



HENRY McMASTER
ATTORNEY GENERAL

May 6, 2009

J, Kennedy DuBose, Jr., Esquire
Kershaw County Attorney
P. O. Drawer 39
Camden, South Carolina 29021-0039

Dear Mr. DuBose:

In a letter to this office you indicated that former Kershaw County Sheriff L.L. DeBruhl, prior to 1987, with approval of the Kershaw County Council, devolved all his powers and duties relating to the custody of the county jail and the appointment of a jailer on the governing body of the county as provided in S.C. Code Ann. § 24-5-12.¹ S.C. Code Ann. § 24-5-10 provides generally that

[t]he sheriff shall have custody of the jail in his county and, if he appoint a jailer to keep it, the sheriff shall be liable for such jailer and the sheriff or jailer shall receive and safely keep in prison any person delivered or committed to either of them, according to law.

Section 24-5-12 states that

[n]otwithstanding the provisions of § 24-5-10 or any other provision of law, the sheriff of any county may, upon approval of the governing body of the county, devolve all of his powers and duties relating to the custody of the county jail and the appointment of a jailer on the governing body of the county; *provided*, a sheriff who

¹As set forth in Carraway v. DeBruhl, 993 F.2d 228, 1993 WL 136983 (4th Cir. Ct. App., 1993) (unpublished disposition),

[i]t...is undisputed that before 1987, in accord with S.C. Code Ann. § 24-5-12, the Kershaw County Sheriff had devolved official responsibility for operation of the county jail to the governing body of Kershaw County. The jail was housed in facilities independent of the Sheriff's office, and was operated by a jail administrator and staff employed and controlled by the Kershaw County Manager and the Kershaw County Council.

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has been defeated in a primary or general election may not devolve said duties on the governing body of the county.

An opinion of this office dated February 12, 1990 indicated that consistent with such provision, "...if a sheriff has properly transferred his duties in regard to the jail upon the county governing body, he presumably would no longer be responsible for its operation." I am unaware of any special legislation regarding Kershaw County that makes any provision for the transfer of the county jail from the sheriff.

You stated that the present sheriff, Sheriff Stephen McCaskill, has written the County Administrator requesting that the operation of the Kershaw County Detention Center be returned to the sheriff's office. Referencing such, you have requested an opinion of this office on the following question:

Can present Sheriff McCaskill, without the consent of the governing body of the County, "take over the operation of the Detention Center", upon the authority of Section 24-5-10, when the Sheriff's predecessor in office, upon approval of the Kershaw County Council, devolved "all of his powers and duties relating to the custody of the county jail and the appointment of the jailer on the governing body" of Kershaw County as provided in Section 24-5-12?

As set forth by Section 24-5-12, the sheriff, upon approval of the county governing body, is authorized to "devolve" all powers and duties relating to the custody of the county jail and the appointment of a jailer "on the governing body of the county." As referenced in a prior opinion of this office dated June 5, 1996,

[t]he phrase "devolve" means to transfer from one person to another, to deliver over, or to hand down...It is said that the term "devolve" means "[t]o pass or be transferred from one person to another; to fall on, or accrue to, one person as the successor of another: as a title, right, office liability. The word "devolution" means the transference of property from one person to another.

The opinion reasoned that "based upon these authorities, I would analogize Section 24-5-12 to a transfer or conveyance of property."

Consistent with the above, in the opinion of this office, there was a transfer by the office of sheriff of the powers and duties relating to the custody of the Kershaw County jail and the appointment of a jailer pursuant to Section 24-5-12 and the transfer should be considered a binding transaction. Typically, the action of one sheriff in such instance should be considered as binding upon any subsequent sheriff. However, the statutes do not expressly address the situation as to the procedure for returning the jail to the sheriff. As a result, in the opinion of this office, a declaratory judgment would be recommended to resolve the question with finality as to whether Sheriff

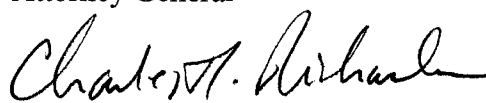
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McCaskill would be authorized to take over the operations of the detention center without the approval of the county governing body.

If there are any questions, please advise.

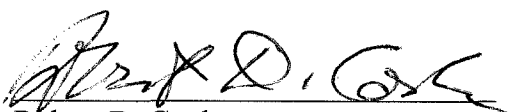
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General