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June 2, 1988

The Honorable Ralph C. Freeman
Sheriff, Chesterfield County
Chesterfield, South Carolina 29709

Dear Sheriff Freeman:

In a letter to this Office you indicated that your department along with law enforcement agencies in other counties, have formed a multi-county task force in an attempt to jointly coordinate efforts against individuals who violate State drug laws. You have asked whether in situations where officers cross county or other jurisdictional lines on surveillance, and an emergency situation arises that requires immediate action, would an arrest by that officer be valid in light of the formation of the multi-county task force and agreement.

Generally, a city police officer has no authority to arrest outside the city limits unless he is in pursuit and then he may arrest within a three mile radius of the corporate boundaries. See: Section 17-13-40 of the Code. Pursuant to Section 23-13-60 of the Code, a deputy sheriff is authorized "for any suspected freshly committed crime, whether upon view or upon prompt information or complaint" to "arrest without warrant." Section 17-13-30 of the Code provides that "the sheriff and deputy sheriffs of this State may arrest without warrant any and all persons who, within their view, violate any of the criminal laws of this State...." In a previous opinion dated June 20, 1984, this Office determined that

"(w)hile the South Carolina Code does not specifically restrict a sheriff to the county in and for which he was elected, such restriction may be fairly implied from other related statutes read in pari materia with statutes on sheriffs and their deputies."

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See also: 80 C.J.S. Sheriffs and Constables Section 36; 70 Am.Jur.2d Sheriffs, Police, and Constables Section 27.

Several state statutes authorize law enforcement activity by law enforcement officers outside their regular jurisdiction in certain instances. Pursuant to Section 23-1-210 of the Code, the intra-state transfer of municipal or county law enforcement officers on a temporary employment basis is authorized. Such statute specifically provides that

any municipal or county law enforcement officer may be transferred on a temporary basis to work in law enforcement in any other municipality or county in this State under the conditions set forth in this section, and when so transferred shall have all powers and authority of a law enforcement officer employed by the jurisdiction to which he is transferred.

Such provision states that prior to such a transfer, a written agreement must be entered into by the affected jurisdictions which states the conditions and terms of the "temporary employment" of the officers who are transferred.

Section 5-7-120 of the Code authorizes law enforcement officers to respond in cases of emergency to another municipality upon request. Such provision states:

(w)hen law enforcement officers are sent to another municipality pursuant to this section, the jurisdiction, authority, rights, privileges and immunities, including coverage under the workmen's compensation laws, which they have in the sending municipality shall be extended to and include the area in which like benefits and authorities are or could be afforded to the law enforcement officers of the requesting political subdivision.

Such section further provides that such officers who respond to requests for assistance have the same law enforcement authority as possessed by the law enforcement officers in the political

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subdivision which requests assistance. 1/ In an opinion dated February 15, 1985 this Office determined that in such circumstances such officers would have the law enforcement authority established by Section 17-13-40 referenced above when responding to requests for assistance. This Office also recognized in a June 20, 1984 opinion that Sections 8-12-10 et seq. of the Code "... would permit the interchange of local governmental employees, such as sheriffs' deputies, between the counties." Consistent with such, Section 8-21-10 et seq. would also permit the interchange of city police officers.

In an opinion dated May 17, 1978, this Office referencing Section 6-1-20, Code of Laws of South Carolina, 1976, and Article VIII, Section 13 of the South Carolina Constitution determined that:

(t)he ability of political subdivisions to enter into an agreement for the joint administration, responsibility and sharing of the costs of services with other political subdivisions is granted ... (R)eading these ... sections in conjunction enables an incorporated municipality to enter into a contractual arrangement with a county to provide law enforcement services to the municipality.

Pursuant to Act No. 107 of 1987 the General Assembly enacted provisions, codified as Section 23-1-215 of the Code,

1/ As to what circumstances would constitute an "emergency" as used in Section 5-7-120, an opinion of this Office dated December 5, 1983 referenced the following definitions:

(t)he term 'emergency' is 'an unusual or abnormal condition beyond the control of the [requesting municipality] and a condition beyond [its] reasonable power to remove or overcome. It may arise from causes other than casualty or unavoidable accident or act of God ... Our Supreme Court has used the definition from Websters' New International Dictionary to define 'emergency' as 'an unforeseen occurrence or combination of circumstances which calls for immediate action or remedy; pressing necessity; exigency

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which authorize agreements between multiple law enforcement jurisdictions for the purpose of criminal investigation. The title to the act states in part that the provision authorizes "... multiple law enforcement jurisdictions to enter into a written agreement with one another for the purpose of criminal investigation only" The act provides that

(A) (i) In the event of a crime where multiple jurisdictions, either county or municipal, are involved, law enforcement officers are authorized to exercise jurisdiction within other counties or municipalities for the purpose of criminal investigation only if a written agreement between or among the law enforcement agencies involved has been executed. This limitation on law enforcement activity shall not apply to any activity authorized by § 17-13-40.

(B) Any law enforcement officer working under this agreement is vested with equal authority and jurisdiction outside his resident jurisdiction for the purpose of investigation, arrest, or any other activity related to the criminal activity for which the agreement was drawn.

While arrest authority is provided by this provision, such authority should probably be limited to the specific criminal investigation contemplated by the agreement entered into by the jurisdictions involved. Pursuant to subsection (D), the referenced agreement "may be terminated in writing at the discretion of any of the law enforcement agencies involved ...(and)...at the conclusion of the investigation for which it was executed." Subsection (E) provides that the respective governing bodies of the political subdivisions where the law enforcement agencies which enter the agreement are located must be notified of any agreement and its termination. A review of such provisions appear to authorize such agreements for investigation of a specific crime only.

Referencing the above, it is clear that there is specific authority for a law enforcement officer to act outside his jurisdiction in certain circumstances. However, it is clear that implicit in any such authorization is the requirement that there be agreement between the two affected jurisdictions.

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In an opinion dated January 28, 1985 this Office dealt with the question of the propriety of a city police officer making drug purchases outside the city limits of the city where he is employed. The opinion recognized that a number of cases in other jurisdictions have sanctioned such activity and upheld arrests by officers operating outside their regular jurisdictions. However, such arrests were validated on the basis that such officers, as private citizens, possessed the power to arrest. See: McAnnis v. Florida, 386 So.2d 1230 (Fla. 1980); People v. Bloom, 577 P.2d 288 (Cal. 1978); Meadows v. State, 655 P.2d 556 (Okla. 1982). The opinion further recognized that South Carolina law relating to arrest by a citizen authorizes any citizen to arrest an individual for a felony and to take such individual to local law enforcement authorities. See: Section 17-13-10, Code of Laws of South Carolina, 1976. Such statute further provides for the arrest by a private citizen upon "view of a larceny committed." 2/ The opinion, however, also stated in a footnote that

"(c)ourts have held that a police officer acting 'under color' of office, but outside his jurisdiction may not make an arrest; in other words, he must be acting as a citizen. A police officer is generally acting under color of his office by '... actually holding himself out as a police officer, either by wearing his uniform or in some other manner openly advertising his official position in order to observe the unlawful activity involved...."

Therefore, as stated in the opinion, courts have generally held that a law enforcement officer acting outside his regular jurisdiction may not make an arrest as a law enforcement officer

2/ Section 17-13-20, Code of Laws of South Carolina, 1976 also provides that:

"Any citizen may arrest any person in the nighttime by such efficient means as the darkness and the probability of escape render necessary, even if the life of such person should be thereby taken, when such person (a) has committed a felony, (b) has entered a dwelling house with evil intent, (c) has broken or is breaking into an out-house with a view to plunder, (d) has in his possession stolen property or (e) being under circumstances which raise just suspicion of his design to steal or to commit some felony, flees when he is hailed.

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but instead must act as a private citizen. In State v. Shipman, 370 So.2d 1195 (Fla. 1978) the Florida District Court of Appeals determined that a law enforcement officer's actions in making an arrest as a private citizen outside his jurisdiction

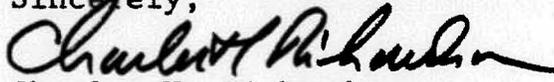
"...would not be sustainable as those of private citizen if ... (he) ... was 'acting under color of office' at the time ... (he made the arrest)...." 370 So.2d at 1196.

Therefore, officers who wear their uniforms outside of their jurisdictions should not be considered to be exercising their regular law enforcement authority. Instead, by wearing their uniforms in such circumstances, the officers are waiving that law enforcement authority they possess, i.e., that of a private citizen.

As stated above, you questioned whether an arrest by an officer would be valid in situations where an officer, as a part of a multi-county task force, crosses jurisdictional lines on surveillance and responds to an emergency situation. I have noted several statutory provisions which authorize a law enforcement officer to act outside his jurisdiction in certain circumstances. However, the provisions of Section 23-1-215, noted above, appear to most closely respond to your situation. As stated, such provision authorizes agreements between multiple law enforcement jurisdictions for purposes of a particular criminal investigation. However, the provision does specifically grant an officer working pursuant to such an agreement outside his resident jurisdiction arrest authority "related to the criminal activity for which the agreement was drawn." Therefore, if in the situation addressed in your letter the officer was operating pursuant to an agreement authorized by Section 23-1-215, he would have such arrest authority as provided by such statute.

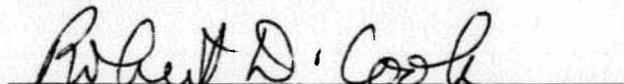
If there is anything further, please advise.

Sincerely,


Charles H. Richardson
Assistant Attorney General

CHR:sds

REVIEWED AND APPROVED BY:


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