

1980 WL 120679 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 20, 1980

*1 Chief Richard P. Ruonala
Chief of Police
Post Office Box 236
Goose Creek, South Carolina 29445

Dear Chief Ruonala:

In a letter to this Office you asked what should be the position of a municipality as to accepting for confinement a person who has been arrested by a Governor's constable. You asked whether the municipality or its officers would be liable in an instance involving false arrest and false imprisonment. You further asked whether a municipal police department could deny a Governor's constable such access to municipal law enforcement vehicles, buildings, and files which is not typically provided to private citizens. Please be advised that while this Office will attempt to respond generally to your questions, inasmuch as such questions are quite broad, it is impossible to provide a specific reply that would be in response to all situations. Obviously each instance must be evaluated on its own.

As to the status of a Governor's constable, [Section 23-1-60, Code of Laws of South Carolina](#), 1976, provides in part:

'(t)he Governor may, at his discretion, appoint such additional deputies, constables, security guards and detectives as he may deem necessary to assist in the detection of crime and the enforcement of any criminal laws of this State, the qualifications, salaries and expenses of such deputies, constables, security guards and detectives appointed to be determined by and paid as provided for by law. Appointments by the Governor may be made hereunder without compensation from the State.'

This Office citing the case of [State v. Luster](#), 178 S.C. 199, 182 S.E. 427 (1935), has previously held in an opinion dated July 6, 1977, that such constables have all the authority of regularly commissioned peace officers, which would include the power of arrest. As to your question of what should be the position of a municipality as to accepting for confinement a person arrested by a Governor's constable, inasmuch as such a constable does have the general powers of arrest of a regular law enforcement officer, presumably such a defendant would be handled and processed as any other defendant brought in for incarceration.

Please be advised however that this Office in a previous opinion, a copy of which is enclosed, indicated that as to defendants charged with offenses within the jurisdiction of the General Sessions Court,

'... it appears that the county jail is the general jail for the incarceration of pre-trial detainees and that the county authorities are responsible for the custody and safekeeping of those persons committed to them ...'

Therefore, as to any defendants arrested by a Governor's constable for an offense within the jurisdiction of the General Sessions Court, they should properly be incarcerated in the county jail.

As to the liability of a municipality in circumstances involving false arrest or false imprisonment in those instances where a defendant arrested by a Governor's constable is in fact incarcerated in the municipal jail, as to an action brought in State court, the South Carolina Supreme Court has held that:

*2 '(i)t is the settled law of this State that, except as expressly permitted by statute, municipal corporations are not liable in damages for a tort committed by any of its officers or agents.' [Wright v. City of North Charleston](#), 271 S.C. 515 at 516, 248 S.E.2d 480 (1978).

Therefore, it would appear that a municipality would generally be immune from liability in the referenced circumstances as to any improper actions by a Governor's constable.

As to the liability of the municipal officers, in the above-referenced situation, it is generally considered that municipal officers are immune from civil liability if found to be acting in good faith. *See, e. g., Long v. Seabrook*, 260 S.C. 562, 197 S.E.2d 659 (1973). If an officer honestly believes that at the time of the actions complained of he was acting within the scope of his powers, and if it is found that the officer reasonably believed he was acting properly, he is generally considered to be immune from liability even if it is later determined that his conduct was unlawful. Therefore a jailer would generally be immune from civil liability in good would generally be immune who he honestly believes was arrested by lawful process or procedure.

As to any liability of the municipality or its officers where an action arising from your referenced factual situation is brought in federal court, presumably pursuant to 42 U.S.C. Section 1983, again each individual circumstance must be evaluated on its own. However, municipal officers generally would be immune from civil liability if found to be acting in good faith with a reasonable belief as to the validity of their actions. *See, e.g., Street v. Surdyka*, 492 F.2d 368 (4th Cir. 1974); *Wood v. Strickland*, 420 U.S. 308, 95 S.Ct. 992 (1975). Concerning the liability of the municipality itself as to an action brought pursuant to 42 U.S.C. Section 1983, the United States Supreme Court in the recent case of *Monell v. New York City Department of Social Services*, 436 U.S. 658, 56 L.Ed.2d 611, 98 S.Ct. 2018 (1978) held that a municipality could be a proper defendant to an action brought pursuant to such section. However the Court held that liability could not be imposed under a respondeat superior theory, i.e., merely because the city employs a tort feisor, but liability must be based on official policy or custom which causes the injury. It is highly questionable whether a municipality would be civilly liable as to an action brought pursuant to 42 U.S.C. Section 1983 where its officers acting in good faith and with a reasonable belief as to the propriety of their action accept for imprisonment an individual arrested improperly or illegally by a Governor's constable. However, again, each situation must be evaluated on its own.

As to your question concerning whether a municipal police department could deny a Governor's constable access to municipal law enforcement vehicles, buildings, and files which is beyond that typically provided to private citizens, I am unaware of any authority which mandates that a Governor's constable is entitled to any such additional access. Therefore such an individual could reasonably be denied such additional access. No law enforcement officer employed by a particular law enforcement agency has the right of free accessibility to the vehicles, buildings, and files of another law enforcement agency. Therefore, any claim of free accessibility by a Governor's constable who is without some additional grant of authority permitting such access is without basis.

*3 Hopefully the above is in fully response to your inquiry.
Sincerely,

Charles H. Richardson
Assistant Attorney General

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