

1975 S.C. Op. Atty. Gen. 255 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4210, 1975 WL 22507

Office of the Attorney General

State of South Carolina

Opinion No. 4210

December 4, 1975

*1 A Deputy Sheriff holds office during the term and at the pleasure of the Sheriff who appointed him.

TO: Sheriff
Chester County

QUESTION PRESENTED:

Does the Chester County Board of Directors and/or County Manager have authority to dismiss Deputy Sheriffs?

STATUTES, CASES, ETC. INVOLVED:

[Willis v. Aiken County](#), 203 S.C. 96, 26 S.E.2d 313

[Trammell v. Fidelity and Casualty Co.](#), 45 F.Supp. 366

[Rutledge v. Small](#), 192 S.C. 254, 6 S.E.2d 260

[State v. Goldsmith](#), 96 S.C. 484, 81 S.E. 147

80 C.J.S., [Sheriffs and Constables](#), Section 26

Opinions of Attorney General, Numbers: 1343 (1962); 1047 (1961); 1986 (1966).

Section 53–71, Code of Laws of South Carolina (1962), as amended.

DISCUSSION OF ISSUE:

If the employee about whom you inquired is a deputy, the Sheriff has general removal power and is entitled to exercise that power alone.

The relationship between a sheriff and his deputy is one of the oldest known to the law, having its origin in the common law. A sheriff and his deputy are, for certain purposes, regarded as one officer in law. [Willis v. Aiken County](#), 203 S.C. 96, 26 S.E.2d 313. (See Opinion of Atty. Gen. Daniel R. McLeod, No. 1343, 1962 at 110). A sheriff is responsible for the acts of his deputy performed in the course of his official business, and the sheriff's bond will be responsible for any damages that may be suffered by any party as a result of negligence or improper acts in the performance of such business. [Trammell v. Fidelity and Casualty Company](#), 45 F. Supp. 366; [Rutledge v. Small](#), 192 S.C. 254, 6 S.E.2d 260. (Same Opinion, 1962 at 110, 111). It is a generally accepted principle of law that the power to remove is vested in the authority having the power to make appointments. (*Ibid.* at 111). The appointing power of deputies is vested in the sheriff, not in any judge or in the governing board or body of a county (such as a County Board of Commissioners). Likewise, the sheriff, and not the Board of Commissioners, or a judge, has the power to remove deputies summarily. Citing Section

53–71 of the Code of Laws; 80 C.J.S., Sheriffs and Constables, Section 26–B; Throop on Public Officers, Section 344. (Op. Atty. Gen. 1962 at 110, 112).¹

The conclusions discussed above are supported in C.J.S.:

In accordance with the rules governing tenure of deputies generally, as discussed in Officers Section 149, where the term of a deputy sheriff or deputy constable is not fixed by statute, he serves at the pleasure of the sheriff or constable who appointed him. 80 C.J.S., Sheriffs and Constables, Section 26; cited in Opinion No. 1047 by William H. Gibbes, Assistant Attorney General, 1961 at 112.

Mr. Gibbes concludes in his opinion that ‘a deputy sheriff only holds office during the term and at the pleasure of the sheriff who appoints him. . . .’ Opinion No. 1047, 1961 at 112. (emphasis added).

CONCLUSION:

*2 Therefore, it is the opinion of this Office that a deputy sheriff holds office during the term and at the please of the sheriff who appointed him.

Joseph R. Barker
Assistant Attorney General

Footnotes

¹ Section 53–71 of the 1962 Code of Laws provides that the sheriff ‘may appoint one or more deputies to be approved by the judge of the circuit court or any circuit judge presiding therein. Such appointment shall be evidenced by a certificate thereof, signed by the sheriff, and shall continue during his pleasure. . . .’ (Emphasis added) A sheriff may remove a deputy without a hearing. [State v. Goldsmith](#), 96 S.C. 484, 81 S.C. 147 (1914). Also, a sheriff is authorized by Section 53–71 to remove summarily a deputy peace officer appointed by him, and such power is not affected by Section 53–104, except insofar as it is made the duty of the sheriff to remove the deputy on the request of the executive officers of a corporation for such causes as are therein stated. [State v. Goldsmith](#), 96 S.C. 484, 81 S.E. 147.

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