

October 26, 2007

Bradley T. Farrar, Esquire
Deputy Richland County Attorney
P. O. Box 192
Columbia, South Carolina 29202

Dear Mr. Farrar:

In a letter to this office you raised the following scenarios:

Richland County does not consider grants to be part of its sheriff's department general fund budget. Are grant funds (e.g. from the State or Federal government) that are provided to counties or sheriff's departments for the purpose of hiring new or special deputies, for example, considered a part of a sheriff's budget?

Ex: The County or its sheriff's department receives a federal grant to hire two special resource officers (SROs) to work in a school district. The grant provides funding for the two SROs for only three years. At the end of the three years, no replacement funding is available, yet the two SROs (classified as "deputies") remain. The County has not taken any action to "reduce or restructure" the sheriff's department's budget, but the two deputies can no longer be paid.

You questioned whether the County is required to pick up where the grant ended.

You also raised the following question:

Richland County does not consider special revenue funds to be part of its sheriff's department general fund budget. Are special revenue funds received in the furtherance of programs such as victim's assistance and other state mandated programs that may create duties for a sheriff's department considered a part of the sheriff's budget? In particular, if the funds are discontinued or reduced (due to, e.g., a cessation of the given program), must a county cover any shortfall to ensure no deputies are displaced even though the purpose for which they were hired may no longer exist and the county did not provide the original funding for their positions?

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A prior opinion of this office dated August 14, 1985 is responsive to your questions. That opinion cited the determination that, generally, the hiring and discharge of a deputy sheriff are matters solely within the prerogative of a sheriff. See also: Op. Atty. Gen. dated January 8, 2007.

S.C. Code Ann. Section 23-13-10 of the Code provides that the appointment of a deputy sheriff shall continue during the pleasure of the sheriff. The State Supreme Court has held that this provision gives a sheriff absolute authority as to the discharge of his deputies and, therefore, county grievance procedures are inapplicable to the discharge of a deputy sheriff by the sheriff. Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979). See also: Anders v. County Council for Richland County, 284 S.C. 142, 325 S.E.2d 538 (1985); Heath v. Aiken County, 295 S.C. 416, 368 S.E.2d 904 (1988); Botchie v. O'Dowd, 299 S.C. 329, 384 S.E.2d 727 (1989). The August, 1985 opinion also stressed that generally, "...deputy sheriffs are answerable only to the sheriff and not to the county government."

The August, 1985 opinion specifically dealt with the question of whether action could be taken by a county council to withdraw the appropriation for a particular deputy sheriff's position so as to result in the termination of the particular deputy. The opinion concluded that

...it is the opinion of this Office that it is extremely doubtful as to whether such action could be taken. While obviously a county council is vested with discretion in dealing with any appropriations from the standpoint of general economic and efficiency concerns, such discretion could not be utilized in a manner which would interfere with the decisions of a sheriff as to hiring and discharge of a deputy sheriff. Generally, courts have closely examined situations where attempts were made to withhold appropriations for sheriffs once they were appointed. Flaherty v. Milliken, 86 N.E. 558 (1908). Moreover, in a previous opinion of this Office dated February 7, 1978, it was stated that "(w)ith reference to budgetary matters, while it is true that the council exercises totally the budgetary authority of . . . (a) . . . county and, consequently, can decrease, increase or otherwise alter appropriations for specific county offices and functions [Section 4-9-140, Code of Laws of South Carolina, 1976] nevertheless, it cannot so decrease the appropriations of an elected official's office so as to prevent the proper functioning thereof . . .'

The opinion concluded that

...a sheriff possesses absolute control insofar as the hiring and discharge of his deputies is concerned. Therefore, it is extremely doubtful whether action could be taken by a county council to withdraw the appropriation of the position of a particular deputy sheriff. Such could be construed as indirectly terminating a particular deputy sheriff's position which is a position the county council is not empowered to abolish directly.

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However, the opinion also stressed that “[a]s to county council's general authority with respect to appropriations for sheriffs' departments, we express no opinion. Our opinion addresses only the question of county council's utilizing its appropriation authority indirectly to ‘discharge’ a particular deputy sheriff.” Another opinion of this office dated May 8, 1989 determined that “...whether or not a council by the budgetary process prevented the proper functioning of an elected official’s office is a factual matter which cannot be determined by this office.”

Additionally, in an opinion of this office dated January 8, 2007 reference was made to S.C. Code Ann. §4-9-30(7) which generally gives county governing bodies the responsibility of employing and discharging county personnel. However, such provision further states that “[t]his 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.” That opinion dealt not with the issue of specifically terminating employees of an elected official but with the desire by a county to reduce budget allocations to elected officials and, therefore, suggest to elected officials to decrease their staffs in order to remain within guidelines of a revised budget.

The opinion commented on the “broad authority and discretion to county governments to appropriate funds for county purposes.” That opinion reiterated the advice set forth above that while a county council exercises totally the budgetary authority of a county and can, therefore, decrease, increase, or otherwise alter appropriations for specific county offices and functions,

...nevertheless, it cannot so decrease the appropriations of an elected official’s office as to prevent the proper functioning thereof and, thus, indirectly, to abolish that official’s office...Whether or not the council has, in any particular instance, exercised its budgetary authority so as to interfere with or prevent the proper functioning of an elected official’s office is a factual matter which cannot be determined by this office...(Accordingly)...a county government’s ability to decrease appropriations to the office of an elected official is limited in that the appropriations cannot be decreased to the extent that they prevent the office from functioning properly or abolish the office.

Such opinion reiterated the earlier advice set out above that

...it is extremely doubtful whether action could be taken by a county council to withdraw the appropriation of the position of a particular deputy sheriff. Such could be construed as indirectly terminating a particular deputy sheriff’s position which is a position the county council is not empowered to abolish directly.

The opinion commented further that

...we certainly recognize the Legislature’s intent to vest budgetary authority in the county’s governing body. However,...such authority is limited with regard to the

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reduction in appropriations to the office of an elected official. Clearly, such reductions may not be to the extent that prevents the official's office from functioning properly. Furthermore, because counties are prohibited by Section 4-9-30(7) from terminating the employees of public officials, we are doubtful as to whether a court would allow counties to indirectly terminate an employee by abolishing their position through a reduction in appropriations for that position.

In this instance, the determination of whether the reductions you mention in your letter will result in the affected office's inability to function properly is clearly a question of fact. Moreover, whether or not the reduction in funding to such offices is in fact a termination is also a question of fact. As we stated on numerous occasions, only a court, as the finder of fact, may ultimately resolve factual issues.

Consistent with the above, in the opinion of this office, it remains clear that where grant funds have been utilized to hire additional deputies, it is extremely doubtful whether action could be taken by a county council to discontinue funding for those positions. As stated in the referenced August, 1985 opinion, "[s]uch could be construed as indirectly terminating a particular deputy sheriff's position which is a position the county council is not empowered to abolish directly." Therefore, consistent with such, it appears that the Council would be required to pick up where the grant ended. Such would similarly be the advice as to special revenue funds that were utilized to fund deputy positions even if the purpose for which the deputies were hired may no longer exist and the county did not provide the original funding for their positions.

With kind regards, I am,

Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General