

The State of South Carolina



Office of the Attorney General

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June 3, 1987

The Honorable Isadore E. Lourie
Member, South Carolina Senate
303 Gressette Building
Columbia, South Carolina 29202

Dear Senator Lourie:

In a letter to this Office you raised questions relating to the arrest authority of personnel at the Richland County Detention Center. You indicated that the Director and Assistant Director of the Center formerly had deputy sheriff's commissions. However, I have been informed that presently these individuals have no ties to the sheriff's department. Instead, these individuals serve under the direction of the County government. You indicated that concern has been expressed as to the authority of the Director and Assistant Director to make an arrest without a commission or proper credentials.

In an opinion of this Office dated January 17, 1985 it was determined that an individual appointed as county jailer pursuant to Sections 24-5-10 et seq. of the Code would be an officer for dual office holding purposes.^{1/} While noting that even though no specific tenure, oath of office, or qualifications for such position were provided for the position by statute, if the county jailer was considered an employee of the county prison, Section 23-1-145 of the Code would be applicable and the jailer would therefore have the status of peace officer. As a result, the jailer would have the status of an officer

^{1/} Such provisions, however, are not applicable to Richland County inasmuch as by special legislation the management of the Richland County jail has been removed from the authority of the sheriff and placed with the authority of the county governing body. See: Opinion of the Attorney General dated May 13, 1980.

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for dual office holding purposes.^{2/} See also: Opinion of the Attorney General dated October 15, 1986.

In your letter you specifically questioned whether Richland County has the authority to commission correctional officers with arrest powers outside the premises of the Richland County Detention Center. Also, you asked whether the Director and Assistant Director of the Richland County Detention Center are considered correctional officers. You additionally questioned these individual's arrest authority.

I am unaware of any authority for Richland County to commission correctional officers. However, inasmuch as correctional officers have the status of peace officers and are given specific arrest authority pursuant to Section 23-1-145, it seems that any further commission as a peace officer by the County for individuals considered to be correctional officers would be unnecessary insofar as such individual's law enforcement authority is concerned. Moreover, it has been stated that:

(a) commission is not an appointment but is evidence of an appointment. While the appointment of an officer is usually evidenced by a commission, as a general rule it is not essential to the validity of an appointment that a commission issue...

67 C.J.S. Officers, Section 44, p. 315. See also: State ex rel. Coleman v. Lewis, 181 S.C. 10, 186 S.E. 625 (1936) ("... the commission does not confer the office, it is only evidence of it...."); Opinion of the Attorney General dated February 19, 1980. Also, as stated in an opinion of this Office dated June 16, 1982, "... a commission is not the source of an officer's authority. It simply serves as written evidence of his appointment."

^{2/} In an opinion dated July 8, 1984 it was similarly stated that an individual serving as a state correctional officer at a state prison would hold an office for dual office holding purposes. The opinion noted that pursuant to Section 24-1-280 employees of the State Department of Corrections have the status of "peace officer".

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As to any questions concerning the necessity of an oath being administered to individuals considered to be correctional officers, it is generally held that any statutory or constitutional directives that officers take oaths of office are directory only and the failure to take an oath does not invalidate the acts of an individual who has assumed the duties of an office. See: 1970 Op. of the Atty. Gen. No. 2918, p. 165. State v. Toomer, 7 Richardson 216 (1854). In another opinion of this Office dated May 30, 1967, it was stated that where an oath is made mandatory by a constitution or a statute, an officer is not considered qualified until he takes it, but if an oath is merely directory or not considered a condition precedent to the right to act, an officer may execute the duties of his office without taking the oath. The opinion stated, for example, that with respect to constables, any requirements as to an oath are merely directory. See also: 63A C.J.S. Public Officers and Employees, Section 131 p. 762.

As to whether the Director and Assistant Director of the Richland County Detention Center are considered correctional officers, such is more accurately a question for the decision of county officials. I would note however that pursuant to provisions of the Richland County Code and the personnel job descriptions for such positions, copies of which were forwarded to this Office, among the duties of these individuals is "the safe-keeping of all Detention Center prisoners." Illustrative examples of their work include admitting and discharging prisoners and supervising the transfer of prisoners between the Detention Center and the courts. Arguably, therefore, these individuals could be considered an employee of a county jail with official duties relating to the custody, control, transportation and recapture of a prisoner and, therefore, would have the arrest authority granted pursuant to Section 23-1-145 to employees of county jails.

As stated, pursuant to Section 23-1-145, correctional officers at the local level are considered "peace officers." Such provision specifically states:

(e)mployees of any county or municipal jail, prison, work camp or overnight lockup facility, while performing their officially assigned duties relating to the custody, control, transportation or recapture of any inmate or prisoner of this State, shall have the status of peace officers anywhere in the State in any matter relating to the custody,

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control, transportation or recapture of
such inmate or prisoner.

In an opinion of this Office dated March 19, 1986 construing Section 23-1-145 it was stated that by having the status of peace officers, jail employees are authorized to make arrests without a warrant of individuals reasonably suspected of having committed a felony or when the facts and circumstances which are observed by such employees provide probable cause to believe that a crime has been freshly committed. Specific reference was made to the provision of Section 23-1-145 which states that jail employees have the law enforcement authority of peace officers "... anywhere in the State in any matter relating to the custody, control, transportation, or recapture of such inmate or prisoner...."

If there is anything further, please advise.

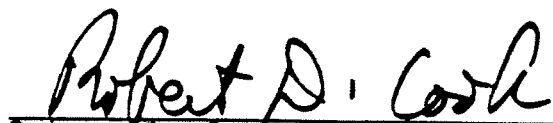
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/rhm

REVIEWED AND APPROVED BY:



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