



HENRY McMASTER
ATTORNEY GENERAL

April 20, 2006

The Honorable Ray Nash
Sheriff, Dorchester County
212 Deming Way
Summerville, South Carolina 29483

Dear Sheriff Nash:

In a letter to this office you requested an opinion regarding whether the Dorchester County Sheriff's Department may maintain a fully independent information technology network separate from that of the County.

In your letter you indicated that the Dorchester County Administrator had denied an application from the Sheriff's Department for a Justice Assistance Grant for consulting support for a fully independent information technology network. You indicated that the network was denied on the basis that "a fully independent information technology network is not a requirement under S.C. Code Ann. § 4-9-33." Such provision states:

A county council may provide for E-911 services as provided for in Chapter 47 of Title 23; provided, however, that access to criminal records databases and other similar restricted databases relating to law enforcement functions must remain under the supervision of the sheriff or his designee unless law enforcement functions are transferred to a county police department pursuant to a referendum provided for in this section. (emphasis added).

Such provision is quite specific in indicating that access to criminal records databases and other similar restricted databases regarding law enforcement are to remain within the supervisory authority of the sheriff or his designee unless otherwise authorized. In my opinion, in order for access to criminal records databases to remain under the supervision of the sheriff, such databases should be separate from any other databases.

The provisions of Section 4-9-33 requiring that criminal records databases and other similar restricted databases related to law enforcement functions remain separate and under the supervision of the sheriff is in keeping with other provisions that restrict accessibility to certain law enforcement

records. Certain criminal record information may be considered confidential. For example, pursuant to S.C. Code Ann. § 30-4-40,

(a) A public body may but is not required to exempt from disclosure the following information:

(3) Records of law enforcement and public safety agencies not otherwise available by state and federal law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by:

(A) disclosing identity of informants not otherwise known;

(B) the premature release of information to be used in a prospective law enforcement action;

(C) disclosing investigatory techniques not otherwise known outside the government;

(D) by endangering the life, health, or property of any person; or

(E) disclosing any contents of intercepted wire, oral, or electronic communications not otherwise disclosed during a trial.

Also, peace officers' records relating to children are not open to public inspection. S.C. Code Ann. § 20-7-8515 provides that

(A) Except as provided herein, law enforcement records and information identifying children pursuant to this article are confidential and may not be disclosed directly or indirectly to anyone, other than those entitled under this article to receive the information.

(B) Law enforcement records of children must be kept separate from records of adults. Information identifying a child must not be open to public inspection, but the remainder of these records are public records.

Prior opinions of this office have also commented on the confidential status of certain criminal documents. See, e.g., Ops. dated August 1, 1989 (search warrants prior to service); February 23, 1989 (prefiled indictments).

The determination that certain records of a sheriff are to be kept separate from those of other county officials is in keeping with the provisions of S.C. Code Ann. § 23-15-20 which requires that the sheriff maintain certain books of record, namely, a "writ book", an "execution book", and a "sale book". Pursuant to subsection (B) of such provision

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Any public records required to be kept by the sheriff in separate books under the provisions of this section may be maintained in a computer system or may be transferred to a microfilm system provided that a second or back-up copy of the records is maintained in the event of destruction or unavailability of the records maintained by the computer or microfilm system.

As to a county's control over a sheriff's department, generally, a sheriff is considered the chief law enforcement officer of a county. See: Ops. Atty. Gen. dated March 1, 2005; May 8, 1989.

A prior opinion of this office dated August 6, 1991 recognized that "the internal operation of the sheriff's office...is a function which belongs uniquely to the chief law enforcement officer of the county."

The office of sheriff is also recognized as an elected, constitutional office. See: Article V, Section 24 of the State Constitution ("There shall be elected in each county by the electors thereof...a sheriff..."). In an opinion dated May 13, 1980, this Office stated that

[t]he office of sheriff is a constitutional office and can be regulated only in a manner prescribed by the State Constitution. Article V, Section 20, South Carolina Constitution. [now Section 24]. That section provides that the General Assembly shall provide by law for the duties and compensation of the county sheriff. Therefore, it must be said that the duties and powers of the sheriff may be varied, abridged or increased only at the pleasure of the Legislature.

A county council is generally considered as having only limited authority in dealing with the authority or duties of an elected official, such as a sheriff. See: Op. Atty. Gen. dated August 6, 1991 (the authority of a county pursuant to S.C. Code Ann. § 4-9-160 to provide for a centralized purchasing system for the procurement of goods and services which would be applicable to an elected official such as a sheriff). Moreover, it is specifically recognized pursuant to S.C. Code Ann. § 4-9-650 that

[w]ith the exception of organizational policies established by the governing body, the county administrator shall exercise no authority over any elected officials of the county whose offices were created by the Constitution or by the general law of the State.

See: Eargle v. Horry County, 344 S.C. 449, 545 S.E.2d 276 (1999) (county administrator did not have authority under the Home Rule Act to suspend three employees of county auditor inasmuch as auditor was an elected official). Pursuant to S.C. Code Ann. § 4-9-30(7), a county government is authorized to

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(7) to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government. This employment and discharge authority does not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government.

In Heath v. County of Aiken, 295 S.C. 416, 418, 368 S.E.2d 904, 905 (1988) the Supreme Court, recognizing that a deputy sheriff serves at the pleasure of the sheriff, agreed that "...commissioned deputies are not county "employees" for purposes of Section 4-9-30(7)'s personnel policies and grievance procedure"

As set forth, Section 4-9-33 specifically states that "...access to criminal records databases and other similar restricted databases relating to law enforcement functions must remain under the supervision of the sheriff..." Such supervisory requirement by a sheriff is in keeping with other provisions that restrict public accessibility to certain law enforcement records and documents. Also, a sheriff's control of criminal records databases and other databases relating to law enforcement is in keeping with other examples of the paramount authority and power of a sheriff as an elected, constitutional office holder as set forth above and the limited authority of a county as to the duties of that office. Therefore, in my opinion, a sheriff's department would be authorized to maintain a fully independent information technology network separate from that of the county. However, while the computer records of a sheriff may be kept separate, I am unaware of any requirement that a county necessarily support a JAG application for funds related to an independent information technology network. In my opinion, any decision regarding such is solely within the discretion of the county.

If there are any questions, please advise.

Sincerely,



Charles H. Richardson

Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook

Assistant Deputy Attorney General