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September 4, 1985

Jeffrey B. Moore, Executive Director
South Carolina Sheriffs' Association
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Dear Mr. Moore:

In your letter you referenced that several sheriffs still retain fees and commissions collected for performing certain functions as a part of their salary. Such a practice was recognized in a previous opinion of this Office dealing with the Dorchester County Sheriff. See: 1975 Op. Atty. Gen. No. 4216, p. 259. You have questioned whether Act No. 163 of 1985 requires such sheriffs to begin turning over these fees and commissions to their counties or may they still continue to retain such monies.

The intent of the sponsors of Act No. 163 was to provide a uniform statewide fee and commission schedule for sheriffs. Op. Atty. Gen., August 31, 1985. Included in such Act was the provision that "(a)ll monies collected under this section shall be deposited into the treasury of that county employing the sheriff collecting those monies." Therefore, it is clear that pursuant to such provision, sheriffs are not authorized to retain any fees and commissions collected for performing the functions specified by Act No. 163.

While such sheriffs may no longer retain such fees and commissions, the compensation of a sheriff may not be reduced during his current term. Section 4-9-30(7) of the Code, a provision in the "home rule" act, states that:

"(t)he salary of those officials elected by the people may be increased but shall not be reduced during the terms for which they are elected...."

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In construing constitutional prohibitions against altering compensation of public officers, it has been stated that:

"(i)f the compensation is a salary, the salary must remain the same throughout the official's term; if fees, then the same scale of fees must prevail for the same services. When the term 'salary' is used in this connection, it is not always employed in its general sense as embracing any compensation fixed by law. It may be used in the limited sense of an annual or periodical payment for the services, and be applicable to specific fees and commissions." 63A Am.Jur.2d, Public Officers and Employees, Section 443, p. 993.

It has typically been recognized that fees and commissions received by sheriffs were considered a part of the salary received by such officials for performing their duties. See, Mullins v. Marion Co., 72 S.C. 84 (1905). The 1975 opinion referenced above which recognized the authority of a sheriff to retain fees and commissions determined that such entitlement "... is readily ascertained by comparing the general statutes ... with specific exceptions thereto, requiring the sheriffs of certain counties to turn their fees over either to the county treasurer specifically or to the county general fund." The fact that fees received by a sheriff were considered a part of the compensation received by him is readily ascertained by a review of special acts pertaining to Marlboro County. In 1975, according to the county appropriation act, Act No. 413 of 1975, the sheriff's salary was set at \$9,176.00. Pursuant to Act No. 869 of 1976, the sheriff was required to turn over all fees collected by him to the county treasurer. However, such act also increased the salary of the sheriff to \$16,000.00.

Referencing the above, a court could reasonably conclude that any fees and commissions paid a sheriff should be construed to have been a part of his salary. Indeed, it has been stated that "... a fee prescribed for a public officer is compensation for particular services...." 67 C.J.S. "Officers", Section 224(b) p. 717. See also: 16 Words and Phrases, "Fee", p. 523 ("fees are compensation for particular acts or services.") Also, as to other types of county officers, fees have been considered to be a part of the salary or compensation of such officers. In Douglas v. McLeod, 277 S.C. 76, 282 S.E.2d 604 (1981), the State Supreme Court recognized that prior to its

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ruling in State of South Carolina ex rel. McLeod v. Crowe, 272 S.C. 41, 249 S.E.2d 772 (1978), the compensation of a magistrate consisted of a combination of fees and salary from the county.

In an opinion of this Office dated November 14, 1979 the question was raised as to whether the fees a master-in-equity had formerly received should be considered in establishing a master's salary. Section 14-11-30 of the 1976 Code, which was effective July 1, 1979, stated:

"(a) master-in-equity shall be compensated in such amounts as may be provided and appropriated by the governing body of the county ... but in no case shall ... such master receive less than he is receiving as of June 15, 1979...."

Another proviso stated salaries of masters could not be reduced during their terms. Act No. 164 of 1976, Part 2, Section 22. The opinion stated:

"(s)ince the fees of the office on and prior to the effective date of this Act and during your current term constituted a part of the salary for the position, they must be considered in determining your salary during the remainder of your term."

While it is true that in this instance § 4-9-30(7) is contained in a separate statute, based upon the foregoing authorities, we would seriously doubt, that the General Assembly intended by Act No. 163 to alter or repeal § 4-9-30(7). Generally, statutes must be read in conjunction with one another to avoid implied repeals. State v. Hood, 181 S.C. 488, 188 S.E. 134 (1936). Moreover, the legislative history surrounding the enactment of Act No. 163 is consistent with the fact that the General Assembly did not intend to reduce the sheriff's compensation with the enactment of the new fee act. See, Minutes of the Senate Judiciary Committee, January 29, 1985.

Accordingly, while it is clear that Act No. 163 requires all sheriffs now to turn over the fees collected by them to the county, it is doubtful whether amounts equivalent to the fees and commissions previously retained by the sheriff as part of his compensation may be subsequently withheld by county council from the sheriff's compensation. Those amounts equivalent to previously retained fees and commissions should thus be reimbursed

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by county council to the sheriff as part of his compensation because, as referenced above, the compensation of sheriffs cannot be reduced during their term. § 4-9-30(7). Since county council would be simply reimbursing to the sheriff amounts equivalent to fees and commissions previously retained by him, normally no additional expenditures by county council should be necessary.

Our conclusions herein should not be construed as indicating that sheriffs would now be compensated in amounts equivalent to those amounts to be turned over to the counties pursuant to the amended fee schedule set forth in Act No. 163. All we are saying here is that § 4-9-30(7) requires that the compensation of a sheriff should not be reduced during his term. Thus, the sheriffs' compensation, including the fees received by him as part of his salary, prior to the enactment of Act No. 163 should be the determining factor. In short, Act No. 163 should not be viewed as providing a windfall to the sheriff or a means whereby his previous compensation may now be reduced.

If we may be of further assistance to you, please let us know. With kindest regards, I am

Sincerely yours,



Robert D. Cook
Executive Assistant for Opinions

RDC:djg