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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

March 6, 2002

The Honorable Lanny E. Littlejohn  
Member, House of Representatives  
402B Blatt Building  
Columbia, South Carolina 29211

Dear Representative Littlejohn:

You have asked for an opinion as to whether South Carolina's state and local law enforcement officers possess authority independently to enforce federal law concerning illegal immigrants. It is our opinion that pursuant to current South Carolina law, state and local law enforcement officers do not possess authority to enforce federal immigration law. Any authority to empower state and local law enforcement officers to arrest and detain individuals for violation of the criminal provisions of federal immigration law would have to be provided by enactment of the General Assembly.

**Law / Analysis**

A number of authorities support the conclusion that the Immigration and Naturalization Act, 8 U.S.C. ch. 12 (INA), does not preempt state and local law enforcement officers from enforcing the criminal provisions of federal immigration law so long as such enforcement is authorized by the law of that particular state. This question was exhaustively addressed in a recent opinion of the Attorney General of New York. See, 2000 WL 420372 (N.Y.A.G. March 21, 2000). There, the New York Attorney General noted that Section 1252c of the INA authorizes state and local law enforcement officers, to the extent permitted by state law, to arrest illegal aliens previously convicted of a felony and who have been deported and left the country after conviction. That provision further states that such arrests may be made only after the local official confirms the individual's status with INS (Immigration and Naturalization Service) and only for the time necessary to take the individual into custody. The New York Attorney General's opinion also referenced Section 1324(c) which authorizes "all other [law enforcement] officers whose duty it is to enforce criminal laws "to arrest persons for violating subsection (a) of that section, which imposes criminal penalties for transporting and harboring illegal aliens.

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The New York Attorney General's opinion noted that while these are the only two provisions of federal immigration law which specifically authorize state and local criminal enforcement, courts have concluded that enforcement of other criminal provisions of the federal immigration laws is not preempted. See, Gonzalez v. City of Peoria, 722 F.2d 468, 472-475 (9<sup>th</sup> Cir. 1983), overruled in part on other grounds, Hodgers-Durgin v. De la Vina, 199 F.3d 1037 (9<sup>th</sup> Cir. 1999) [nothing in federal law preempts state and local enforcement of federal immigration laws' criminal provisions]; United States v. Vasquez-Alvarez, 176 F.3d 1294, 1297 (10<sup>th</sup> Cir. 1999), cert. den. 120 S.Ct. 264 (1999). The New York Attorney General therefore concluded that while civil violations of the federal immigration laws would not constitute a basis for an arrest, "the INA does not preempt the authority of state and local officials to make warrantless arrests for criminal violations of the INA, insofar as such activity is authorized by state and local laws." (emphasis added).

Thus, the question becomes whether South Carolina law currently authorizes our state and local law enforcement officers to arrest for violations of federal law. Typically, South Carolina state and local officers are authorized to arrest for violations of the "criminal laws of this State." See, e.g. S.C. Code Ann. Section 17-13-30 (sheriffs and deputy sheriffs may arrest without warrant any and all persons who, within their view, violate any of the criminal laws of this State); § 23-1-60 (constables appointed to assist in the detection of crime and the enforcement of any criminal laws of this State); § 23-6-140 (officers and troopers shall have the same power and authority held by deputy sheriffs for the enforcement of the criminal laws of the State); § 24-21-280 (a probation agent has the power and authority to enforce the criminal laws of the State.)

Based upon these statutes, this Office has consistently concluded that state or local law enforcement officers do not possess the authority to enforce federal law. In an opinion dated September 13, 1971, we concluded that "a State or local officer is an agent of the State, county or municipality by which he is employed. He is not empowered to enforce federal law." And, in Op. No. 2066 (June 10, 1966), we stated:

[i]t is therefore apparent, in the opinion of this office that a city police officer or deputy sheriff would not be authorized to arrest a person for failure to have a draft card in his personal possession, the offense being one solely against the laws of the United States. He of course could file a compliant with the proper federal authorities, who would then proceed at their discretion.

The General Assembly has enacted legislation which authorizes the enforcement of state criminal laws by federal law enforcement officers. See, § 23-1-212. However, no such

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enabling authority allowing state and local officers to enforce federal criminal laws is apparent.

**Conclusion**

Accordingly, based upon the foregoing authorities, it is our opinion that legislation is necessary to provide South Carolina law enforcement officers with the authority to make arrests or detain individuals for violations of the criminal provisions of the federal immigration laws.

Very truly yours,



Robert D. Cook

Assistant Deputy Attorney General

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