

The State of South Carolina



Office of the Attorney General

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January 28, 1991

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

Dear Sheriff Brown:

In a letter to this Office you indicated that consideration is being given to contracting the service of civil process with a private entity. Under such a procedure, individuals designated to serve civil process will be commissioned by you as special deputies for the purpose of serving civil process. These individuals' commissions will be restricted solely to serving civil process and they would not be authorized to exercise any law enforcement authority. Any civil process involving the actual seizure of property would be accomplished by a full-time deputy sheriff who has met all training requirements. By contract with the county, fees collected by the private entity would be remitted weekly to the county and the county would issue a check to the entity for the same amount for the services rendered. You asked whether this procedure would conflict with the law enforcement training statutes, Sections 23-23-10 et seq. of the Code.

Pursuant to Section 23-23-10(D), a "law enforcement officer" is defined as

... an appointed officer or employee hired by and regularly on the payroll of the State or any of its political subdivisions, who is granted statutory authority to enforce all or some of the criminal, traffic, and penal laws of the State and who possesses, with respect to those laws, the power to effect arrests for offenses committed or alleged to have been committed.

Section 23-23-40 mandates training for any law enforcement officer within the referenced definition. Such statute provides

Should any such person fail to secure certification within one year from his date of employment, he may not perform any of the duties of a

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law enforcement officer involving control or direction of the public or exercising the power of arrest until he has been certified.

Section 23-13-40 of the Code provides

The sheriff, without seeking the approval of the circuit judge, may appoint special deputies as the exigency of his business may require for the service of process in civil and criminal proceedings. He shall be responsible for the conduct of such special deputies.

A prior opinion of this Office dated May 1, 1978 citing the decision of the State Supreme Court in McConnell v. Kennedy, 29 S.C. 180, 7 S.E. 76 (1888) indicated that these special deputies

... need not qualify as regular law enforcement officers ... Since special deputies are appointed only for the service of process, they have no authority to carry weapons and exercise no general police authority. They accordingly have no authority to arrest persons, other than that possessed by ordinary citizens in this state.

See also: Opins. Atty. Gen. dated October 31, 1977 and August 8, 1977; Bryant v. State, 264 S.C. 157, 213 S.E.2d 451 (1975) ("the authority of the special deputy is fixed by the statute" ... citing Section 23-13-40). In an opinion of this Office dated May 7, 1965 it was noted that a special deputy "... should not be allowed to have a pistol on his person, as he is not a peace officer...." An opinion dated December 29, 1960 indicated that a special deputy

... is not an officer in the proper sense of the word and is not required to give any bond ... (H)e can only serve civil or criminal process or papers. He is not, in any sense, a regular police officer.... He is not to be considered in the class with a deputy who is to make arrests and perform all of the other functions of a peace officer such as are performed by regular deputies....

See also: Opin. Atty. Gen. dated January 6, 1960 (special deputies "... are not officers but merely agents of the sheriff and their appointment is ... for the occasion....)

Referencing the above, it does not appear that the appointment of individuals as special deputies to serve civil process only, with no other law enforcement authority, would conflict with statutory provisions mandating training for law enforcement officers generally

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as set forth in Sections 23-23-10 et seq. As you indicated, these special deputies would serve civil process only and would not carry a weapon, make an arrest or exercise general law enforcement authority. Therefore, these individuals would not have to undergo the type training required of law enforcement officers generally. Of course, if the duties of these special deputies was expanded to include any duty beyond the mere service of civil process, further examination would be necessary.

It is my understanding that the referenced contract would be between the county and the private entity. In these circumstances, reference to the provisions of Section 4-9-30(5)(d) may be necessary. Such statutes indicates:

provided, further, that 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.

Therefore, in drafting any contract care should be taken to assure compliance with such provision where necessary.

If there is anything further, please advise.

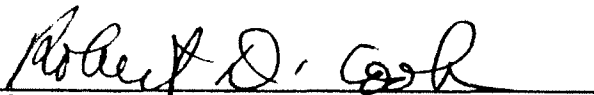
Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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