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The State of South Carolina



Office of the Attorney General

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December 11, 1985

Carrol G. Heath, Sheriff
County of Aiken
P. O. Box 462
Aiken, South Carolina 29802-0462

Dear Sheriff Heath:

In a letter to this Office you requested an opinion dealing with the question of what authority a county government has over the personnel in a sheriff's department.

In prior opinions, this Office has advised that the hiring and discharge of a deputy sheriff are matters solely within the prerogative of a sheriff. See: Opinions dated August 14, 1985 and January 24, 1985. Such opinions referenced that the State Supreme Court in Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979), recognized that pursuant to Section 23-13-10 of the Code a deputy sheriff serves at the pleasure of the sheriff. The Court also indicated that particular statutes, namely, Sections 8-17-110, et seq. of the Code, which provide for county and municipal grievance procedures generally, are inapplicable to individuals serving as deputy sheriffs. More recently, the Court reaffirmed its decision in Rhodes in Anders v. County Council for Richland County, S.C., 325 S.E.2d 538 (1985) wherein the Court noted that Section 4-9-30(7) of the "home rule" act, which provides grievance procedures for county employees, is inapplicable to employees of a solicitor. Instead, the Court determined that Section 1-7-405 of the Code, which states that employees of a solicitor serve at his pleasure, controls. In Anders, the Court noted that Section 23-13-10 provided similar power to sheriffs.

Section 4-9-30(7) of the Code provides that county governments are authorized 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

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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.)

In a prior opinion of this Office dated February 18, 1983 which dealt with another elected county official, a clerk of court, this Office determined that pursuant to Section 4-9-30(7) a county council does not have responsibility for the employment and discharge of county personnel within a clerk of court's office. Instead, the opinion noted that "... the Clerk of Court has the power under the Home Rule Act to employ and discharge all personnel employed in the Office of the Clerk of Court." However, the opinion further stated that the personnel employed by the clerk "... would ... be subject to general 'personnel system policies and procedures for county employees by which all county employees are regulated.'" The opinion emphasized that the authority in Section 4-9-30(7) for a county to develop personnel system policies and procedures could not, however, be construed in any manner so as to infringe upon the authority of an elected county official to make any decisions regarding the employment and discharge of personnel in the elected official's office. In addition to the referenced authority of a county government in the area of personnel policies and procedures, other opinions of this Office have stated that the "home rule" legislation authorizes county governments to affect the functioning of elected officials in matters such as the establishment of an accounting and reporting system [Section 4-9-30(8) of the Code], the establishment of a centralized purchasing system [Section 4-9-160 of the Code], and the submission to it of annual fiscal reports [Section 4-9-140 of the Code]. See: Opinions dated February 10, 1984 and September 7, 1979; February 9, 1981.

An opinion dated January 24, 1985 determined that the conclusions of the referenced opinion dealing with a clerk of court's office would similarly be applicable to personnel in a county sheriff's office since a sheriff is an elected county official. Therefore, consistent with Section 4-9-30(7), a sheriff has absolute authority regarding the employment and discharge of personnel employed within his department. Such personnel would, however, also be subject to "general personnel system policies and procedures" of the county. The opinion

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further noted that generally for any personnel positions within the sheriff's office other than deputy sheriff, such personnel would be entitled to the benefits of the employee grievance procedure established by Section 4-9-30(7). Such provision states in part that:

"(a)ny employee discharged by... (an)
... elected official ... shall be
granted a public hearing before the
entire county council if he submits a
request in writing... ."

As to what type matters may be considered "general personnel system policies and procedures", the January 24, 1985 opinion particularly advised that as to the question raised concerning whether county personnel should handle all applications for employment within the sheriff's department, such activity would be within the subject of "general personnel system policies and procedures" regulating county employees generally. Therefore, the opinion advised that the county should handle any such applications. A July 27, 1977 opinion dealt with the question of whether a county council was authorized to regulate the hours during which all county departments, including those of elected officials, are open to the public. Referencing Section 4-9-30(7), the opinion determined that a council was so authorized. The opinion further stated that such provision:

"... is most probably broad enough to allow
a county council to set the hours during
which county employees are to work and,
thus, indirectly, to regulate the hours
during which county offices are open for
business. While such a regulation cannot be
construed to include an elected official
because of the exception hereinabove emphasized,
it does include the employees of elected
officials." 1/

1/ Inasmuch as the 1977 opinion was rendered prior to the decision of the Supreme Court in Rhodes, it is questionable whether such determination dealing with the regulation of hours remains applicable to deputy sheriffs. The distinction between a deputy sheriff and other employees of a sheriff's department was particularly noted in an opinion dated January 9, 1979 which was issued during the period the Court was considering Rhodes. However, we express no opinion regarding the authority of a county to regulate the hours of employment of a deputy sheriff.

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Consistent with the recognized absolute authority of a sheriff as to the employment and discharge of a deputy within his department, an opinion of this Office dated August 14, 1985 dealt with the question as to whether action could be taken by the county council to withdraw the appropriation for a particular deputy sheriff's position so as to result in the termination of the particular deputy. The opinion concluded that it is extremely doubtful as to whether such action could be taken. The opinion noted that "(w)hile obviously a county council is vested with discretion in dealing with any appropriations from the standpoint of general economic and efficiency concerns, such discretion could not be utilized in a manner which would interfere with the decisions of a sheriff as to hiring and discharge of a deputy sheriff."

Hopefully the above has been responsive to your general inquiry as to what authority a county government has over personnel within a sheriff's department. If there is anything further, please advise.

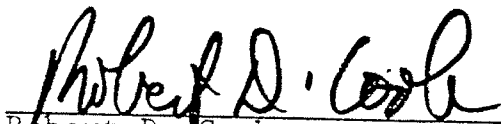
Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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