

The State of South Carolina

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September 11, 1992

Michael M. Hatfield, Chief Deputy
Office of Sheriff, Beaufort County
P. O. Box 1758
Beaufort, South Carolina 29901

Dear Deputy Sheriff Hatfield:

In a letter to this Office you raised several questions relating to bailiffs.

You first asked whether a bailiff has arrest powers. If so, by what authority or oath does the bailiff act. By definition, a bailiff is a "court officer or attendant who has charge of a court session in the matter of keeping order, custody of the jury and custody of prisoners while in the court." Black's Law Dictionary (5th Ed. 1979). The only statutory authority with which I am familiar that relates to bailiffs for circuit court is S.C. Code § 14-15-210 which states:

The sheriff of the respective counties in this State shall be empowered to appoint as many bailiffs as they see fit, not to exceed five in number, whose duties shall be as now provided by law. The bailiffs may be removed, increased or decreased by the circuit judge within his discretion.

Such provision does not explicitly set forth any arrest authority for a bailiff. The only reference to their authority is that their duties "shall be as now provided by law." No precise guidelines are established and I am unaware of any case law in this State which expressly provides for arrest authority for bailiffs. Of course, any individual situation would have to be examined to consider whether any express grant of authority was made.

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As to your question regarding by what authority does a bailiff act, again, Section 14-15-210 specifies that bailiffs are appointed by action of the sheriff.

You also asked whether a bailiff can carry a pistol. S.C. Code § 16-23-20 states that it is unlawful for anyone to carry about the person, concealed or not, any pistol. Twelve exceptions to such prohibitions are set forth. Included is the exception for any

(1) Regular, salaried law enforcement officers of a municipality, county, of the State, uncompensated Governor's constables, law enforcement officers of the federal government or other states when they are carrying out official duties while in this State, deputy wildlife conservation officers within their territorial jurisdictions, and reserve police officers while serving and functioning as law enforcement officers as authorized by § 23-28-10 et seq.

It does not appear that bailiffs should be considered "regular, salaried law enforcement officers." There are no specific exceptions for bailiffs. However, included in the exceptions is the authorization for an individual to apply to the State Law Enforcement Division for a permit to carry a pistol. Based upon a review of prior opinions of this Office, unless there is a specific statute particularly authorizing an individual to carry a pistol or unless an individual falls within one of the exceptions set forth in Section 16-23-20, an individual would have to obtain a permit in order to carry a pistol.

In a telephone conversation the question was also raised as to whether a bailiff should be considered as holding an office for dual office holding purposes.

Article XVII, Section 1A of the state Constitution provides that "no person may hold two offices of honor or profit at the same time . . .," with exceptions specified for an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public. For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications

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or an oath for the position. State v Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

I am unaware of any prior opinions of this Office which have dealt with the question of whether a bailiff holds an office for dual office holding purposes. However, Section 14-15-210 creates the position, provides for the appointment of bailiffs, and specifies their duties. As referenced, by definition bailiffs are considered "officers of the court." As such, they may be considered as exercising some portion of the sovereign power of the State. Although the statute does not specify an oath of office, it is generally observed that bailiffs take an oath before beginning their duties. Referencing the criteria set forth above, a bailiff would probably be considered an officer for dual office holding purposes.

If there is anything further, please advise.

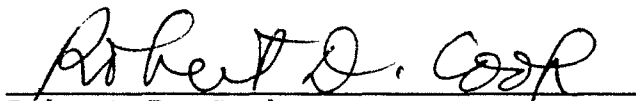
Sincerely,



Charles H. Richardson
Assistant Attorney General

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