

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3970
FACSIMILE 803-253-6283

November 15, 1991

Jeffrey B. Moore, Executive Director
South Carolina Sheriffs' Association
P. O. Box 21428
Columbia, South Carolina 29221-1428

Dear Jeff:

In a letter to this Office you questioned the permission that must be obtained before an officer may perform private jobs while using their issued weapon, uniform and like equipment. You referenced a previous opinion of this Office dated March 20, 1985 which construed Sections 23-24-10 et seq. of the Code as permitting such off-duty work where the following conditions are met:

1. a determination by the agency head of the agency that employs the law enforcement officer that such employment would not have any adverse effects on the agency, officer or profession, and that such employment would be in the public interest;
2. permission of the law enforcement agency that employs the officer;
3. permission of the governing body by which they are employed if the official uniforms, weapons, and like equipment is to be utilized by the uniformed officer while off-duty;

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4. notice is given by the officer to the law enforcement agency of the place of employment, of the hours to be worked and the type of employment.

Section 23-24-10 states:

Uniformed law enforcement officers ... may wear their uniforms and use their weapons and like equipment while performing private jobs in their off duty hours with the permission of the law enforcement agency and governing body by which they are employed.

Referencing recent court decisions which you indicate construed deputies as employees of the sheriff and not of the county, you questioned whether it remains necessary for the sheriff to obtain permission from the county in order to authorize his deputies to be employed in off-duty private jobs.

While not identifying which court decisions you are referring to, I assume you are citing decisions such as Heath v. County of Aiken, 295 S.C. 416, 368 S.E.2d 904 (1988) and Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979) which reference the general law in this State that a deputy serves at the pleasure of the sheriff. See: Section 23-13-10 of the Code. However, based upon my review, it appears that Sections 23-24-10 et seq., and especially the requirement that a deputy obtain permission from the county governing body prior to entering into off-duty employment, should not be construed as conflicting with such decisions.

In Rhodes the Supreme Court determined that inasmuch as a deputy serves at the pleasure of the sheriff, statutes which provide for county and municipal grievance procedures should not be construed as limiting such pleasure. Similarly, in Heath the Court ruled that the General Assembly did not intend for the grievance procedure established by Section 4-9-30(7) of the Code to be applicable to deputies. The Court stated that

... deputies are not "employees" for purposes of Section 4-9-30(7). Next, the statutes establishing the relationship between sheriff and deputy should

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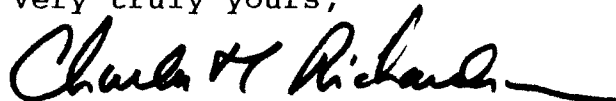
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not be "considered as repealed by a later general statute unless there is a direct reference to the former statute or the intent of the legislature to repeal the earlier statute is implicit" ... In ... (Anders v. County Council for Richland County) ... we held that Section 4-9-30(7) is subordinate to a statute specifically stating that employees of a solicitor serve at his "pleasure."

However, the General Assembly in providing in Sections 23-24-10 et seq. for outside private jobs for law enforcement officers specifically set forth the requirement that permission of the governing body which employs the officer provide permission. Moreover, such a requirement should not necessarily be construed as impacting on a deputy's service at the pleasure of the sheriff in that the outside employment by a deputy is distinguishable from the situations before the Court in Rhodes and Heath where the direct employment relationship between the sheriff and the deputy was more at issue. In this instance it appears that any change removing the requirement regarding the permission of the governing body should be sought by legislative amendment.

With kind regards, I am

Very truly yours,



Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions