

# The State of South Carolina



## Office of the Attorney General

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The Honorable Joyce C. Hearn  
Member, House of Representatives  
1300 Berkeley Road  
Columbia, South Carolina 29205

Dear Representative Hearn:

You have also asked whether the reorganization of the Richland County Sheriff's Department by placing the Emergency Preparedness Department of the County under the supervision of the Sheriff requires a referendum pursuant to the provisions of Section 4-9-30 (5) of the South Carolina Code of Laws. Section 4-9-30 (5) 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. (emphasis added)

This Office has never attempted to define or delineate in detail the meaning of the terms used in this proviso, i.e. words such as "reorganization" or "restructuring" or "limit[ing]" or "duplicating" the duties and functions" of a sheriff. However, in Roton v. Sparks, 270 S.C. 637, 639, 244 S.E.2d 214 (1978), the State Supreme Court applying this proviso stated that its provisions are "plain" and "clear". In another opinion, the Court, while referencing the provision, did not expressly define all situations where a referendum would be necessary. See: Graham v. Creel et al., 289 S.C. 165, 345 S.E.2d 717 (1986).

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The word "reorganization" is generally defined in this context as

... the alteration of the existing structure of governmental entities (as bureaus or legislative committees) and the lines of control or authority between them, usually to promote greater efficiency and responsibility.

Webster's Third New International Dictionary. The word "restructure" generally means to give "new structure or organization to". "Reorganization" in a similar context has also been defined as "the planned elimination, addition or redistribution of functions or duties in an organization." 5 C.F.R. 2 351.203(g). Whether a court would apply these generally accepted definitions is not known. However, this Office has previously stated that regardless of whether the "reorganization" or "restructuring" results in an expansion or diminution of a sheriff's duties or functions, if such reorganization or restructuring occurs, a referendum is necessary. Op. Atty. Gen. May 17, 1978.

The State Supreme Court held in Roton that where a particular duty or function of a sheriff is prescribed by general law, Section 4-9-30 (5) requires a referendum if such duties or functions are to be altered by county council. [sheriff's function as jailer] But see, concurring opinion of Gregory, J. [where general law prescribes duties of sheriff, county council may not alter, regardless of Section 4-9-30 (5) and referendum requirements]. In Graham, the Court ruled that a referendum was not necessary where the duties or functions of a sheriff's department were not affected in any manner in circumstances where an ordinance was enacted devolving the functions of a county police commission upon a county council and/or county administrator.

In certain instances, this Office has noted the requirement for the referendum set forth by Section 4-9-30 (5). This Office has stated that where providing contract law enforcement services by a sheriff to a municipality results in appropriations which reorganize or restructure a sheriff's department, a referendum is necessary pursuant to Section 4-9-30 (5). Op. Atty. Gen., May 17, 1978. See also: Op. Atty. Gen. June 13, 1985. Additionally, this Office has stated that where a local enactment of the General Assembly has transferred the management of the county jail to the county governing body and the governing body desires to transfer such management back to the sheriff, Section 4-9-30 (5) and its referendum provision would prevent any such transfer prior to a referendum. Op. Atty. Gen. May 13, 1980. While the opinion further stated that it was doubtful that such an enactment could be

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altered except by the General Assembly, the opinion recognized the applicability of Section 4-9-30 (5) to that situation. See also: Op. Atty. Gen. January 23, 1986 [citing Roton v. Sparks and noting that "the home rule act leaves the powers of the sheriff as jailer unaffected at least until such referendum is held."] Also, an opinion dated February 9, 1981 construing a provision in an ordinance which required a sheriff to make weekly inspections of bingo operations commented that if the imposition of such duties required an appropriation, such as an additional deputy, which resulted in the reorganization or restructuring of the sheriff's department, a referendum would be required pursuant to Section 4-9-30 (5) to approve the appropriation.

An opinion dated August 14, 1985 dealt with the question of whether a county council possesses the authority to remove a particular deputy sheriff by not appropriating funds for his position. While recognizing that a county council "is vested with discretion in dealing with any appropriations from the standpoint of general economic and efficiency concerns," the opinion noted that a sheriff possesses both statutory and common law authority to discharge his deputies. The opinion also referenced Section 4-9-30 (5) and the need for its requirements to be followed where applicable. Additionally, in an opinion dated May 8, 1989 reference was made to the referendum requirement in responding to a question regarding the authority of a county council to limit the overtime expenditures by a sheriff for his personnel.

An opinion dated December 4, 1987 dealt with the question regarding the establishment of a county police force or a joint city-county police force. It was stated that if a county council were to create a county police force, the functions of said police force would duplicate the functions of the county sheriff's department, thereby reducing the sheriff's duties to those of process serving and similar functions. If a county council and city council were to jointly create such a joint police force, such would have the same effect on the duties of the sheriff. The opinion noted that any such action contemplated by a county council acting by itself or jointly with a city council would involve changes in the appropriations to the sheriff's department and, therefore, there must be compliance with the provisions of Section 4-9-30 (5) of the Code. See also: Op. Atty. Gen. September 20, 1979.

An opinion dated August 3, 1987 dealt with questions regarding the failure of a county council to fund four positions in a sheriff's department. The question was again raised as to whether such failure to fund constituted restructuring of the department. In

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construing the applicability of Section 4-9-30 (5) to that situation, the opinion concluded that

... the purpose of the proviso contained in § 4-9-30(5) is to protect a sheriff's status as the chief law enforcement officer of a county. Clearly, his role as chief law enforcement officer cannot be altered unless the people of the county approve. It has been stated that "the internal operation of the sheriff's office ... is a function which belongs uniquely to the chief law enforcement officer of the county...."

Based on the opinions cited above, it appears that reference was made to the referendum requirement of Section 4-9-30 (5) in those situations which impacted on the duties of the sheriff. In the situation you addressed, the County Emergency Preparedness Department would be placed under the supervision of the Richland County Sheriff. While only a court could conclusively determine whether such action would constitute a "reorganization" or "restructuring" of the Sheriff's Department in a manner which would require a referendum pursuant to Section 4-9-30 (5), it appears that consistent with prior opinions of this Office the better reading of such provision indicates that such action would constitute such a "reorganization" or "restructuring" so as to require a referendum. Therefore, absent such a referendum, the Richland County Council could not transfer such duties to the Sheriff.

With best wishes, I am

Very truly yours,



Charles H. Richardson  
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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Executive Assistant for Opinions