

1979 WL 42745 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 9, 1979

*1 John H. Williams, Esquire
Law Offices
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Post Office Box 463
Aiken, South Carolina 29801

Dear Mr. Williams:

You have requested an opinion from this Office as to whether or not a deputy sheriff who is discharged by the sheriff is entitled to a hearing before the county council pursuant to [Section 4-9-30\(7\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976. In my opinion, he is not so entitled as hereinafter discussed.

[Section 4-9-30\(7\) of the 1976 Code](#) provides 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 . . . [Emphasis added.]

Several South Carolina cases have held that a deputy sheriff is an ‘officer’ rather than an ‘employee.’ See e.g., [Willis v. Aiken County](#), 203 S.C. 96, 102 S.E.2d 313; [Pulliam v. Board of Police Commissioners](#), 202 S.C. 324, 24 S.E.2d 745; [State v. Johnson](#), 123 S.C. 50, 115 S.E. 748; [State v. Goldsmith](#), 96 S.C. 484, 81 S.E. 147; cf., [Ex Parte Hanks](#), Cheves Eq. 203; [Trammell v. Fidelity and Gasualty Co. of N.Y.](#), 45 F.Supp. 366 (E.D.S.C. 1942); [Roton v. Sparks, et al.](#), 270 S.C. 637, 244 S.E.2d 214 (1978). Inasmuch as the right to a hearing before the county council and possible reinstatement by it is expressly available to county employees only, a deputy sheriff is not included within the terms of the statute because he is a county officer, not a county employee. Moreover, the word ‘employee’ as used in [Section 4-9-30\(7\)](#) is not synonymous with the word ‘officer’ because the provisions of the ‘home rule’ legislation, of which [Section 4-9-30\(7\)](#) is a part, use the words ‘officer’ and ‘employee’ in conjunction with each other, indicating thereby that they have different meanings. See, e.g., [Section 4-9-180, CODE OF LAWS OF SOUTH CAROLINA](#), 1976; [Section 4-9-430, CODE OF LAWS OF SOUTH CAROLINA](#), 1976; [Section 4-9-660, CODE OF LAWS OF SOUTH CAROLINA](#), 1976; [Section 4-9-850, CODE OF LAWS OF SOUTH CAROLINA](#), 1976. Finally, [Section 4-9-30\(7\) of the Code](#) has, in my opinion, neither expressly nor impliedly repealed the provisions of [Section 23-13-10, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, which latter provision makes the sheriffs of this State liable for the ‘neglect of duty of misconduct in office of any deputy.’ Parenthetically, that statute also empowers a sheriff to ‘appoint’ rather than ‘hire’ or ‘employ’ one or more deputies, which appointment ‘shall continue during [the sheriff’s] pleasure.’ This language is also indicative of the fact that a deputy sheriff is an officer, not an employee, who serves at the unfettered pleasure of the sheriff so long, of course, as he is not terminated for an unconstitutional reason.

This opinion is not free from doubt, however, since it may be that a deputy sheriff is both an officer and an employee and, therefore, is entitled to a hearing pursuant to the provisions of [Section 4-9-30\(7\)](#). Obviously, a judicial resolution of the question which you have raised is the only way it can be definitely determined. Nevertheless, I agree with your conclusion that, so long as [Section 23-13-10 of the Code](#) places upon the sheriff a liability for the acts of his deputies, the General Assembly must be presumed to have intended that a terminated deputy sheriff is not supposed to be subject to reinstatement by the county council.

*2 I am enclosing a copy of a brief submitted by this Office in an action involving the right of a terminated deputy sheriff to a hearing under the provisions of [Section 8-17-110, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, the ‘County and

Municipal Employees Grievance Procedure Act.’ That case is scheduled to be argued before the South Carolina Supreme Court next week and, while [Section 4-9-30\(7\) of the Code](#) is not specifically before the court therein, hopefully its decision will provide some guidance as to the scope of its provisions.

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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