5931 Library

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

May 20, 1996

The Honorable C. David Stone
Sheriff, Pickens County
216 L.E.C. Road
Pickens, South Carolina 29671

Re: Informal Opinion

Dear Sheriff Stone:

You note that the Pickens County Council "has enacted a county ordinance ... concerning demonstrations, picketing, protests and other expressions of views on Pickens County property." Further, you indicate that "[t]he most likely location where this ordinance would apply is the County Administration Building and the Law Enforcement Complex, both located within the corporate city limits of Pickens." Your questions are thus, first, whether the county ordinance is enforceable within corporate limits, and secondly, if so, is the Sheriff's Office "the only law enforcement agency with jurisdiction to enforce breaches of this ordinance within the city?"

I presume for purposes of your question that the Town of Pickens has not adopted an identical ordinance to that adopted by the county. In addition, I make no comment regarding the substance of the ordinance itself; my views as expressed herein relate only to your specific questions.

In Op. No. 88-18 (February 25, 1988), we addressed in considerable detail the question of "the applicability of a Richland County ordinance governing bingo games to

Request Letter

the operation of such games within incorporated areas of the county." We referenced Art. VIII, Sec. 13 of the South Carolina Constitution,[1] which provides as follows:

> [a]ny county, incorporated municipality or other political subdivision may agree with the State or with any political subdivision for the joint administration of any function and exercise of powers and the sharing of costs thereof.
>
> Nothing in this constitution shall be construed to prohibit the State or any of its counties, incorporated municipalities or other political subdivisions from agreeing to share the lawful cost, responsibility, and administration of functions with any one or more governments, whether within or without this State.

Moreover, the opinion referenced S.C. Code Ann. Section 4-9-40 which permits a county to

> perform any of its functions, furnish any of its services within the corporate limits of any municipality, situated within the county, by contract with any individual, corporation or municipal governing body, subject always to the general law and the Constitution of this State regarding such matters. Provided, however, that where such service is being provided by the municipality or has been budgeted or funds applied for that such service may not be rendered without the permission of the municipal governing body.

We advised in the Opinion that

> [c]learly, by these provisions, counties and municipal corporations may agree to jointly administer services or exercise powers. By reasonable implication, a county could not

---

[1] We have previously concluded that Art. VIII, Sec. 13 is "self-executing and therefore requires no legislative implementation to make its provisions effective." Moreover, we have interpreted the phrase "any function" as used in the provision as "any function which the various political subdivisions are authorized by law to undertake." Op. Atty. Gen., No. 3498 (March 27, 1973).

> exercise power within an incorporated municipality unless such an agreement existed or, in effect, the municipality has assented to the county's exercise of power.

The 1988 Opinion also cited an earlier opinion, Op. Atty. Gen., May 21, 1987, which concluded:

> "Insofar as whether or not it [county ordinance] would include the municipalities within Richland County, the answer is 'no.' The Council has no authority to enact ordinances which are enforceable within the confines of municipalities. However, by agreement, the council could agree to enforce ordinances within the municipalities of Richland County."

(emphasis added). Thus, it has consistently been the opinion of this Office that the only way a county ordinance could be made applicable to an incorporated area is by virtue of an agreement between the two political subdivision, to the effect that county ordinances are applicable within the city limits.

Moreover, we have also previously recognized that a municipality may contract with a county for the receipt of law enforcement services. In an opinion, dated May 17, 1978, we advised that a Sheriff's Department could contract with a municipality to provide police protection, stating:

> [t]here are currently no state statutes which would prevent the Greenville County Sheriff's Department from offering Contract Law Enforcement services to municipalities within Greenville County. Both counties and incorporated municipalities have the ability to contract, a power given them by sections 4-9-30(3) and 5-7-60 of the CODE OF LAWS OF SOUTH CAROLINA, 1976 respectively. Section 5-7-110, CODE OF LAWS OF SOUTH CAROLINA, 1976, grants a municipality the power to appoint as many police officers as are necessary for the proper law enforcement of the municipality. The 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 by Article VIII, section 13, of the SOUTH CAROLINA CONSTITUTION, and section 6-1-20, CODE OF LAWS OF SOUTH CAROLINA, 1976. I believe reading

> these above sections in conjunction enables an incorporated municipality to enter into a contractual arrangement with a county to provide law enforcement services to the municipality.

Further, in an Opinion of April 11, 1985, we reiterated:

> ... while a county and county officials are not as a general matter obligated to perform services within the corporate limits of a city, the General Assembly has provided by statute for municipal residents to contract for county services in certain situations. Section 4-9-40 of the Home Rule Act authorizes a county to "perform any of its functions, furnish any of its services within the corporate limits of any municipality, situated within the county, by contract with any individual, corporation or municipal governing body, subject always to the general law and the Constitution of this State regarding such matters." ... Such services cannot be provided, however where the service "is being provided by the municipality or has been budgeted or funds have been applied for" unless permission is given by the municipal governing body.

This Office has consistently recognized the status of the Sheriff as the chief law enforcement officer of the county. Op. Atty. Gen. May 8, 1989; Op. Atty. Gen. No. 92-67 (November 6, 1992). We have noted that, pursuant to S.C. Code Ann. Secs. 23-13-50 et seq. and 23-15-40 et seq., the Sheriff and his deputies are required to patrol their county and provide law enforcement services to its citizens. Notwithstanding these obligations, however, the Sheriff "as a county official, is not generally considered to be obligated to provide specific services within a municipality", but is authorized to "offer contract law enforcement services to a municipality." Op. No. 92-67, supra.

Section 23-13-70 requires deputy sheriffs to "patrol the entire county" where they serve as deputies. Such enactment obligates deputies "to prevent or detect crime or make an arrest ... for the violation of every law which is detrimental to the peace, good order and the morals of the community." Moreover, Section 23-13-20 prescribes the oath of office of a deputy sheriff to be "alert and vigilant to enforce the criminal laws of the State." (emphasis added).

In McKittrick v. Williams, 144 So.2d 98 (Mo. 1940), the Missouri Supreme Court analyzed the duties and responsibilities of a sheriff as compared to other law enforcement officials in the county. The Court wrote with respect to the Sheriff's powers:

> [h]is authority is county wide. He is not restricted by municipal limits. For better protection and for the enforcement of local ordinances the cities and towns have their police departments or their town marshals. Even the state has its highway patrol. Still the authority of the sheriff with his correlative duty remains. It has become the custom for the sheriff to leave local policing to local enforcement officers but this practice cannot alter his responsibility under the law. ... There is no division of authority into those of the sheriff and the police. Each is a conservator of the peace possessing such power as the statutes authorize ... In every county there are a number of peace officers of varying authority. They and the sheriff must work in harmony.

Id. at 104. Courts have generally held that local ordinances--municipal as well as county--constitute "criminal laws" of the State. Rincon Band of Mission Indians v. San Diego Co., 324 F.Supp. 371, 375 (1971) [county gambling ordinance]. When the words "laws of this state" are used, the generally accepted meaning is that these words include state statutes as well as municipal ordinances. City of Dayton v. Adams, 9 Ohio St.2d 89, 223 N.E.2d 822, 824 (1967). See also, Kansas City v. Jordan, 163 P. 188, 191 (Kan. 1917); In re Lawrence, 11 P. 217 (Cal. 1886); People v. Walker, 135 Mich.App. 267, 354 N.W.2d 312, 318 (1984). Contra, Hunter v. State, 761 P.2d 502, 503 (Ore. 1988). As our Supreme Court has noted, by enacting Home Rule, the Legislature intended "to ... restore autonomy to local government." Williams v. Town of Hilton Head Island, 311 S.C. 417, 429 S.E.2d 802, 805 (1993); Knight v. Salisbury, 262 S.C. 565, 571, 206 S.E.2d 875, 875 (1974) ["It is clearly intended that home rule be given to the counties and that county government should function in the county seats rather than at the State Capitol."] Thus, within the respective spheres of the police power of counties and municipalities, the proper adoption of ordinances by these political subdivisions would be considered "criminal laws of this State."

Your specific question was addressed in a comprehensive opinion of the Wisconsin Attorney General, OAG 24-86 (July 15, 1986). There, the two municipalities wished to enter into law enforcement contracts with the county. Through this contract, "the municipalities would secure additional patrol, visibility, physical presence and law enforcement not only of state law and county ordinance[s], but enforcement of town or

village ordinances." Officers patrolling would be deputy sheriffs "solely under the control of the sheriff." The municipalities would pay the Sheriff for these additional services as part of the contract.

Pursuant to Wisconsin statute, political subdivisions could contract with each other for the receipt of furnishing of services or the joint exercise of any power. The Wisconsin Attorney General thus concluded:

> [i]t is apparent, then, that the Sheriff's general county-wide responsibilities give him the authority to enforce state statutes and county and municipal ordinances within the boundaries of villages and towns. The county may contract for the sheriff to act to the limits of this law enforcement authority to provide supplemental law enforcement to both the village and the town.

The Wisconsin Attorney General, citing Professional Police Assn. v. Dare County, 106 Wis.2d 303, 316 N.W.2d 656 (1982), further concluded that the county could not "limit a sheriff's exercise of discretion concerning the performance of his or her traditional duties. Since the proposed contracts would affect the exercise of the sheriff's traditional law enforcement duties, the sheriff's approval is required."

The foregoing authorities would indicate that the Sheriff could enforce the ordinance pursuant to any intergovernmental agreement between the City of Pickens and Pickens County. Such agreement is the recognized mechanism for enforcing a county ordinance in the city limits. While our Supreme Court has not given its approval to such agreements in this context, and only a court can decide the matter with finality, I am fairly comfortable that the Sheriff does have the authority to enforce county and municipal ordinances generally. Thus, it is my opinion that the Sheriff could enforce the county ordinance in the city if there is an intergovernmental agreement between the county and the municipality. Such practice is apparently fairly common in other areas of the State. Of course, the municipality could also itself adopt the same ordinance as the county for enforcement in the city.

As to your question regarding whether any other law enforcement could enforce the county ordinance (without separate adoption by the municipality) in the city, the law, again, in this area has not been settled by our Supreme Court. Absent a definitive ruling by the Court, however, it would appear to me that the municipal authorities could also enforce the county ordinance.

In County of Peoria v. Capitelli, 494 N.E.2d 155 (Ill. 1986), the Court upheld an agreement between a county and a municipality for enforcement of a county ordinance under a constitutional provision similar to our Art. VIII, Section 13, and concluded that the municipality could enforce the ordinance. The Court reasoned as follows:

> [w]e disagree with the defendant's contention that the county's intergovernmental agreement violated article 7, section 10 of the Illinois Constitution. Under this constitutional provision, units of local government may share services and combine, transfer, or exercise any functions or power in conjunction with another unit of local government ... .
>
> These various constitutional provisions clearly support the scope and purposes of the county's agreement with the city. We find no evidence of constitutional impropriety in allowing city attorneys to act in their appointed capacity as assistant state's attorneys. Pursuant to the terms of the Peoria intergovernmental agreement, the attorneys for the city did possess the requisite authority to prosecute the defendant. Such delegations of authority are also permitted under section 5 of the Intergovernmental Cooperation Act ... . According to this provision, public agencies may contract with each other to perform any governmental service which any agency is authorized by law to perform. This capacity of public agencies to contract and transfer functions thus provides additional support for the Peoria intergovernmental agreement.

494 N.E.2d at 154-155. Thus, the Court found that enforcement by city officials of a county ordinance made applicable to the city by mutual agreement, was valid.

Consistent therewith, Section 5-7-110 relates to the powers and authority of municipal police officers and provides as follows:

> [a]ny 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.
>
> Police officers shall be vested with all the powers and duties conferred by law upon constables, in addition to the

> special duties imposed upon them by the municipality. (emphasis added).

Thus, a municipality possesses the authority to assign additional duties to its police officers. Accordingly, it would appear that a municipality, through implementation of an agreement between the city and county as outlined above, could assign its police officers the additional duty of enforcing the county ordinance made applicable to the city pursuant to the agreement. I would caution again, that these issues have not been finally settled by our Supreme Court.

As to any additional specific question regarding these matters, I would refer you to the city and county attorney concerning these issues. Such intergovernmental cooperation is necessary to implement the type of arrangement as is contemplated in your letter.

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