

1977 S.C. Op. Att'y. Gen. 36 (S.C.A.G.), 1977 S.C. Op. Att'y. Gen. No. 77-33, 1977 WL 24376

Office of the Attorney General

State of South Carolina

Opinion No. 77-33

January 26, 1977

*1 The Honorable Ralph H. Ellis

Senator

Horry, Florence, Marion and Williamsburg Counties

State House

Columbia, South Carolina

Dear Senator Ellis:

You have raised several questions concerning the Horry County Police Commission [§§ 53–551 through 53–566, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended] to which I shall respond as follows:

1. In response to your question as to whether or not the Horry County Police Commission can be abolished by a special act, in my opinion, such legislation would most probably run afoul of the Constitutional prohibition against ‘laws for a specific county’ [Article VIII, Section 7 of the South Carolina Constitution of 1895, as amended]. While our Office has taken the position that the repeal of a special act by a special act might not be unconstitutional where a general law cannot be made applicable, I think that a general law can be made applicable in this matter and, therefore, a special act would be constitutionally suspect. A law, general in form, could be enacted either abolishing all rural and other county police, *i.e.*, repealing the provisions of Chapter 6, Articles 1–19 of Title 53 of the 1962 South Carolina Code of Laws, as amended, or delegating to all county governing bodies the authority to abolish the rural and other county police in their respective counties as they might chose. *CF.*, *e.g.*, 58 STAT. 2018 (1974); 59 STAT. 331 (1975). I am enclosing herewith suggested drafts of such legislation.

2. In response to your inquiry as to the powers, duties and functions which the Horry County Sheriff will have, assuming the Horry County Police Commission is abolished and the Horry County rural police cease to operate, in my opinion, the Sheriff will continue to have those powers and duties already vested in him by virtue of the common law and of the provisions of Chapter 3 of Title 53 of the 1962 Code. In addition, the drafts of the proposed legislation which I am enclosing provide that the county sheriff will be vested with those powers and duties theretofore possessed by the rural or other county police.

3. In response to your inquiry concerning any action taken by the governing body of Horry County to alter that county's sheriff's department, the provisions of Act No. 283 of 1975, the ‘home rule’ legislation, require the approval of the voters byway of a county-wide referendum before ‘any appropriation relative to police protection [which] would result in reorganization or restructuring of a sheriff's department’ can take effect. Therefore, when the Horry County Rural Police Commission is abolished, the governing body of Horry County cannot appropriate county funds to enlarge or supplement that county's sheriff's department without the prior approval of the Horry County voters.

With kind regards,

Karen LeCraft Henderson

Assistant Attorney General

A BILL

TO AUTHORIZE THE GOVERNING BODIES OF ALL COUNTIES IN THE STATE WHEREIN OPERATE RURAL OR OTHER COUNTY POLICE TO ABOLISH THE COMMISSIONS THEREOF AND TO CEASE THE OPERATION

THEREOF; AND TO PROVIDE FOR THE POWERS AND DUTIES OF COUNTY SHERIFFS IN THOSE COUNTIES WHEREIN SUCH RURAL OR OTHER COUNTY POLICE PRESENTLY OPERATE.

*2 Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Power of county governing body.—Any county governing body may by ordinance or resolution abolish the commission of any rural or other county police operating therein which was established pursuant to Sections 53–351 through 53–707 of the 1962 Code, as amended, and to cease the operation of such rural or other county police therein.

SECTION 2. Powers and duties of county sheriffs after rural or other county police cease to operate.—Upon the effective date of final action taken by a county governing body to abolish the commission of any rural or other county police operating therein and to cease the operation of such rural or other county police therein, the sheriff of that county will become vested with the powers and duties previously possessed by that rural or other county police in addition to those powers and duties already possessed by that county sheriff.

SECTION 3. Time effective.—This act shall take effect upon approval by the Governor.

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