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OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

December 5, 1996

W. C. Humphrey, Jr., Training Sergeant
Detention Center, Greenwood County
528 Edgefield Street
Greenwood, South Carolina 29646-2686

Re: Informal Opinion

Dear Sergeant Humphrey:

You have presented two questions for our review and advice. In your letter, you state that

> [d]etention officers of our county jail have been told by the county magistrate's office, that they can not charge inmates who assault them, with assault and battery on a peace officer, due to the fact that they hold no peace officer status while on duty.
>
> Secondly, we have been told that officers can no longer charge an individual with threatening a public official due to the fact officers are not considered public officials in the court view.
>
> I would greatly appreciate having these two issues clarified so that we have the proper knowledge when charging individuals with offenses against either our Detention Officers or Deputies.

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

LAW / ANALYSIS

S.C. Code Ann. Sec. 23-1-145 provides as follows:

> [e]mployees of any county or municipal jail, prison, work camp or overnight lockup facility, while performing their officially assigned duties relating to the custody, control, transportation or recapture of any inmate or prisoner in this State, shall have the status of peace officers anywhere in the State in any matter relating to the custody, control, transportation or recapture of such inmate or prisoner. Provided, that for the purposes of this section no trustee shall be considered an employee.

In Op.Atty.Gen. No. 94-61 (October 18, 1994), we noted that "Section 23-1-145 makes .. detention officers peace officers, much as any other certified officer in the state, over inmates during the times they are housed at the facility, or under their 'control.'" Further, in Op.No. 86-38 (March 19, 1986), it was stated that "[b]y having the status of peace officers, jail employees have the authority to make arrests without a warrant of individuals reasonably suspected of having committed a felony or when the facts and circumstances which are observed by such employees provide probable cause to believe that a crime has been freshly committed." Moreover, referencing Section 23-1-145, we concluded that a warden of a county prison system is a public officer for purposes of dual office-holding. There, we stated that

> [i]f the warden of the county prison system, or jailer, could be considered an employee of the county prison, this statute would be applicable and the warden would be deemed a peace officer. The status of a 'peace officer' as a public officer is discussed in the opinion this Office dated July 3, 1984.

Op.Atty.Gen. (January 17, 1985).

Thus, it is clear that a jailer or detention officer holds the status of a "peace officer" while on duty. As such, these officials, "while performing their officially assigned duties relating to the custody, control, transportation or recapture of any inmate or prisoner", possess the status of any other peace officer or law enforcement officer for purposes of the various statutes relating to the use of force or intimidation of a law enforcement officer. See, e.g. § 16-9-320.

With respect to your second question, the case you reference is State v. Bridgers, Op.No. 2522 (Ct.App., Filed June 17, 1996). The Court construed Section 16-3-1040 which provides as follows:

> [i]t is unlawful for any person to knowingly and wilfully deliver or convey to a public official or to a teacher or principal of an elementary or secondary school ... any verbal ... communication which contains any threat to take the life of or to inflict bodily harm upon the public official, teacher, or principal or members of their immediate families.... For purposes of this section: (1) 'Public official' means any elected or appointed official of the United States or of this State or of any county, municipality, or other political subdivision of this State.

In Bridgers, the Court of Appeals held that a highway patrolman was not a "public official" for purposes of this statute, the Court reasoned as follows:

> [u]nder the test articulated by our Supreme Court ... dealing with criminal prosecutions for public misconduct, Cpl. Chamberlain, as a highway patrol officer, would be considered a public official. However, he is not a public official within the clear meaning of S.C.Code Ann. § 16-3-1040 (Supp.1995). The definitional section of that statute expressly defines a public official as "any elected or appointed official of the United States or of this State." The common law test for determining whether an individual is a public official in the context of criminal prosecution has no application where the statute itself undertakes to define the term "public official." Highway Patrol officers, not being "elected or appointed," cannot be considered public officials within the meaning of § 16-3-1040.
>
> Moreover, S.C. Ann. § 16-2-1040 (Supp.1995) is penal in nature and therefore must be strictly construed against the State and in favor of the defendant. [citations omitted]. The General Assembly amended § 16-3-1040 in 1990 to extend the provisions of this section to teachers and principals of elementary and secondary schools, who, like highway patrol officers,

> are neither elected nor appointed. If highway patrol officers are to come within the scope of § 16-3-1040, that decision must be made by the General Assembly, not by this Court.

This Office strongly opposed the position adopted by the Court in this case.

Subsequent to Bridgers, however, the Court of Appeals decided State v. Carter, Op.No. 2563 (Ct.App. Filed October 7, 1996). The factual context of that case was whether a municipal police officer was a "public official" for purposes of § 16-3-1040. The Court decided in the affirmative. Judge Goolsby, speaking for the Court of Appeals, concluded:

> [t]his court recently addressed the question of whether an individual is a public official within the meaning of § 16-3-1040 in State v. Bridgers, ___ S.C. ___, 473 S.E.2d 829 (App.1996) (Davis Adv.Sh. No. 16 at 11). In Bridgers, this court held that highway patrol officers cannot be considered public officials within the meaning of § 16-3-1040 because they are not "elected or appointed." In contrast, however, municipal police officers are elected or appointed to their positions. See S.C. Const. art. V, § 24 (the South Carolina General Assembly may provide by law for "the selection, duties, and compensation of other appropriate officials to enforce the criminal laws for the State ...."); S.C.Code Ann. § 5-7-110 (1977 and Supp.1995) ("Any municipality may appoint or elect as many police officers, regular or special, as may be necessary for the proper law enforcement in such municipality and fix their salaries and prescribe their duties."). See also 1984 Op. S.C. Att'y Gen. No. 84-103 (a police officer is included within the definition of a "public official" as set forth in § 16-3-1040).

There is little question in my mind that a deputy sheriff is also a "public official" for purposes of § 16-3-1040. Section 23-13-10 of the Code provides that

> [t]he sheriff may appoint one or more deputies to be approved by the judge of the circuit court ... . Such appointment shall be evidenced by a certificate thereof, signed by the sheriff, and shall continue during his pleasure. (emphasis added).

Moreover, in Willis v. Aiken County, 203 S.C. 96, 26 S.E.2d 313 (1943), the Court found that the position of deputy sheriff constituted a public office. Noting that the "office of under or deputy sheriff is one of the oldest offices known to the law" which "had it origins in the common law", the Court concluded that the office possessed all the requisites of a public office. Deputy sheriffs, said the Court,

> ... are required to take the oath of office, give an official bond, and after appointment and qualification they may perform any and all of the duties appertaining to the office of sheriff. The right, authority and duty of a deputy sheriff are thus created by statute. He is invested with some portion of the sovereign functions of the government, to be exercised in behalf of the public, and is, consequently, a public officer within any definition given by the County or text writers. It can make no difference that the appointment is made by the sheriff. The power of appointment comes from the state, the authority is derived from the law, and the duties are exercised for the benefit of the public. (emphasis added).

203 S.C. at 102-103.

Thus, it is my opinion that a Deputy Sheriff would constitute a "public official" for purposes of § 16-3-1040.

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