



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 28, 1997

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

Re: Informal Opinion

Dear Sheriff Brown:

You have asked me to look into the question of what duties and responsibilities does the Sheriff have with respect to the security of the courthouse and the courtroom.

Law / Analysis

A sheriff is, of course, the chief law enforcement officer of the county. Op. Atty. Gen., July 10, 1996 (Informal Opinion); Op. Atty. Gen., May 8, 1989. The sheriff's jurisdiction encompasses the entire county.

With respect to the Sheriff's relationship to the courts of this State, the Sheriff is in a somewhat unique position. The case of State v. Brantley, 279 S.C. 215, 305 S.E.2d 234 (1983) is particularly instructive. In Brantley, the trial judge was presiding over a guilty plea proceeding in Hampton County. Learning that the Sheriff of Jasper County was in possession of certain records, the judge asked the Solicitor's office to notify the Jasper County Sheriff to appear in court with the records at a designated time. The Sheriff refused to appear, choosing to send the records via a deputy. Upon the Sheriff's failure to appear, the trial judge had word sent back to the Sheriff to appear in court the next morning "without fail." However, the Sheriff again refused.

The trial court found the Sheriff in contempt of court. On appeal, the Sheriff argued that the lower court erred in holding him in contempt because he had received no

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subpoena or subpoena duces tecum and because he was sheriff in an adjoining county rather than the county where court was being held."

The Supreme Court found the Sheriff's arguments to be without foundation, however. Reasoning that the order directed to the Sheriff was binding, the Court stated:

[t]he court's order was valid, was directed to appellant in his official capacity as an officer of the court, and his wilful failure to comply constituted a constructive contempt of court, which tended to "obstruct and embarrass or prevent the due administration of justice." Long v. McMillan, et al., 226 S.C. 598, 609, 86 S.E.2d 477 (1955).

279 S.C. at 217.

Several statutes are also relevant to this question; these enactment reinforce the Court's holding in Brantley regarding the Sheriff as an officer of the various courts of this State. Section 23-15-80 of the Code provides that

[t]he sheriffs or their deputies shall attend all the circuit courts that may be held within their respective counties and enforce such rules as such courts may establish. During the term time of any such court any sheriff or his deputy shall serve any rule of such court or writ of attachment for any contempt thereof on any party or witness in any part of this State. The party moving for such service shall be liable to pay such sheriff the costs in cash for such service on the return of such rule or writ of attachment.

And with regard to the Family Court, § 20-7-1450 states:

[i]t is made the duty of every county, town or municipal official or department to render such assistance and cooperation within his or its jurisdictional power to further the objects of the Family Court Act. Law enforcement officers' "jurisdictional power" includes both the arrest and transportation of prisoners. The policy enunciated in this section indicates the intention of the legislature that all public officials and departments cooperate with the Family Courts, and this applies to the officers of the County in which the

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Family Court is sitting as well as to the officers of the county in which an arrest warrant might be sent for execution.

Section 14-3-150 further provides the following as to the Supreme Court:

[t]he Supreme Court may require the sheriff of each and every county to whom any order or process issuing from said court may be directed to serve and execute the same and shall have the same power to enforce such service and execution and to punish default thereon as is vested in circuit courts on processes issuing therefrom. The sheriff and clerk of each and every county, whenever required, shall attend any hearing in any case by any of the justices at the courthouse in any of the counties.

Section 23-15-40 also requires

[t]he sheriff or his regular deputy, on the delivery thereof to him, [to] serve, execute and return every process, rule, order or notice issued by any court of record in this State or by other competent authority.

No statute of which I am aware specifically mentions the Sheriff's duties with respect to the courthouse per se. Thus, such duties would be encompassed only as an officer of the court or as part of the general law enforcement duties of the Sheriff. I would note for your information, however, the following statement of law found in 80 C.J.S., Sheriffs and Constables, § 46:

[c]ustody of the courthouse is a duty which at common law rests on the sheriff as an incident to his general duties; but under a statute giving a sheriff the custody and care of the courthouse and jail of his county, "except as otherwise provided," the sheriff is a mere custodian of the building, and he has no estate or interest, possessory or other, therein. A statute putting the sheriff in charge and control of the courthouse, subject to regulations of the commissioner's court, places the sheriff in charge and control merely for the purpose of keeping order and preserving the property, and not for the purpose of keeping the building in usable condition

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This article goes on to say that the duty of the sheriff with respect to the courthouse at common law "flows from his position as an executive officer of the court." Id., n. 94, citing People ex rel. Walsh v. Bd. of Commrs. of Cook County, 397 Ill. 293, 74 N.E.2d 503.

Pursuant to § 14-17-210 of the Code, the Clerk of Court "shall have charge of the courthouse within his county" However, notwithstanding that the Clerk of Court is given custody and charge of the courthouse in South Carolina, it could still be argued that the sheriff as an officer of the courts of the State still possesses a common law duty to keep the courthouse secure. However, I must emphasize I have found no case in this State which directly addresses the issue -- only the general authority referenced above.

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