



HENRY McMASTER
ATTORNEY GENERAL

January 27, 2010

The Honorable V. Stephen Moss
Member, House of Representatives
304-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Moss:

In a letter to this office you have questioned whether an individual whose law enforcement experience is limited to serving as a reserve police officer pursuant to S.C. Code Ann. §§ 23-28-10 et seq. would qualify as a "certified law enforcement officer" for purposes of being qualified to be elected sheriff. Reference was made to S.C. Code Ann. § 23-11-110 which states that

- (A) All sheriffs in this State must have the following qualifications:
- (1) be a citizen of the United States;
 - (2) be a resident of the county in which he seeks the office of sheriff for at least one year immediately preceding the date of the election for sheriff;
 - (3) be a registered voter;
 - (4) have attained the age of at least twenty-one years prior to the date of his qualifying for election to the office;
 - (5) have:
 - (a) obtained a high school diploma, its recognized equivalent in educational training as established by the State Department of Education, and have at least five years experience as a certified law enforcement officer; or
 - (b) obtained a two-year associate degree and three years experience as a certified law enforcement officer; or
 - (c) obtained a four-year baccalaureate degree and one years experience as a certified law enforcement officer; or
 - (d) served as a summary court judge for at least ten years.

For purposes of this section, a "certified law enforcement officer" is a person who has been issued a certificate as a law enforcement officer pursuant to Section 23-23-60. (emphasis added).

Section 23-23-60 sets forth the requirements for law enforcement agencies that must be met as to officers seeking certification as regular law enforcement officers. Subsection (9) of such provision includes the requirement of "...evidence satisfactory to the director of successful completion of a course of law enforcement training as established and approved by the director, and conducted at an academy or institution approved by the director, this evidence to consist of a certificate granted by the approved institution."

As noted above, Sections 23-28-10 et seq. provide for the appointment of reserve police officers. Section 23-28-10(A) defines "reserves" as "...persons given part-time police powers without being assigned regularly to full-time law enforcement duties." Section 23-28-30 provides that

(A) [a] reserve officer may not assume a police function until he has successfully completed a course of training of at least sixty hours and passed a comprehensive test prepared by the Law Enforcement Training Council and administered by the local law enforcement agency. The sixty hours of training must be promulgated by the Law Enforcement Training Council, endorsed by the appointing official and must include, but not be limited to:

- (1) Firearms training-twelve hours
- (2) Laws of arrest-three hours
- (3) Searches and seizure-three hours
- (4) Evidence-six hours
- (5) Crisis intervention-three hours
- (6) Officer survival-two hours
- (7) Ethics-two hours
- (8) Constitutional law-two hours
- (9) Local ordinances and policies-ten hours
- (10) Radio communications-one hour
- (11) Handling prisoners-one hour
- (12) Handling juveniles-one hour
- (13) Human relations-two hours.

(B) Nothing in this chapter prevents the entity having a reserve unit from prescribing additional training, subject to the approval of the Law Enforcement Training Council.

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I am informed by the State Criminal Justice Academy that such training is distinguishable from the training required pursuant to Section 23-23-60 which sets forth the requirements for individuals seeking certification as regular law enforcement officers generally. Again, such provision requires "...evidence satisfactory to the director of successful completion of a course of law enforcement training as established and approved by the director, and conducted at an academy or institution approved by the director, this evidence to consist of a certificate granted by the approved institution."

Regular law enforcement officers and reserve officers are distinguishable. Section 23-28-70 (A) states that "[r]eserves shall serve and function as law enforcement officers only on specific orders and directions of the chief." Subsections (C) and (D) of such provision states that

[a] person appointed as an auxiliary or reserve police officer after January 1, 1996, shall perform his duties while accompanied by a full-time, certified South Carolina police officer...Reserves shall not assume full-time duties of law-enforcement officers without complying with all requirements for full-time officers. (emphasis added).

S.C. Code Ann. Section 23-23-40 states that

[n]o law enforcement officer employed or appointed on or after July 1, 1989, by any public law enforcement agency in this State is authorized to enforce the laws or ordinances of this State or any political subdivision thereof unless he has been certified as qualified by the Law Enforcement Training Council....(emphasis added).

S.C. Code Ann. § 23-23-60(A) states that

[a]t the request of any public law enforcement agency of this State the council is hereby authorized to issue certificates and other appropriate indicia of compliance and qualification to law enforcement officers or other persons trained under the provisions of this chapter. (emphasis added).

As to the training of reserve officers, S.C. Code Ann. § 23-28-80 states

[a] reserve who has been in active status for at least two years who desires to become a full-time law enforcement officer may, upon application and completion of other existing requirements, be accepted at the Law Enforcement Training Council for such additional hours of training as deemed necessary. (emphasis added).

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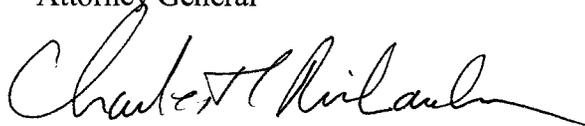
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Noting these limitations and distinctions as to reserve police officers as to their certification and training, in the opinion of this office, there is a distinction between a reserve police officer and a certified law enforcement officer. As a result, in the opinion of this office, a reserve police officer would not be considered a certified law enforcement officer for purposes of Section 23-11-110 so as to enable that individual to be elected sheriff. As to any constitutional questions, Article V, Section 24 of the State Constitution states that “[t]he General Assembly also may provide for the age and qualifications of sheriffs....” In the opinion of this office, the requirements set forth by Section 23-11-110 are consistent with such constitutional mandate.

With kind regards, I am,

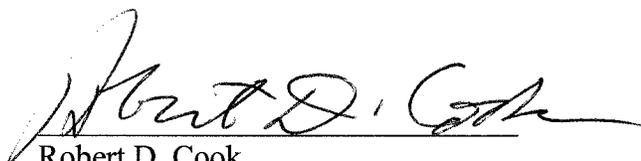
Very truly yours,

Henry McMaster
Attorney General



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REVIEWED AND APPROVED BY:



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