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The State of South Carolina



Office of the Attorney General

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October 8, 1985

The Honorable J. Al Cannon, Jr.
Chief of Police
City of North Charleston
Post Office Box 10100
North Charleston, South Carolina 29411

Dear Chief Cannon:

In a letter to this Office you questioned the interpretation of Section 5-7-120 of the Code which authorizes law enforcement officers of one municipality to respond to another municipality in cases of emergency in such other municipality. Such provision states:

"(t)he governing body of any municipality may upon the request of the governing body of any other political subdivision of the State, send any law enforcement officers to such requesting political subdivision in cases of emergency. A complete record of the request, together with the names of the officers sent, shall be recorded in the minutes of the next regular or special meeting of the governing bodies of both the requesting and the sending political subdivisions. Expenses of the requested services shall be borne by the requesting municipality."

You particularly questioned whether such officers can be sent in situations where a quorum of city councilmen cannot be assembled to authorize assistance to another municipality.

Section 5-7-120 is ambiguous as to its requirement concerning the involvement of a municipal governing body in authorizing law

REQUEST LETTER

Continuation Sheet Number 2

To: The Honorable J. Al Cannon, Jr.
October 8, 1985

enforcement officers to respond to another municipality in cases of emergency. It appears that you are construing such provision as requiring the approval of a municipality's governing body prior to a response. Indeed, as quoted, the provision states that "(t)he governing body of any municipality may upon the request..." of another municipality's governing body send their law enforcement officers to the requesting subdivision in emergencies. However, an argument may be made that the decision to respond to such a request from another municipality could, consistent with Section 5-7-120, be delegated to an individual, such as the chief of police.

Generally, it is recognized that unless a statute specifically provides otherwise, legislative powers vested in the governing body of a municipality cannot be delegated to administrative officials of the municipality. However, purely administrative, ministerial, or executive powers may be delegated by a municipal governing body to the appropriate officer. 56 Am.Jur.2d, Municipal Corporations, 196, pp. 251-252. Arguably, the decision as to whether to respond to another municipality's request for assistance in cases of emergency should be construed as an administrative or ministerial decision. As such, it could be delegated by a municipal governing body to its chief of police. If any questions would persist as to whether this is a proper delegation of authority, subsequent action could be taken by a municipal governing body which would support the action previously taken. Such ratification by the governing body arguably would clear up any question of improper or unlawful delegation which might exist.

As stated above, Section 5-7-120 is ambiguous as to the authorization which must be given by a municipality's governing body prior to its law enforcement officers being sent to another municipality. Inasmuch as such provision is ambiguous, obviously, such statute should be clarified by the General Assembly. You provided this Office with a proposed amendment to Section 5-7-120 which more fully sets out the instances in which a governing body must authorize its law enforcement officers to respond to another municipality. Your amendment is being forwarded to Flynn Harrell, the Executive Assistant for Special Projects in this Office, for his consideration.

In a separate question you referenced a city ordinance dealing with alcoholic beverages and questioned whether such ordinance may be enforced in light of a provision in the 1984

Continuation Sheet Number 3
To: The Honorable J. Al Cannon, Jr.
October 8, 1985

Appropriations Act which has been codified as Section 61-5-190 of the Code. Such provision states in part:

"The South Carolina Alcoholic Beverage Control Commission is the sole and exclusive authority empowered to regulate the operation of all retail locations authorized to sell beer, wine, or alcoholic beverages and is authorized to establish conditions or restrictions which the Commission in its discretion considers necessary before issuing or renewing any license or permit."

In a previous opinion of this Office dated August 22, 1984, although expressing certain reservations concerning the constitutionality of this provision, it was stated with respect to Section 61-5-190:

"(t)he express language of this provision evinces the legislative intent that the state, through the Alcoholic Beverage Control Commission, shall be the exclusive authority to regulate the operation of all beer and wine outlets. That this is the legislative intent there can be no doubt, as the words used are most clear."

The opinion determined that such provision preempted the regulation of hours that beer and wine may be sold and placed the regulatory authority exclusively in the State. The opinion concluded that as a result, a county is not authorized to enact any ordinance restricting the hours of sale of beer and wine.

The ordinance referenced by you covers three areas: restricting the hours of sale of beer and wine by licensed establishments, prohibiting drinking in non-licensed public places, and prohibiting public drunkenness. The latter two provisions of the ordinance are not in conflict with the provisions of Section 61-5-190 inasmuch as such provisions do not deal with possession or consumption of beer and wine in businesses licensed by the ABC Commission. However, the first provision of the ordinance specifically deals with the regulation of hours of the sale and consumption of beer and wine by licensed establishments and, therefore, is a matter within the exclusive authority of the State to regulate. I would only further advise that any problems dealing with the sale and

Continuation Sheet Number 4
To: The Honorable J. Al Cannon, Jr.
October 8, 1985

consumption of beer and wine at certain licensed locations be discussed with the ABC Commission inasmuch as they may be able to assist you.

If there are any questions, please advise.

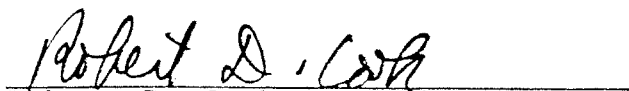
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR:djg

REIVEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions