

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3680
FACSIMILE: 803-253-6283

November 23, 1993

W.E. Jenkinson, III, Esquire
Williamsburg County Attorney
120 W. Main Street
Kingstree, South Carolina 29556

Dear Mr. Jenkinson:

Attorney General Medlock referred your recent letter to me for response. By your letter, you request an "opinion as to whether or not jailers and the jail administrator are subject to the grievance procedures as established by the Williamsburg County Council." Your letter cites Heath v. County of Aiken, 295 S.C. 416, 368 S.E. 2d 904 (1988) and other authorities. Based on those authorities, you appear to conclude that jailers and the jail administrator are not subject to the grievance procedure adopted by the Williamsburg County Council.

To comply with Article VIII, §7 of the South Carolina Constitution, the General Assembly enacted Act No. 283, 1975 S.C. Acts 692 - 742 which established five alternate forms of county government.¹ Section 4-9-30(7) of Act No. 283, which was amended by Act No. 312, 1988 S.C. Acts 2527-2530, provides:

Under each of the alternate forms of government listed in §4-9-20, . . . , each county government within the authority granted by the Constitution and subject to the general laws of this State shall have the following enumer-

¹ The South Carolina Supreme Court has held that the county board of commissioners form of county government provided as one of the alternate forms of county government was constitutionally impermissible. Duncan v. County of York, 262 S.C. 327, 228 S.E. 2d 92 (1976).

Request Letter.

November 23, 1993

S.C. Code Ann. §40-9-30(7) (1976 & 1992 Cum. Supp.).² In addition, the General Assembly has enacted the County and Municipal Employees Grievance Procedure Act, S.C. Code Ann. §§8-17-110 through 8-17-160 (1976 & 1992 Cum. Supp.).

In your letter, you refer to S.C. Code Ann. §§24-5-10 through 24-5-170 (1976 & 1992 Cum. Supp.) which govern jails and jailers. As you note, §24-5-10 designates the sheriff as custodian of jails and makes him liable for a jailer appointed by him. In addition, §24-5-30 mandates the manner in which a sheriff shall appoint a jailer. Please note, however, that §24-5-12 allows a county sheriff, upon approval of the governing body of the county, to devolve his powers and duties as jail custodian and jailer appointee on the governing body of the county. While your letter is not entirely clear, Williamsburg County's Sheriff apparently has not made such a devolution. Assuming he has not, the jailer and jail administrator would appear to be personnel employed in a department or agency under the direction of an elected official. Consequently, the emphasized language in §4-9-30(7) above would appear to remove the employment and discharge of such employees from the provisions of the County and Municipal Employees Grievance Procedure Act.³ I, therefore, agree with your conclusion.

I hope the above will be helpful to you. If I can answer any questions, please advise.

Sincerely,

Samuel L. Wilkins

Samuel L. Wilkins
Special Assistant Attorney General

SLW/fg

[Signatures continue.]

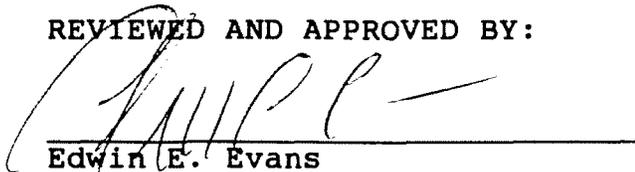
² S.C. Code Ann. §40-9-30(7) (1976 & 1992 Cum. Supp.) was amended by Act No. 312, 1988 S.C. Acts 2527-30, effective February 24, 1988. This amendment was not applicable in Heath v. County of Aiken, 295 S.C. 416, 368 S.E. 2d 904 (1988). Id. at 418 n. 2, 368, S.E. 2d at 905 n.2.

³ Your letter notes that Williamsburg County has adopted a grievance policy for its employees; however, you did not provide a copy of that policy. Therefore, this analysis does not consider any aspects of that policy and how it may have formed an employment contract as described in Small v. Springs Industries, Inc., 292 S.C. 481, 357 S.E. 2d 452 (1987) and its progeny.

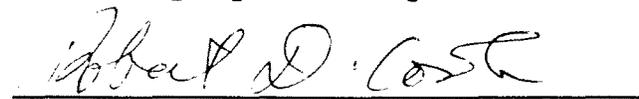
W. E. Jenkinson, III, Esquire
Page 4

November 23, 1993

REVIEWED AND APPROVED BY:



Edwin E. Evans
Chief Deputy Attorney General



Robert D. Cook
Executive Assistant for Opinions