1984 S.C. Op. Atty. Gen. 179 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-70, 1984 WL 159877

Office of the Attorney General

State of South Carolina
Opinion No. 84-70
June 20, 1984

***1** The Honorable E. Joe Wallace
Sheriff of Cherokee County
125 Baker Boulevard
Gaffney, South Carolina 29340

Dear Sheriff Wallace:
By your letter of April 20, 1984, you asked whether South Carolina had a statute similar to a statute of North Carolina which permits interchange of governmental employees. With your letter of April 23, you enclosed a copy of Section 8–12–10 et seq., Code of Laws of South Carolina (1983 Cum.Supp.), and asked this Office to interpret our statute to determine whether it would permit the Cherokee County Sheriff's Department to exchange law enforcement personnel with your counterpart department in Cleveland County, North Carolina. You indicate that the two counties have mutual problems which might be alleviated more easily if law enforcement officials from the two counties could work together.

This Office advises that Section 8–12–10 et seq. of the South Carolina Code would permit the interchange of local governmental employees, such as sheriffs' deputies, between the counties. However, Section 8–12–10 et seq. does not extend any authority to enforce laws to North Carolina peace officers entering South Carolina or to South Carolina peace officers, such as sheriffs' deputies, entering North Carolina. As will be discussed more fully below, it would be necessary to provide additional authorization either by some kind of special deputization or by the General Assembly's enacting legislation to provide law enforcement powers to incoming peace officers if they are to enforce the laws of this State. [1]

Act No. 480, 1978 Acts and Joint Resolutions, provided for the interchange of governmental employees between and among federal, state, and local governments. In Section 1 of that Act, the General Assembly recognized that
intergovernmental cooperation is an essential factor in resolving problems affecting this State and that the interchange of personnel between and among governmental agencies at the same or different levels of government is a significant factor in achieving such cooperation.

Section 3 of that Act, codified as Section 8–12–20 of South Carolina's Code, would authorize a department or agency of a county, as a political subdivision, to ‘participate in a program of interchange of employees with departments and agencies of the federal government, or this or any other state or any of their political subdivisions as a sending or receiving agency, or both.’ [2] Thus, the Cherokee County Sheriff's Department would be authorized to participate in a program to send employees to, or receive employees from, another governmental entity (federal, state, or local) under the provision of Section 8–12–10 et seq. [3]

Other provisions of the Act provide for the status of the employees of sending agencies relative to salaries, benefits, leave, and suffering of disability or death while participating in an exchange. See, Section 8–12–30. Further, the relationship of interchanged employees with their receiving agencies is detailed in Section 8–12–40. Payment of travel expenses by a receiving agency to an interchanged employee assigned thereto is permitted by Section 8–12–50. Authority to promulgate regulations and administer programs is granted to the State Budget and Control Board by Section 8–12–60. [4] The Act contains no specific provisions as to law enforcement officials or their authority under State or any other law.

***2** North Carolina has a similar, but more detailed, interchange statute codified as N.C. Gen. Stat. § 126–51 et seq. While this Office does not intend herein to interpret the North Carolina statute, it appears that a county sheriff's department would be among those entities which could send or receive employees. Section 126–53(d) would prohibit participation by elected officials in an interchange program. Section 126–54(d) is very specific in its provisions for the status of employees of the sending agency. Because the Law Enforcement Officers' Benefit and Retirement Fund is expressly mentioned, it may be assumed that the North Carolina statute covers law enforcement officers. The North Carolina Code contains other provisions similar to the provisions in South Carolina's Act and are not relevant herein.

Absent in the statutes of both states is any provision authorizing law enforcement personnel of one state to enforce the laws of another state, however. It would appear that law enforcement personnel could be interchanged between the two counties, but it is doubtful that these statutes by themselves would be sufficient authority for officers of one state to enforce the laws of the other state.

Deputy sheriffs in South Carolina are appointed by elected county sheriffs pursuant to Section 23–13–10 of the South Carolina Code. The oaths taken by a deputy sheriff are provided in Article III, Section 26 of the Constitution of the State of South Carolina and in Section 23–13–20 of the Code. Article III, Section 26 reads as follows:
I do solemnly swear (or affirm) that I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been elected, (or appointed), and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect and defend the Constitution of this State and of the United States. So help me God. [Emphasis added.]

In addition, the deputy is required to take the following oath (or affirmation) specified in Section 23–13–20:
I further solemnly swear (or affirm) that during my term of office as county deputy, I will study the act prescribing my duties, will be alert and vigilant to enforce the criminal laws of the State [of South Carolina] and to detect and bring to punishment every violator of them, will conduct myself at all times with due consideration to all persons and will not be influenced in any matter on account of personal bias or prejudice. So help me God. [Emphasis added.]

From the oaths to be taken by deputy sheriffs, it is apparent that they are sworn to uphold the laws and Constitution of this State only, applying the plain language contained in the oaths. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). Thus, it is doubtful that South Carolina officers would be able to enforce North Carolina laws based on their oaths sworn to in South Carolina. Because North Carolina officers would not have taken these oaths, they would not be empowered to enforce South Carolina laws. Without taking additional oaths or being granted such authority by the appropriate legislature, any act of an officer outside his state would be the act of a private citizen and not a peace officer. Cf., Kapson v. Kubath, 165 F.Supp. 542 (W.D. Mich. 1958).

***3** Two additional statutes must be considered as well. Section 23–13–60 of the Code authorizes deputy sheriffs ‘for any suspected freshly committed crime, whether upon prompt information or complaint,’ to ‘arrest without warrant.’ Furthermore, Section 17–13–30 provides that
[t]he sheriffs and deputy sheriffs of this State may arrest without warrant any and all persons who, within their view, violate any of the criminal laws of this State . . .. [Emphasis added.]

Section 17–13–30, if construed together with Section 23–13–60, may well be a limitation upon the language ‘any freshly committed crime’ to those offenses which constitute violations of the ‘laws of this State,’ thereby excluding offenses of other states. Such would, at least, be a reasonable construction.

Moreover, the territorial extent of a peace officer's authority must be considered. While the South Carolina Code does not specifically restrict a sheriff to the county in and for which he was elected, such restriction may be fairly implied from other related statutes read in pari materia with statutes on sheriffs and their deputies. Moffett v. Traxler, 247 S.C. 298, 147 S.E.2d

255 (1966). See, for example, Sections 23–11–10 (election held in each county); 23–13–20 (county attorney approves form of bond which is filed by county clerk of court); and 23–13–30 (governing body of county furnishes uniforms). Furthermore, the power of arrest specifically mentions the county of appointment in Section 23–13–60:

The deputy sheriffs may for any suspected freshly committed crime, whether upon view or upon prompt information or complaint, arrest without warrant and, in pursuit of the criminal or suspected criminal, enter houses or break and enter them, whether in their own county or in an adjoining county. [Emphasis added.]

See also, State v. Brantley, 279 S.C. 215, 305 S.E.2d 234 (1983), Gregory, J., dissenting. The North Carolina statutes, at § 15A–402(c), provide that a county officer's jurisdiction is also limited to the county in which he is employed, though county officers apparently are empowered to arrest a suspect at any place within the State of North Carolina for a felony or in the event of hot pursuit cases. The applicable statutes appear to have codified the common law rule that 'the [sheriff's] authority, and the authority of a deputy sheriff appointed by him, are limited to his own county.' 80 C.J.S. Sheriffs and Constables § 36. See also Taylor v. Town of Wake Forest, 228 N.C. 346, 45 S.E.2d 387 (1948); Pipkin v. District Court of Cotton County, 321 P.2d 410 (Okl. 1957); DeSalvatore v. State, 52 Del. 550, 163 A.2d 244 (1960); Kapson v. Kubath, supra.

In cases which have considered the authority of a law enforcement official of one state arresting a suspect in another state, it is stated that the peace officer may make an arrest only within the state from which his authority is derived; an arrest in a foreign state would be unlawful except under very narrowly-defined circumstances and may be viewed as an arrest by a private person. See, Kapson v. Kubath, supra; 6A C.J.S. Arrest, § 53; 5 Am.Jur.2d Arrest, § 50. It is noted that '[a] state cannot confer on its officers any power to make an arrest in another state, even when recapturing an escaped prisoner on immediate pursuit.' Id. See also Kirkes v. Askew, 32 F.Supp. 802 (E.D. Okl. 1940); Street v. Cherba, 662 F.2d 1037 (4th Cir. 1981);[5] Mullins v. State, 35 Md. App. 605, 371 A.2d 713 (1977); Commonwealth v. Anzalone, 269 Pa.Super. 549, 410 A.2d 838 (1979); McLean v. State of Mississippi, 96 F.2d 741 (5th Cir. 1938).

***4** By an Opinion of the Attorney General dated December 5, 1980, this Office has addressed the issue of authority of law enforcement officers once they have left their jurisdiction. That Opinion reads in part:

You also questioned whether a police officer in this State should cease pursuit of felons after the latter have crossed the State line. While a South Carolina police officer could pursue an individual into another State, inasmuch as such police officer has no law enforcement authority in another State, such officer should not attempt in any manner to exercise any law enforcement powers in another State.

We believe that this Opinion would apply also in the event law enforcement officers were exchanged between this State and North Carolina.

While the statute is not directly on point, it is appropriate to examine Section 23–1–210, which provides for intra-state transfer of municipal or county law enforcement officer to another county or municipality on a temporary basis. That statute addresses the power and authority of the law enforcement officer once he is transferred, written agreements to effect the transfer, bond, compensation, pension, and retirement. Arguably, the General Assembly recognized the possibility of such problems when law enforcement officers leave the jurisdiction from which such officers derive their authority. If made aware of the problems facing an interstate interchange of law enforcement officers, the General Assembly might wish to enact similar legislation to overcome the problems and simplify the interchange.

An additional analogy may be found in 28 U.S.C.S. § 515, the federal statute authorizing the Attorney General of the United States to specially appoint attorneys as, for example, special prosecutors. Section 515(a) provides that such attorney may be appointed 'whether or not he is a resident of the district in which the proceeding is brought.' Section 515(b) provides in part that '[e]ach attorney specially retained under authority of the Department of Justice shall be commissioned as special assistant to the Attorney General or special attorney, and shall take the oath required by law. . . .' At least one circuit solicitor in South Carolina

has been appointed a federal special prosecutor, presumably pursuant to this statue. While the solicitor in his state capacity would be sworn to prosecute violators of state law, he must take an additional oath to be able to carry out his federal duties.

Although problems have been identified with the interchange of law enforcement personnel, there are several possible solutions. The General Assembly may wish to enact additional legislation as noted above. The law enforcement personnel, once interchanged under presently existing law, could be utilized in activities not requiring the enforcement of laws, such as training. Officers so exchanged could be specially deputized or made a state constable at the discretion of the Governor by the provisions of Section 23–1–60 et seq. of the South Carolina Code. By the Opinion dated December 5, 1980, this Office advised 'the officer in this State to contact the law enforcement authorities in the other State and request their assistance in making any arrest.' If an arrest is effected out of the State, extradition is available to have the suspect returned to South Carolina. The latter two suggestions would not be as helpful as an interchange of officials but are offered as a temporary measure.

***5** We hope that the above discussion has satisfactorily resolved your inquiry. If you need clarification or additional information, please advise us.
Sincerely,

Patricia D. Petway
Assistant Attorney General

Footnotes

1 This Office will not attempt to interpret North Carolina law as to the authority of a police officer from South Carolina enforcing the laws of North Carolina. If such a problem exists, North Carolina officials would be in a better position to identify and deal with it.

2 'Sending' and 'receiving' agencies are defined by Section 8–12–10(a) and (b), respectively, as basically the department or agency which sends or receives an employee under the provisions of Section 8–12–10 et seq.

3 Section 8–12–20(b) provides the following limitation: 'Elected public officials of this State or any of its political subdivisions shall not be assigned from a sending agency nor detailed to a receiving agency.' A sheriff, as an elected public official, could not be exchanged under these provisions; only employees may be so exchanged. North Carolina's statute contains a similar provision in § 126–53(d).

4 Regulations so promulgated are found in R 19–711. We are advised by the State Personnel Division of the Budget and Control Board that the regulations pertain only to state employees; thus, it is not necessary to review the regulations for the purposes of this opinion.

5 In Street v. Cherba, it was noted that a Maryland statute authorized police officers from another jurisdiction who entered the State of Maryland in fresh pursuit of a criminal suspect to arrest that person under the laws of the officers' jurisdiction. See Md. Ann. Code Art. 27, § 595. South Carolina and North Carolina legislatures may wish to adopt such a statute to assist in intergovernmental cooperation.

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