

The State of South Carolina



Office of the Attorney General

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October 16, 1991

Peter D. Hyman, Esquire
Florence County Attorney
P. O. Box 1770
Florence, South Carolina 29503

Dear Mr. Hyman:

You indicated that the Town of Lake City has requested that Florence County appoint a special constable to provide supplemental law enforcement for the Town. It is my understanding that such appointment would be made pursuant to Section 4-9-145 of the Code which states:

The governing body of a county may appoint and commission as many enforcement officers as may be necessary for the proper security, general welfare, and convenience of the county. These officers are vested with all the powers and duties conferred by law upon constables in addition to duties imposed upon them by the governing body of the county; however, such duties shall not conflict with Section 4-9-30(5) as it relates to the reorganization or restructuring of the sheriff's department or the functions and duties presently being performed by the sheriff. These enforcement officers shall exercise their powers on all private and public property within the county.

Section 4-9-145 was enacted as a means of providing law enforcement authority for individuals in salaried county positions such as animal control and litter control. Because of their law enforcement authority, these officers are required to attend the State Criminal Justice Academy. See: Section 23-23-40 of the Code.

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As referenced Section 4-9-145 states that the duties imposed on the officers commissioned pursuant to such provision shall not conflict with the provisions of Section 4-9-30(5) relating to the reorganization or restructuring of the sheriff's department or the functions performed by that department. Such statute states

... if any appropriation relative to police protection would result in reorganization or restructuring of a sheriff's department or, if any appropriation relative to police protection would limit the duties of the sheriff or provide for police protection duplicating the duties and functions presently being performed by a sheriff, it shall not take effect until the qualified electors of the county shall first approve the appropriation by referendum called by the governing body of the county; ...

As to Section 4-9-30(5), a prior opinion of this Office dated October 26, 1987 stated:

This Office has never attempted to define or delineate in detail the meaning of the terms ... (restructuring or reorganization) ... However in Roton v. Sparks, 270 S.C. 637, 244 S.E.2d 214 (1978), the State Supreme Court applying this proviso stated that its provisions are "plain" and "clear" ...

See also: Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717 (1986) (the Court while referencing Section 4-9-30(5) did not expressly define all situations where a referendum would be necessary.)

You indicated that under the proposal a special constable would be appointed by the county to provide supplemental law enforcement for a particular municipality within the county. An opinion of this Office dated December 21, 1988 recognized the status of a sheriff as the chief law enforcement officer of his county and concluded that a sheriff has law enforcement jurisdiction throughout his respective county, including its political subdivisions. The opinion quoted the comment that

(s)ince the sheriff is a county officer, his authority extends over the entire county, and includes all ... (political subdivisions) ... within his county.

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While the impact of the referenced proposal on a sheriff's department is not immediately clear, a court could possibly conclude that an appointment of an officer pursuant to Section 4-9-145 to provide supplemental law enforcement for a municipality could constitute a conflict with Section 4-9-30 inasmuch as it could be duplicative of duties and functions already performed by the sheriff. Also, such might possibly be considered a restructuring or reorganization of that department. Therefore such an appointment would not be authorized absent compliance with the referendum requirements of Section 4-9-30.

If there is anything further, do not hesitate to contact me.

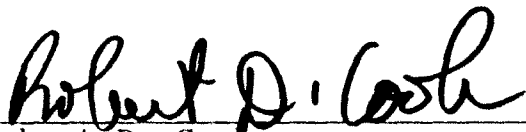
Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions