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September 1, 1988

Burnet R. Maybank, III
Counsel to the Governor
Office of the Governor
Post Office Box 11369
Columbia, South Carolina 29211

Dear Mr. Maybank:

In a letter to this Office you questioned whether cities and counties are empowered to confer law enforcement authority comparable to that held by a constable on employees who are not members of a city or county police force or otherwise commissioned law enforcement officers. You indicated that law enforcement authority is needed by certain employees such as building code inspectors or animal control officers.

A prior opinion of this Office dated June 3, 1987 dealt with the question of whether a county was generally authorized to commission certain individuals with law enforcement authority. The opinion concluded that our research had not revealed any statewide legislation authorizing a county to commission individuals as law enforcement officers. Of course, sheriffs are authorized pursuant to Section 23-13-10 of the Code to appoint individuals as deputies. Also, local legislation authorizing county law enforcement agencies is provided for certain counties. See, e.g., Act No. 105 of 1953 (Charleston County Police). As to municipalities, Section 5-7-110 of the Code states in part:

(a)ny municipality may appoint or elect as many police officers, regular or special, as may be necessary for the proper law enforcement in such municipality and fix their

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salaries and prescribe their duties. Police officers shall be vested with all the powers and duties conferred by law upon constables, in addition to the special duties imposed upon them by the municipality.

I am unaware of any separate authority for municipalities to commission individuals with law enforcement authority.

As to your question regarding whether there are any alternatives other than constable commissions available to city and county employees who need to exercise law enforcement authority, I am unaware of any other separate sources of general law enforcement authority. As to the examples cited in your letter, pursuant to Section 6-9-30 of the Code, counties are authorized to appoint building inspectors. Also, pursuant to Section 6-9-70 of the Code violations of building codes are declared to be misdemeanors. However, I am unaware of any provision granting these inspectors law enforcement authority. Also, I am unaware of any source of general law enforcement authority for animal control officers.

You also asked whether there are any legal barriers to city and county employees simply being commissioned by local police departments or sheriffs. I am unaware of any specific basis that would prohibit such a commission. However, typically when individuals receive such commissions they are not restricted as to specific enforcement duties, such as animal control. Section 5-7-110 does state, however, that a municipality in appointing police officers may "prescribe their duties." The establishment of duties of particular municipal police officers would appear therefore to be a matter of local concern. As to individuals being commissioned deputy sheriffs, again, I am unaware of any authority which would prevent such. However, as stated in prior opinions of this Office, the hiring and the discharging of a deputy sheriff are matters solely within the prerogative of the sheriff. See: Opinions of the Atty. Gen. dated January 24, 1985 and August 14, 1985. Moreover, as noted by the State Supreme Court in Heath v. County of Aiken et al., Opinion No. 22871, filed May 23, 1988, a decision which affirmed that a deputy serves at his sheriff's pleasure, "...historically in South Carolina the deputy sheriffs are answerable only to the sheriff and not the county government." Therefore, the duties of a particular deputy are matters strictly within the authority of the sheriff to prescribe.

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If there is anything further, please advise.

Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR:sds

Reviewed and approved by:



Robert D. Cook
Executive Assistant for Opinions