

The State of South Carolina



Office of the Attorney General

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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 referenced action by the City of Greenville and Greenville County in 1972 which consolidated certain law enforcement functions. Pursuant to the arrangements between the two governments, the functions of training, communications, records and identification were assigned to a new agency, the Police Services Bureau. In an opinion dated February 3, 1972, former Attorney General McLeod reviewed this arrangement. In authorizing the cooperative contractual agreement between law enforcement agencies in Greenville, Mr. McLeod indicated that "... areas such as communications, laboratory services, records, canine services and detention appear to be no infringement upon the powers and functions of any law enforcement agency but merely provide for a unified approach to the problem of law enforcement." As you are aware, this Office in an opinion dated June 16, 1986 reaffirmed the referenced opinion of Mr. McLeod.

In 1982, the Police Services Bureau was renamed the Greenville County Department of Law Enforcement Support Services. You indicated that in 1983, a new contract pertaining to this Department was entered into between the City and County which provided that the agreement between these governments would be in effect for a four year term.

However, you further stated that in November, 1986 Greenville County gave notice to the City of Greenville that it intended to terminate the contract in February, 1987. Accordingly, at that time, the contract was terminated. You indicated

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that despite the dissolution of the contract, the law enforcement functions transferred to the Department of Law Enforcement Support Services in 1972 have not been returned to the Sheriff's Department by the County Council. You have asked whether the dissolution of the contract between the County and City should have resulted in the automatic return of these law enforcement functions to the Sheriff's Department.

According to my information, in 1982 the Greenville County Council by ordinance created the Department of Law Enforcement Support Services. The ordinance states that such Department is "... a regular department of county government ..." and "... shall provide its services to the County of Greenville...." I am informed that in 1985 the referenced Department of Law Enforcement Support Services was renamed the Greenville County Law Enforcement Support Department. I am also informed that the ordinance is still in effect.

In the opinion of this Office dated June 16, 1986 noted above, reference was made to the provisions of Section 4-9-30(5) of the Code, a provision of the Home Rule Act, which, according to an opinion of this Office dated May 17, 1978, mandate that if appropriations relevant to police protection would result in the reorganization or restructuring of a sheriff's department so as to expand or lessen the sheriff's duties or functions, a referendum would have to first be called. The 1986 opinion indicated that in the situation where the agreement between the City of Greenville and Greenville County existed when the Home Rule Act was enacted in 1975

... we doubt that a court would require a subsequent referendum to preserve an already existing agreement. While the referendum requirement could be deemed procedural in nature, unless a subsequent agreement or ordinance by county council further "reorganizes" or "restructures" the Sheriff's office or limits the powers and function of the Sheriff, the referendum required by § 4-9-30(5) does not appear to be necessary. We note further that there appears no intention, either expressly or impliedly, within § 4-9-30(5) that it apply retroactively to contracts in place prior to the enactment of the Home Rule Act.

According to our information, there was no further restructuring or reorganizing of the Sheriff's Department by the County

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Council in adopting the referenced 1982 ordinance. The 1986 opinion referenced above commented that if any "reorganization" or "restructuring" or "limitation" upon the Sheriff's functions has occurred since the original agreement, such could not be gathered based upon our information. Instead, such action appears to be consistent with the earlier action by the Council in 1972 in establishing the Police Services Bureau. However, as noted in our opinion to you dated June 16, 1986, any such inquiry into subsequent changes in the Sheriff's office would be factual in nature and, therefore, beyond the scope of an opinion of this Office. The opinion indicated that such facts could be determined by a declaratory judgment.

Inasmuch as Greenville County adopted an ordinance in 1982 creating the Department of Law Enforcement Support Services to provide services to the County, and as indicated, to the Sheriff's Department, it appears that the law enforcement functions handled by the Department of Law Enforcement Support Services would remain with that Department until further action by the County Council. As a result, such functions would not automatically return to the Sheriff's Department upon the dissolution of the contract between the County and City. Moreover, consistent with our earlier advice, inasmuch as such a transfer of functions to the Sheriff's Department would arguably constitute a "reorganization" or "restructuring" of the Department, favorable approval by referendum would be necessary prior to such functions even being returned to the Department.

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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