

8209 Liberty



HENRY McMASTER  
ATTORNEY GENERAL

August 2, 2006

Jeffrey B. Moore, Executive Director  
South Carolina Sheriffs' Association  
P. O. Box 21428  
Columbia, South Carolina 29221-1428

Dear Mr. Moore:

In a letter to this office you referenced an order of Chief Justice Toal dated April 25, 2006 which states as follows:

[p]ursuant to the provisions of S.C. Const. Article V, § 4

For the sole purpose of determining a sex offender's indigent status, each county sheriff, or his designee, is hereby designated as the appropriate official to make a ministerial determination of indigent status for sex offenders. A presumption that the registering sex offender is indigent shall be determined if the registering sex offender's net family income is less than or equal to the Poverty Guidelines established and revised annually by the United States Department of Health and Human Services. Net income shall mean gross income minus the deductions required by law

You stated that such order is in conflict with provision 55DD.32 of Act No. 115 of 2005 which states that:

[e]ach Sheriff is authorized to charge and collect an annual amount of one hundred dollars from each sex offender required to register by law. If such sex offender has been declared indigent by the Clerk of Court of the county in which the offender must register and provides proof of the declaration at the time of registration, the fee will automatically be waived.

Therefore, by the Order of the Chief Justice, the sheriff or his designee is required to determine the indigent status of a sex offender whereas by the referenced provision in Act No. 115 the clerk of

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court is to determine indigency. You have questioned whether the sheriffs should comply with the Order of the Chief Justice or should they insist that the clerks of court determine indigent status.

Article V, Section 1 of the State Constitution provides for a unified judicial system. Section 4 of Article V designates the Chief Justice as the administrative head of the unified judicial system. Such provision also directs that the Supreme Court make rules governing the administration of all courts in this State.

Prior opinions of this office dated September 11, 2003 and July 25, 2002 have recognized that a clerk of court, when performing the duties of clerk, is an arm of the court itself. See, Thornton v. Atlantic Coast Line R. Co., 196 S.C. 316, 13 S.E.2d 442, 446 (1941), quoting Chafee and Co. v. Rainey, 21 S.C. 11, 18 ["The clerk is the officer of the court, and any mere ministerial act he does by the order of the court is the act of the court itself."]. Another opinion of this office dated May 16, 1984 concluded that clerks of court are to be considered part of the unified judicial system "since they are officers of the circuit courts." In McCormick County Council v. Butler, 361 S.C. 92, 603 S.E.2d 586 (2004), the Supreme Court determined that "[a]s the administrative head of the unified judicial system, the Chief Justice has the authority to issue administrative orders controlling the courts in the State." In that opinion, the Court concluded that a clerk of court had the authority to assign offices in and to possess the keys to the various offices of a courthouse. Consistent with such, there is no question that the Chief Justice is authorized to issue orders with respect to the duties and responsibilities of a clerk of court.

In State v. Brantley, 279 S.C. 215, 308 S.E.2d 234 (1983), the Supreme Court determined that a sheriff is an officer of the court and subject to a court's order upon penalty of contempt for failure to obey. An opinion of this office dated March 3, 2000 stated that a sheriff is "...an officer of the court and as such is required to carry out and effectuate the court's orders." Such would include orders of the Chief Justice of the State Supreme Court. In Matter of Holmes, 834 A.2d 384 at 385 (N.H. 2003), the New Hampshire Supreme Court referenced an earlier decision stating that "[t]he power of the judiciary to control its own proceedings, the conduct of participants, the actions of officers of the court and the environment of the court is a power absolutely necessary for a court to function effectively and do its job of administering justice." See also: Kirven v. Secretary of the Board of Commissioneres on Grievances and Discipline, 271 S.C. 194, 246 S.E.2d 857 (1978) (Supreme Court may charge officers of court with their duties and responsibilities.). Therefore, a county sheriff, as an officer of the court, is subject to the orders of the Chief Justice.

Registration as a sex offender pursuant to the provisions of S.C. Code Ann. §§ 23-3-400 is a means of establishing an easily accessible public record of information that is already a matter of public court records. See: Op. Atty. Gen. dated April 10, 1995. Therefore, records relating to sex offenders are tantamount to judicial records. As a result, the order by the Chief Justice, the head of the unified judicial system in this State, which deals with the determination of indigency with regard to a sex offender by an officer of the court, in this instance, a sheriff, is consistent with this understanding.

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As referenced in Berry v. Milliken, 234 S.C. 518, 109 S.E.2d 354, 356 (1959), the State Supreme Court is "...the final arbiter of the meaning of the State Constitution." In its decision in Matter of Ferguson, 304 S.C. 216, 218, 403 S.E.2d 628, 630 (1991), the State Supreme Court stated that

Article V of the South Carolina Constitution provides for a unified judicial system with the Chief Justice as the administrative head, and charges the Supreme Court with administering the courts of this State. Accordingly, this Court, as the highest constitutional court, has the responsibility to protect and preserve the judicial system. Even in the absence of specific constitutional or statutory authority, we have the inherent authority to take whatever action is necessary to effectuate this responsibility.

In State ex rel. Riley v. Martin, 274 S.C. 106, 262 S.E.2d 404 (1980) the Court dealt with a statute which required that records of the Court of Appeals "be kept in a manner prescribed by the judges" thereof. Referencing Article V, Section 4 which, again, provides that "[t]he Supreme Court shall make rules governing the administration of all the courts of the State", the Court stated that

[a]cting under this constitutional provision, the Supreme Court has heretofore promulgated rules governing the administration of the courts of this State, including the manner and form in which certain court records are to be kept and maintained. Such power is necessarily encompassed within constitutional authority to "make rules governing the administration of all the courts of the State." Since the Court of Appeals is a part of the unified judicial system, its records must be kept and maintained under the supervisory control of the Supreme Court. To the extent that Section 14-8-240 may purport to vest in the judges of the Court of Appeals the absolute authority to prescribe the manner in which the records of that court shall be kept, the same is violative of Article 5, Section 4, of the Constitution.

274 S.C. at 114. See also: In the Matter of Chiovero, 570 A.2d 57 (Pa. 1990) (the interpretation of the code of judicial conduct is a matter within the sole jurisdiction of the Supreme Court and the enforcement and manner of application of such code is within the exclusive role of the Supreme Court in its capacity as administrative and supervisory head of the unified judicial system); Op. Atty. Gen. N. Dakota dated October 28, 1996 ("...under the separation of powers doctrine, the judiciary's authority over the unified judicial system is exclusive, except as otherwise limited by the...Constitution.").

Chief Justice Toal by her Order dated April 25, 2006 has determined that consistent with Article V, Section 4 of the State Constitution, a county sheriff, or his designee, is "...the appropriate official to make a ministerial determination of indigent status for sex offenders." The determination of the scope of Article V to include placing such responsibility on a county sheriff or his designee is certainly within the authority of the Chief Justice. As a result, in my opinion, the sheriffs of this

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State must comply with the Order of the Chief Justice regarding the determination of indigency for purposes of registration as a sex offender.

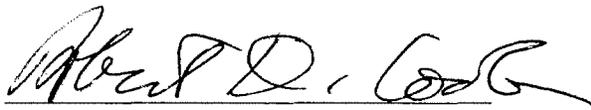
With kind regards, I am,

Very truly yours,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General