



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

October 27, 1998

Ms. Roberta L. Starks
Aiken County Veterans Affairs
828 Richland Avenue, West
Aiken, South Carolina 29801

RE: Informal Opinion

Dear Ms. Starks:

Your opinion request has been forwarded to me for reply. You have asked whether a prior opinion of this Office should be interpreted to mean that "a county veterans affairs officer is a county employee entitled to all rights and privileges thereof as established by county policy, and as such entitled to equitable and fair treatment under such policies."

The opinion you reference is Opinion No. 1986 dated March 1, 1966. The question addressed in this opinion was whether county service officers (now referred to as county veterans affairs officers) were state or county officers. The opinion analyzed the law concerning the master-servant relationship and concluded that county service officers were county officers rather than state officers. This conclusion was based on the manner in which county service officers were appointed and who exercised control over the officers. The opinion included the following:

Although the State Service Officer makes the appointments of the various county service officers, he has no power to select them. The County delegations make the selections and the State Service Officer appoints the persons they select. Funds for the payment of salaries of service officers are appropriated by the State, forwarded to the county treasurers who actually pay out the funds. County Service Officers are subject to removal at any time by a majority of the county delegations from the respective counties. The State Service Officer has no control over the County Service Officers except to require reports from time to time. He has no authority to tell

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them what to do or how to perform their duties. Thus, the authority for selecting and removing County Service Officers rests with a majority of the county delegations of the various counties (including the Senator for selection). Apparently, the county delegations have the right of control of the Service Officers' conduct. The State Service Officer has none and exercise none except to require reports from time to time.

...

Based on the foregoing, it appears that County Service Officers are county officers. See 1960-61 Opinions, Attorney General, Opinion No. 1099, p.171; 56 CJS Master & Servant, § 3(5).

While the 1966 opinion concludes that a county veterans affairs officer is a county officer, I do not believe that conclusion answers the question raised in your opinion request. Your question seems be whether a county veterans affairs officer is a "county employee" for purposes of Section 4-9-30(7) of the South Carolina Code of Laws. This Section of the Code, which is part of the Home Rule Act, was enacted several years after the 1966 opinion was issued. Section 4-9-30 provides in part as follows:

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 law of this State shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof:

(7) to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government. This 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. ...

The duties and appointment of county veterans affairs officers are found in Section 25-11-10 et. seq. of the Code. Section 25-11-40 provides:

Subject to the recommendation of a majority of the Senators representing the county and a majority of the House members representing

the county, the Director of the Division of Veterans' Affairs shall appoint a county veterans affairs officer for each county in the State, whose terms of office shall begin July first of each odd-numbered year and shall continue for a term of two years and until their successors shall be appointed. Any such county veterans affairs officer shall be subject to removal at any time by a majority of the Senators representing the county and a majority of the House members representing the county.

The courts in this state have never addressed the question of whether a county veterans affairs officer is subject to county personnel system policies. However, it would appear that analysis of such a question would be similar to the analysis undertaken by the Supreme Court in Heath v. Aiken County, 295 S.C. 416, 368 S.E.2d 904 (1988). In Heath, the court concluded that deputy sheriffs are not county employees for purposes of Section 4-9-30(7)'s personnel policies and grievance procedure. The court stated:

The county governing powers set out in Section 4-9-30 are "subject to the general law of this State ..." The "general law" on deputy sheriffs is well-settled in South Carolina: a deputy serves at his sheriff's "pleasure." *Rhodes v. Smith*, 273 S.C. 13, 254 S.E.2d 49 (1979); see S.C. Code Ann. § 23-13-10 (1976). Section 23-13-10 also holds the sheriff "answerable for neglect of duty or misconduct in office of any deputy." Section 23-13-50 empowers a deputy sheriff to perform "any and all of the duties appertaining to the office of his *principal*," i.e. the sheriff (emphasis in original). A deputy, then, acts as his sheriff's agent under South Carolina law. [footnote omitted] See, e.g., *Willis v. Aiken County*, 203 S.C. 96, 26 S.E.2d 313 (1943).

The county personnel policy at issue here included such elements as working hour limitations, attendance and leave regulations, and work schedule assignments. Implementation of such policies would afford Council a degree of day-to-day control over deputies irreconcilable with the common and statutory law of this state. A deputy's "serv[ice] at the sheriff's pleasure," *Rhodes v. Smith, supra*, entails not only *how long* he serves, but *how* he serves. We therefore hold that for purposes of personnel system policies under Section 4-9-30(7), the legislature did not intend the term "employees" to include deputies.

The statutory grievance procedure is similarly inapplicable to deputies. First, as stated above, deputies are not "employees" for purposes of Section 4-9-30(7). Next, the statutes establishing the relationship

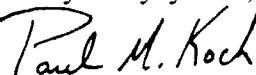
between sheriff and deputy should not be "considered as repealed by a later general statute unless there is a direct reference to the former statute or the intent of the legislature to repeal the earlier statute is implicit." *Rhodes v. Smith, supra*, 273 S.C. at 16, 254 S.E.2d at 50. Section 4-9-30(7) is general; it "speaks in a broad generalization referring only to elected officials." *Anders v. County Council for Richland County*, 284 S.C. 142, 144, 325 S.E.2d 538, 539 (1985). In *Anders*, we held that Section 4-9-30(7) is subordinate to a statute specifically stating that employees of a solicitor serve at his "pleasure."

We therefore reject the argument that Section 4-9-30(7)'s grievance hearing limits a sheriff's "previously unbridled pleasure." *Rhodes v. Smith, supra*. Nothing in the statute itself implies such a limitation was intended by the legislature. To the extent the circuit court's order included deputies as county "employees" under Section 4-9-30(7), it is reversed.

It is likely that if a court were to address the question of whether a county veterans affairs officer is a "county employee" for purposes of Section 4-9-30(7), the court would reach a conclusion similar to that in Heath. As in Heath, a county veterans affairs officer serves at the pleasure of the appointing authority. Specifically, the statute provides that the county veterans affairs officer may be removed at any time by a majority of the Senators and House members serving on the county legislative delegation. In keeping with Heath, this entails not only how long the county veterans affairs officer serves, but how the county veterans affairs officer serves. Therefore, while a county veterans affairs officer may be considered a "county employee" in a particular set of circumstances, it is likely that a court would conclude that these circumstances would not include classification as a "county employee" for purposes of Section 4-9-30(7).

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,


Paul M. Koch
Assistant Attorney General