

The State of South Carolina



Office of the Attorney General

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October 5, 1992

The Honorable Bill Coffey
Sheriff of Spartanburg County
Post Office Box 771
Spartanburg, South Carolina 29304

Dear Sheriff Coffey:

By your letter of September 30, 1992, you have requested the opinion of this Office as to whether persons employed by the Spartanburg County Sheriff's Office could participate in a sale of abandoned and/or unclaimed items to be conducted by public auction. You have advised that the sale has been noticed in the Spartanburg Herald-Journal on two occasions and is set to proceed on October 10.

A review of S.C. Code Ann. § 27-21-10 et seq., which statutes pertain to disposition of confiscated, recovered stolen property, or abandoned property, does not reveal any statute which expressly prohibits personnel of the Sheriff's Department from participating in such a sale. By contrast, we note that § 23-17-100 prohibits the purchasing of judgments or decrees, which the sheriff is to enforce or have executed, by the sheriff or his deputies. Specific inclusion in § 23-17-100 of language prohibiting certain actions by the sheriff or deputies would suggest that a statute devoid of such prohibition be interpreted differently. Cf., Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker, 282 S.C. 546, 320 S.E.2d 458 (S.C. Ct. App. 1984). Thus, we are aware of no statute in § 27-21-10 et seq. which would prohibit a deputy or other personnel from participating in the public sale.

Several cautionary notes are in order. As we suggested to Lieutenant Murphy of your staff, the State Ethics Commission should be consulted to advise you of potential applicability of the ethics laws; this Office defers to that agency for advice and opinions on the ethics laws. Too, we suggest that the auction be conducted "above board" in all respects if your personnel participate therein, so that certain items are not "held back" and/or your personnel are not given any advantage as to the sale not available

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to the public generally. Finally, this Office comments only as to the legal aspects of your personnel participating in such a sale and offers no comment as to the wisdom thereof or other policy considerations.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions