

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

January 18, 1988

The Honorable Frank Powell
Sheriff of Richland County
1400 Huger Street
Columbia, South Carolina 29201

Dear Sheriff Powell:

By your letter of January 15, 1988, you have advised that your authority as Richland County Sheriff to hire the son of a Richland County Council member has been questioned, due to a Richland County nepotism ordinance. You have asked whether a county council ordinance may restrict the constitutional officer of sheriff from hiring, as a deputy, certain individuals.

County Ordinance

Richland County's nepotism ordinance is found in § 2-392(b) of the codified county ordinances; adopted March 8, 1985, it provides the following:

During a county council member's term of office, no person related to him within the fourth degree of consanguinity or affinity shall be employed in any administrative department, or in the office of any elected or appointed official. This policy applies to promotions, demotions, transfers, reinstatements, and new appointments. The provisions of this section shall not be retroactive, and no action shall be taken concerning those relatives of a council member employed at the time of the adoption of this section.

Because the employment practices of you as sheriff, an elected official, are in question, it is necessary to consider this personnel policy in light of other statutes.

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Section 4-9-30(7) of the Code of Laws of South Carolina (1976), a portion of the Home Rule Act, Act No. 283 of 1975, provides in relevant part that a county council is empowered

to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government but this authority shall not extend to any personnel employed in departments or agencies under the direction of an elected official ...
[Emphasis added.]

By Op. Atty. Gen. No. 85-7 dated January 24, 1985, this Office examined a Spartanburg County personnel policy containing an anti-nepotism provision in light of Section 4-9-30(7) of the Code and concluded that the county policy was inapplicable to employment of a relative by the Spartanburg County Sheriff. 1/ The opinion stated:

Therefore, consistent with Section 4-9-30(7), a sheriff has absolute authority regarding the employment and discharge of

1/ Op. Atty. Gen. No. 85-7 also stated that the state's nepotism statute was not applicable to counties and municipalities. Section 8-5-10 of the Code provides:

It shall be unlawful for any person at the head of any department of this government to appoint to any office or position of trust or emolument under his control or management any person related or connected with him by consanguinity or affinity within the sixth degree.

The South Carolina Supreme Court has, in Bladon v. Coleman, 285 S.C. 472, 330 S.E.2d 298 (1985), interpreted Section 8-5-10 as prohibiting nepotism at the county level, as well as the state level, of government. However, Section 8-5-10 is not applicable in this instance because the individual employed by you as a deputy sheriff is not related to you. Op. Atty. Gen. dated December 10, 1986.

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personnel employed within his department. However, such personnel would be subject to "general personnel system policies and procedures" of the county. Therefore, as to the questions raised in your letter, the county anti-nepotism ordinance which you referenced would be inapplicable to any employment decisions made by you as to your department. ... [Emphasis added.]

Similarly, the conclusion that an elected official of the county, such as a sheriff, would have independence in employing and terminating his employees was reached in Ops. Atty. Gen. dated December 11, 1985 and February 18, 1983. Copies of all three opinions are enclosed herewith.

The above-referenced opinions make it clear that the authority of a county council to adopt personnel system policies and procedures cannot infringe upon the authority of an official elected by the people, such as a sheriff, to make appropriate employment and termination decisions as to the personnel in his employ. 2/ Therefore, it must be concluded that the Richland County ordinance found at § 2-392(b) of the codified county ordinances would not be applicable to the Sheriff of Richland County. The decision to employ the son of a Richland County Council member thus remains with the Sheriff of Richland County.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions

2/ In addition, Section 23-13-10 of the Code states that a deputy sheriff serves at the pleasure of the county sheriff. Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979).