



ALAN WILSON
ATTORNEY GENERAL

November 20, 2019

Chris Noury, Esq.
North Myrtle Beach City Attorney
1018 Second Avenue South
North Myrtle Beach, SC 29582

Dear Mr. Noury:

We received your request seeking an opinion on whether a law enforcement agency from South Carolina can enter into a mutual aid agreement with an out-of-state law enforcement provider. This opinion sets out our Office's understanding of your question and our response.

Addendum November 20, 2019: This opinion is being reissued with a clarification at the request of the South Carolina Sheriffs' Association. *See Conclusion, infra.*

Issue (as quoted from your letter):

Section 23-20-20(2) defines "law enforcement provider" as any in-state *or out-of-state* (emphasis added) law enforcement authority that provides law enforcement services to a law enforcement agency pursuant to the Chapter.

However, even though out-of-state law enforcement authorities are referenced in the definitions section, the Act does not appear to provide additional language or authority to authorize a law enforcement authority from South Carolina to enter into a mutual aid agreement with an out-of-state law enforcement authority.

Section 23-20-30(A) provides in part "All agreements must adhere to the requirements contained in Section 23-20-40." Section 23-20-40(B) provides "Except as provided in subsection (C), a mutual aid agreement entered into on behalf of a law enforcement authority *must be approved by the appropriate governing bodies of each* concerned county, incorporated municipality, or other political subdivision *of this State*" (emphasis added).

The term "each" implies each party to the agreement must receive the approval of the governing body of *this State* (i.e., the state of South Carolina). If the above interpretation is true, [then] it appears that a law enforcement authority from the state of South Carolina would be precluded from entering into a mutual aid agreement with an out-of-state law enforcement authority even though it

appears the General Assembly intended to authorize law enforcement authorities from South Carolina to enter into mutual aid agreements with out-of-state law enforcement authorities.

Law/Analysis:

It is the opinion of this Office that a South Carolina law enforcement agency can enter into a mutual aid agreement with an out-of-state law enforcement provider pursuant to the Law Enforcement Assistance and Support Act. *See* S.C. Code Ann. § 23-20-10 *et seq.* (Supp. 2019). Although this Office has not identified any published court decision which directly addresses this question, we believe that this result is mandated by the express text of the Act and the apparent legislative intent. *See id.*

South Carolina's "Law Enforcement Assistance and Support Act" governs mutual aid agreements and is found in S.C. Code Ann. § 23-20-10 *et seq.* (Supp. 2019). Section 23-20-20(2) defines a "law enforcement provider" to mean "any in-state or out-of-state law enforcement authority that provides law enforcement services to a law enforcement agency pursuant to this chapter." S.C. Code Ann. § 23-20-20(2) (Supp. 2019) (emphasis added). Section 23-20-40 establishes the requirements of a mutual aid agreement, and that Section reads in full:

(A) All mutual aid agreements for law enforcement services must be in writing and include, but may not be limited to, the following:

- (1) a statement of the specific services to be provided;
- (2) specific language dealing with financial agreements between the parties;
- (3) specification of the records to be maintained concerning the performance of services to be provided to the agency;
- (4) language dealing with the duration, modification, and termination of the agreement;
- (5) specific language dealing with the legal contingencies for any lawsuits or the payment of damages that arise from the provided services;
- (6) a stipulation as to which law enforcement authority maintains control over the law enforcement provider's personnel;

(7) specific arrangements for the use of equipment and facilities; and

(8) specific language dealing with the processing of requests for information pursuant to the Freedom of Information Act for public safety functions performed or arising under these agreements.

(B) Except as provided in subsection (C), a mutual aid agreement entered into on behalf of a law enforcement authority must be approved by the appropriate governing bodies of each concerned county, incorporated municipality, or other political subdivision of this State. Agreements entered into are executed between governing bodies, and, therefore, may last until the agreement is terminated by a participating party of the agreement.

(C) An elected official whose office was created by the Constitution or by general law of this State is not required to seek approval from the elected official's governing body in order to participate in mutual aid agreements.

(D) Provided the conditions and terms of the mutual aid agreements are followed, the chief executive officers of the law enforcement agencies in the concerned counties, incorporated municipalities, or other political subdivisions have the authority to send and receive such resources, including personnel, as may be needed to maintain the public peace and welfare.

(E) The officers of the law enforcement provider have the same legal rights, powers, and duties to enforce the laws of this State as the law enforcement agency requesting the services.

S.C. Code Ann. § 23-20-40 (Supp. 2019). You note in your letter that the key language at issue here is the requirement that an agreement “must be approved by the appropriate governing bodies of each concerned county, incorporated municipality, or other political subdivision of this State.” This language was added by Act 222 of 2016¹, and the title of that Act read in relevant part:

AN ACT . . . TO DELETE THE PROVISION THAT ALLOWS LAW ENFORCEMENT AGENCIES TO ENTER INTO CONTRACTUAL AGREEMENTS TO PROVIDE LAW ENFORCEMENT SERVICES, TO

¹ Substantially similar language regarding approval was added by Act No. 382, 2000 S.C. Acts and codified in Section 23-20-50. That Section was repealed and the substantive portions regarding approval were consolidated into the current version of Section 23-20-40 by Act 222 of 2016.

ALLOW POLITICAL SUBDIVISIONS TO ENTER INTO MUTUAL AID AGREEMENTS TO PROVIDE LAW ENFORCEMENT SERVICES, TO PROVIDE FOR THE CONTENT OF A MUTUAL AID AGREEMENT, TO SPECIFY THE OFFICIALS WHO MAY ENTER INTO AND ENFORCE A MUTUAL AID AGREEMENT

Act No. 222, 2016 S.C. Acts 1534. Thus, one of the stated purposes of this Act was to shift the authority to enter into a mutual aid agreement from law enforcement agencies and to political subdivisions, subject to certain exceptions. *Id.*; *see also* S.C. Code Ann. § 23-20-40(C) (Supp. 2019) (establishing exceptions for elected officials).

As this Office has previously opined:

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). All rules of statutory interpretation are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999).

Op. S.C. Att'y Gen., 2005 WL 1983358 (July 14, 2005). The South Carolina Supreme Court also has held that:

However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning, when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature, or would defeat the plain legislative intention; and if possible will construe the statute so as to escape the absurdity and carry the intention into effect.

State ex rel. McLeod v. Montgomery, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964) (quoting *Stackhouse v. County Board*, 86 S.C. 419, 68 S.E. 561 (1910).).

Turning to the text of the statute, we observe that the General Assembly plainly intended that out-of-state law enforcement authorities be able to provide law enforcement services in South Carolina pursuant to a mutual aid agreement. S.C. Code Ann. § 23-20-20(2) (Supp. 2019). Therefore, it would be incoherent to read the language “the appropriate governing bodies of each concerned . . . political subdivision of this State” so as to preclude an out-of-state governing body from entering into such an agreement. Such a narrow reading would frustrate the apparent

intent of the General Assembly in expressly including out-of-state law enforcement authorities in the definition of a law enforcement provider. *See id.* Instead, the better reading of the statute as a whole is to read this provision as inclusive of the appropriate governing bodies of an out-of-state law enforcement provider that will operate under the provisions of a mutual aid agreement. This reading is consistent with the General Assembly's express inclusion of out-of-state law enforcement authorities as potential law enforcement providers in S.C. Code Ann. § 23-20-20(2).

This inclusive construction is consistent with the available guidance found in opinions of the South Carolina Supreme Court. Our State's highest Court has opined in the past regarding the requirements of approval by a governing body in the case of *State v. Boswell*, 391 S.C. 592, 707 S.E.2d 265 (2011). We note that the Court in *Boswell* addressed a mutual aid agreement where all law enforcement agencies and local governments were within South Carolina and the question presented in your letter was not before the Court. *See id.* Furthermore, the Court decided *Boswell* under a prior version of the Code. *See id.*; *cf.* S.C. Code Ann. § 23-20-40(C) (Supp. 2019). However we discuss these cases briefly here because they underscore that the purpose of the revisions to Section 23-20-40 was to require the execution by governing bodies.

In *State v. Boswell*, the Supreme Court was called upon to opine on the validity of a mutual aid agreement executed between two sheriff departments in South Carolina under a prior version of Title 23, Chapter 20. *State v. Boswell*, 391 S.C. 592, 601, 707 S.E.2d 265, 270 (2011). The agreement in *Boswell* was executed between two sheriff departments in 1999, but never ratified by county council as required by the prior version of Sections 23-20-40 and 23-20-50 codified in the year 2000. *Id.*; *cf.* S.C. Code Ann. § 23-20-40(C) (Supp. 2019). The Court in *Boswell* rejected the argument that ratification was optional and opined:

In contrast to the State's interpretation, we construe subsection A [of S.C. Code Ann 23-20-50 (2000)] as requiring governing bodies to formally approve a pre-existing agreement if it is to retain its validity. Taking into account the significance of territorial jurisdiction, we believe a more stringent approach needs to be followed in order to confer this type of authority.

In the instant case, the General Counsel for the Lexington County Sheriff's Department admitted that the 1999 agreement had been "sent to" but not voted on by the county council. Based on the failure to satisfy the requisite statutory provisions, we find the 1999 agreement was invalid.

Id. We reiterate that the agreement in *Boswell* was executed between two South Carolina sheriff departments and the question presented in your letter was not before the Court. Additionally, it was decided under a prior version of the code which has since been amended to include S.C.

Code Ann. § 23-20-40(C) (Supp. 2019). However, the *Boswell* decision underscores that mutual aid agreements made pursuant to Title 23, Chapter 20 must be made between governing bodies as opposed to law enforcement agencies alone (subject to exceptions added later in Subsection 23-20-40(C)). *See id.*, *see also* S.C. Code Ann. § 23-20-40(C) (Supp. 2019). While not controlling, we believe this provides persuasive support for reading the current version of Section 23-20-40 as inclusive of the appropriate governing bodies of an out-of-state law enforcement provider that will operate under the provisions of a mutual aid agreement.

Conclusion:

In conclusion, it is the opinion of this Office that a South Carolina law enforcement agency can enter into a mutual aid agreement with an out-of-state law enforcement provider pursuant to the Law Enforcement Assistance and Support Act. *See* S.C. Code Ann. § 23-20-10 *et seq.* (Supp. 2019). We agree with your assessment that “the General Assembly intended to authorize law enforcement authorities from South Carolina to enter into mutual aid agreements with out-of-state law enforcement authorities.” Furthermore, we believe that the text of the Law Enforcement Assistance and Support Act accomplishes that intended purpose. *See* S.C. Code Ann. § 23-20-40 (Supp. 2019) & *discussion supra*.

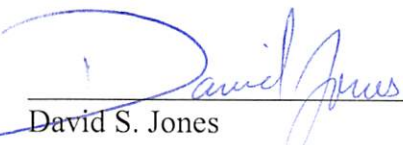
As to the requirement that an agreement “must be approved by the appropriate governing bodies of each concerned county, incorporated municipality, or other political subdivision of this State,” in Section 23-20-40(B), we believe that a court most likely would read this as inclusive of the appropriate governing bodies of an out-of-state law enforcement provider that will operate under the provisions of a mutual aid agreement. *See* S.C. Code Ann. § 23-20-40(B)-(C) (Supp. 2019). Accordingly, we advise that a mutual aid agreement for an out-of-state law enforcement provider to operate in South Carolina should be entered into with the appropriate out-of-state political body.

Addendum November 20, 2019: Our discussion of the opinion in *State v. Boswell, supra*, expressly notes that it was decided under a previous version of the statute. Our discussion is included solely to expound on how the Court historically has understood the legislative intent in the general scheme of the statute. Furthermore, this opinion is focused squarely on the question presented involving out-of-state providers, and should be read as such. As noted earlier in this opinion, the current version of Section 23-20-40(C) now expressly provides that “[a]n elected official whose office was created by the Constitution or by general law of this State is not required to seek approval from the elected official's governing body in order to participate in mutual aid agreements.” At the request of the South Carolina Sheriffs’ Association, we note that a South Carolina Sheriff holds such an office. S.C. Const. Art. V, § 24 (“There shall be elected in

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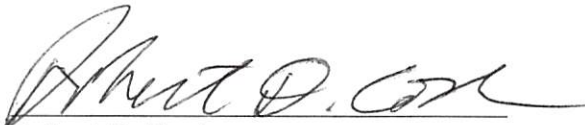
each county by the electors thereof . . . a sheriff . . .”). Consequently, a South Carolina sheriff entering into a mutual aid agreement is exempt from any requirement to obtain consent of the governing body of their county. Nothing in this opinion should be construed to the contrary.

Sincerely,



David S. Jones
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General