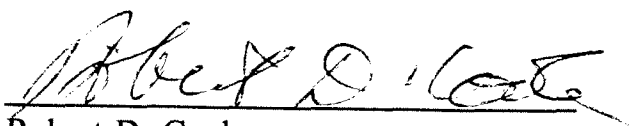
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



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