

The State of South Carolina

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February 8, 1989

C. David Sawyer, Jr.
101 West Church Street
P.O. Box 506
Saluda, S.C. 29138

Dear Mr. Sawyer:

You have requested an opinion as to "the propriety and legality" of certain actions taken by Solicitor Donald V. Myers. Specifically, you indicated in your letter as follows:

Earlier this week the County Council and Law Enforcement agencies were notified by the Solicitor that he would no longer perform services for which he was elected. For your review I am attaching copies of these letters which are dated January 12, 1989.

The correspondence you have enclosed describes actions taken by the Solicitor.

First, the Solicitor has designated a Special Assistant Solicitor for Saluda County. The practice of designating a particular assistant solicitor to handle a specific county within a solicitor's judicial circuit is common practice throughout South Carolina. See, S.C. Code § 1-7-420 through § 1-7-540. Moreover, there is specific authority for this practice. South Carolina Code § 1-7-405 (1976, as amended) provides:

Each solicitor may appoint as many assistant solicitors, investigators and secretaries as he deems necessary and whose salaries are provided by the counties of the circuit in which they serve. They shall serve at the pleasure of the solicitor and shall have such responsibilities as he directs.

The South Carolina Supreme Court, in State v. Mattoon, 287 S.C. 493, 339 S.E.2d 867 (1986) has recognized the authority of

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the solicitor to designate assistants and special assistants to carry out his responsibilities. In Mattoon the court, speaking through then Chief Justice Ness, stated:

In 1984, the general assembly enacted S.C. Code Ann. 2, 3 Section 1-7-405 (Supp. 1984), which grants solicitors authority to appoint assistant solicitors and to vest them with "such responsibility as he directs." The statute does not permit a solicitor to relinquish prosecutorial control to a private attorney, but it removes any limitations upon his actual trial participation arguably imposed by our prior decisions.

287 S.C. at 494. Thus, it is clear that the Solicitor may designate a specific assistant solicitor for Saluda County.

Next, the Solicitor has also indicated that the assistant solicitor's salary "will be whatever amount he and the Saluda County Council agree upon." A review of S.C. Code § 1-7-405 set out hereinabove reveals that the salaries of assistant solicitors are "provided by the counties of the circuit in which they serve." It is unclear from the materials that you have provided whether the Solicitor expects Saluda County to utilize monies presently appropriated for the operation of the Solicitor in Saluda County or whether the Solicitor expects Saluda County to compensate the assistant with "new" monies above and beyond those sums already appropriated. Nevertheless, the Solicitor and the Saluda County Council are certainly free to negotiate the appropriation for the operation of the Solicitor's office in Saluda County.

Also, you have expressed the concern that Solicitor Myers "would no longer perform" the services for which he was elected. Presently, there is no general sessions court being held in Saluda. ^{1/} Of course, the Solicitor is a State employee and his salary is paid by the State. South Carolina Code § 1-7-325 (1976, as amended) provides:

^{1/} As you know the South Carolina Court Administration sets the terms of court throughout the State. The next term of general sessions court in Saluda County is set for the week of March 27.

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The solicitors of this state shall be full-time employees of the State of South Carolina, provided, however, that any solicitor serving in office on July 1, 1976, whose term of office expires in the year 1979 shall not be required to be full time as provided by this section until the expiration of his term in 1979. Each solicitor shall receive an annual salary and a monthly expense allowance as is provided by the General Assembly.

When a solicitor is required to serve out of his circuit, he shall also receive such subsistence and mileage as is authorized by law for the circuit judges while holding court without the county in which they reside. Each solicitor shall have one full-time secretary who shall receive such annual salary as may be provided by the General Assembly.

Additionally, S.C. Code § 1-7-330 (1976 as amended) provides:

The solicitors shall attend the courts of general sessions for their respective circuits. Preparation of the dockets for general sessions courts shall be exclusively vested in the circuit solicitor and the solicitor shall determine the order in which cases on the docket are called for trial. Provided, however, that no later than seven days prior to the beginning of each term of general sessions court, the solicitor in each circuit shall prepare and publish a docket setting forth the cases to be called for trial during the term.

Thus, the Solicitor is obligated by statute to attend the courts of general session. Obviously, the Solicitor can perform his duties through the use of assistants; however, the responsibility to comply with the law falls on the Solicitor.

It is apparent from the correspondence enclosed with your request letter that Solicitor Myers has not abandoned Saluda County. The Solicitor, in his January 12, 1989, correspondence addressed to "all law enforcement agencies," states that law enforcement authorities in Saluda should contact only "Mr. Wicker and me." (emphasis added). Clearly Solicitor Myers continues to advise law enforcement officials.

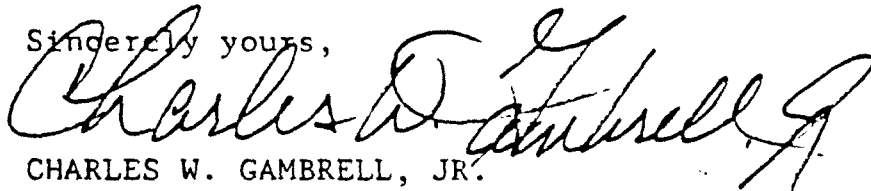
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Thus, it appears that Solicitor Myers is within his authority to appoint a Special Assistant Solicitor for Saluda County. The Solicitor is required by statute to attend and run, either in person or through an assistant, the general sessions courts in Saluda County.

Sincerely yours,



CHARLES W. GAMBRELL, JR.
Deputy Attorney General

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