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The State of South Carolina



Opinion No. 87-72  
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Office of the Attorney General

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August 3, 1987

The Honorable Carrol G. Heath  
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Aiken, South Carolina 29802-0462

Dear Sheriff Heath:

In a letter to this Office you indicated that you have been advised by your County Administrator that four positions in your department have not been funded. As a result, these positions are to be eliminated from your department. You have questioned whether such constitutes restructuring of your department so as to be in conflict with provisions of the home rule act.

In the enactment of the home rule act, now codified as Sections 4-9-10 et seq. of the Code, the General Assembly gave county councils broad authority and discretion to appropriate funds for county purposes. See, 1984 Op. Atty. Gen., No. 84-66, June 11, 1984. Pursuant to § 4-9-30(5), a county council is specifically empowered to

... assess property and levy ad valorem property taxes and uniform services charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided and to make appropriations for functions and operations of the county, including, but not limited to appropriations for ... public safety, including police and fire protection  
....

Typically, a county council pursuant to § 4-9-30(5) appropriates funds annually for the operation of a county sheriff's department.

In the enactment of the home rule act, the General Assembly also specifically recognized the unique status of a sheriff as the chief law enforcement officer of a county and presumably

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also recognized his status as a constitutional officer. See, Article V, § 20 of South Carolina Constitution (1895 as amended); Trammell v. Fidelity & Cas. Co., 45 F.Supp. 366 (D. S. C. 1942). A proviso contained in § 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.

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).

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 "re-structure" 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

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"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, § 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 § 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. The Court has also previously held that a sheriff possesses absolute control over the discharge of his deputies despite county grievance procedures and county council's authority pursuant to § 4-9-30(7). Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979). See also, Anders v. Co. Council for Richland Co., S.C. \_\_\_\_\_, 325 S.E.2d 538 (1985); Ops. Atty. Gen. January 24, 1985; December 11, 1985.

In certain limited instances, this Office has advised that a referendum pursuant to § 4-9-30(5) is necessary. This Office has stated that where the provision of 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 § 4-9-30(5). Op. Atty. Gen., May 17, 1978. We have also cautioned that "where the county decides to contract with a separate political subdivision, care should be taken in drafting any such contract not to limit the sheriff's discretion in the placement of his deputies or the providing of adequate personnel in other areas of the county." We further noted that in drafting any such contract, care should be taken to see that there is compliance with § 4-9-30(5) and the referendum provision contained therein. Op. Atty. Gen. June 13, 1985.

Additionally, this Office has concluded 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, § 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 altered except by the General

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Assembly, the opinion recognized the applicability of § 4-9-30(5) to that situation. See also, Op. Atty. Gen. January 12, 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."]

Finally, this Office has questioned whether a county council possesses the authority to remove a particular deputy sheriff by not appropriating funds for his position. Op. Atty. Gen., August 14, 1985 (copy enclosed). 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 § 4-9-30(5) and the need for its requirements to be followed. It was noted that use of the appropriations process to "remove" a particular deputy "could be construed as indirectly terminating a particular deputy sheriff's position which is a position the county council is not empowered to abolish directly." But see, Simon v. Del Vitto, 403 A.2d 1335 (Pa. 1979).

Based on the foregoing, we deem 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." Weitzenfeld v. Dierks, 312 So.2d 194, 196 (Fla. 1975).

On the other hand, as stated in an opinion of this Office dated June 16, 1986, the proviso must also be interpreted with common sense. State ex rel. McLeod v. Ellisor, 259 S.C. 364, 192 S.E.2d 188 (1972). It must be construed so as to give effect, not only to the Legislature's intent to preserve a sheriff's role as the county's chief law enforcement officer, but also to give county council wide discretion in the appropriation of funds to county agencies. Op. Atty. Gen., August 14, 1985. Obviously, not every appropriation by county council which impacts upon a sheriff's office, such as a reduction or increase in appropriations or equipment, can reasonably be deemed to be a "reorganization" or "restructuring" of the sheriff's department, thus requiring a referendum prior to implementation. The opinion concluded that a court would have to decide on a case by case basis whether an appropriation of county council will have the effect of altering a sheriff's role as the chief law enforcement officer of the county, or instead, merely

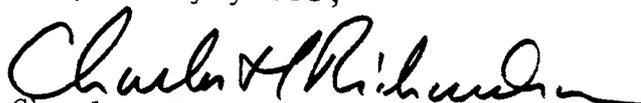
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represents a valid and legitimate exercise of council's legislative power in the area of appropriation of funds and funding of county agencies.

Therefore, as to the situation addressed by you, this Office cannot conclusively state that the action by the Aiken County Council in not funding certain positions in your department would constitute a "reorganization" or "restructuring" of the Sheriff's Department and thus require a referendum. However, while noting in the opinion dated August 14, 1985 that we were expressing no opinion on a county council's general authority concerning appropriations for sheriffs' departments, this Office concluded that it was "extremely doubtful" whether a county council could take action to withdraw the appropriation for the position of a particular deputy sheriff. As noted, the opinion indicated that such action could be construed as indirectly terminating a particular deputy sheriff which is a position the county council could not abolish directly. However, again, only a court could make an absolute conclusion as to whether the recent action by the Aiken County Council is authorized.

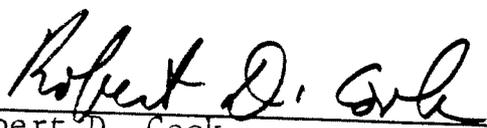
With best wishes, I am

Very truly yours,

  
Charles H. Richardson  
Assistant Attorney General

CHR/an  
Enclosure

REVIEWED AND APPROVED BY:

  
Robert D. Cook  
Executive Assistant for Opinions