

1978 WL 35162 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 10, 1978

***1** Chief Bill Rea
Secretary-Treasurer
Police Chiefs Association of Spartanburg County
Post Office Box 8
Campobello, South Carolina 29322

Dear Chief Rea:

In your capacity as Secretary-Treasurer of the Police Chiefs Association of Spartanburg County, you have requested an opinion as to three (3) questions pertaining to municipal police officers.

Question number one (1) is as follows: Would a municipal police officer be within legal limits if he was dispatched by a civilian dispatcher to go outside his municipal jurisdiction to answer a call prior to the arrival of other agencies having jurisdiction?

The only authority discovered which would allow a municipal officer to operate outside the corporate limits of his municipality is [Section 17-13-40, South Carolina Code](#) of Laws, 1976, which provides as follows:

The police authorities of all towns and cities of this State may make arrests of all offenders against the municipal ordinances and statutes of this State committed within the corporate limits or at any place within a radius of three miles of the corporate limits, with or without a warrant, when such police authorities are in pursuit of such offender.

This section is specific in its requirement that the officer be in 'pursuit' of a person who has violated a municipal ordinance, and that the officer's jurisdiction extends within only a three (3) mile radius of the corporate limits. Therefore, if a municipal police officer should answer a call outside his municipal jurisdiction, exclusive of the above situation, he would have no authority to make an arrest or to take any action in the matter, other than action of a non-legal nature such as to call in an officer who does have jurisdiction in the matter. Thus the municipal police officer would be best advised not to answer a call outside his jurisdiction, and instead to notify immediately the law enforcement agency having jurisdiction over the matter.

Question number two (2) is as follows: If a municipal police officer is called out of his jurisdiction by a deputy sheriff or highway patrolman to assist on a call, is his legal jurisdiction extended and in case of liability would it be imposed on his surety or the requesting agency's surety?

Because of the express limitations of [Section 17-13-40, South Carolina Code](#) of Laws, 1976, the jurisdiction of the municipal officer could not be extended simply by virtue of a call from another officer outside the municipality. Unless some other express authority exists which would allow such a practice, of which this writer is unaware, the municipal officer would be beyond his authority. As such, the surety of the municipal officer would be liable for any damages resulting from actions taken by the officer, even though the officer's assistance was requested by another law enforcement agency.

Question number three (3) is as follows: Does posse comitatus apply when an officer with legal authority is not present?

*2 The applicable statute is [Section 14-25-100, South Carolina Code](#) of Laws, 1976, which provides in pertinent part as follows:

The marshal or police officer of the city or town shall make such arrest and call to his assistance the posse comitatus, if necessary, and upon failure to perform such duty he shall be fined in a sum not exceeding one hundred dollars for each and every offense . . . (emphasis added)

From the emphasized portions, it is apparent that the statute contemplates the presence of a municipal police officer or marshal with the posse. The marshal or police officer is to make the arrest; the posse merely assists him. Therefore, the answer to your question is no; posse comitatus does not apply except where the posse is accompanied by a duly authorized officer.

Sincerely yours,

Robert N. Wells, Jr.
Assistant Attorney General

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