

The State of South Carolina



Handwritten notes and scribbles

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The Honorable Robert N. McLellan
Member, House of Representatives
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Dear Representative McLellan:

Thank you for your recent letter with which you had enclosed a proposed bill which, if adopted, would establish minimum salaries for sheriffs based upon the population of the county which a particular sheriff serves. You have asked that my Office examine the constitutionality of the proposed bill, as well as the effect the proposed bill would have on home rule powers of the various counties.

Article V, Section 20 of the State Constitution mandates that

[t]here shall be elected in each county by the electors thereof ... a sheriff
The General Assembly shall provide by law for their duties and compensation. ...

At present, compensation for sheriffs is set by each county, with the General Assembly providing a supplement to each sheriff. See, Part III of Act No. 201 of 1985 (Appropriations Act). Clearly the General Assembly has authority to provide for compensation of sheriffs, by virtue of the above-cited constitutional provision.

Our Supreme Court has on a number of occasions set forth the standard by which the constitutionality of legislation, upon its enactment, is reviewed. In Parker v. Bates, 216 S.C. 52, 56 S.E.2d 723 (1949), the Court stated that

... The General Assembly may enact any law not expressly, or by clear implication, prohibited by the State or Federal

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Constitution; a statute will, if possible, be construed so as to render it valid; every presumption will be made in favor of the constitutionality of a legislative enactment; and a statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution.

216 S.C. at 59, quoting Mosley v. Welch, 209 S.C. 19, 39 S.E.2d 133, 137 (1946). Moreover, we have stated repeatedly that while this Office may comment upon the constitutionality of legislation, it is solely within the province of the courts to declare an act of the General Assembly unconstitutional. Op. Atty. Gen., February 7, 1985.

By an opinion of this Office dated April 17, 1985, a bill setting the salaries of probate judges according to county population was considered and determined to be constitutional; a copy of the opinion is enclosed herewith. For the reasons cited in that opinion, there appears to be no constitutional difficulty with the proposed bill as submitted to this Office.

Your greater concern, however, was whether the proposed bill might infringe upon the right of a county council, acting under its home rule authority, to set the sheriff's salary. For the reasons following, the Home Rule Act, Sections 4-9-10 et seq., Code of Laws of South Carolina (1976 & 1984 Cum. Supp.), would not be violated.

As cited above, the State Constitution has granted authority to the General Assembly to determine compensation for sheriffs. The General Assembly, under its plenary powers, may enact any law not specifically or impliedly prohibited. Duncan v. York County, 267 S.C. 327, 228 S.E.2d 92 (1976). Because there is no prohibition against the passage of an act permitting the General Assembly to set salaries of sheriffs, the proposed bill could be adopted by the legislature if it so chose.

We would further note that counties have only those powers which have been granted to them under home rule or other legislation. As stated in Williams v. Wylie, 217 S.C. 247, 60 S.E.2d 586 (1950), a county possesses "only such powers and can perform only such duties as are expressly or impliedly conferred or imposed upon it by constitutional or statutory provisions. . . ." Id., 217 S.C. at 251. At the present there are no statutory provisions governing the setting of sheriff's salaries by county

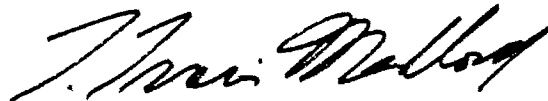
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councils. Thus, while county councils presently exercise this power, they do so without a grant of express power from the legislature.

If the General Assembly were to enact the proposed bill, it would not infringe upon counties' home rule powers because such a power has not yet been given to the counties. Furthermore, because counties derive their powers from the General Assembly, the General Assembly would have authority to modify those powers, assign more powers to counties, or in this instance, assume the responsibility of establishing sheriffs' salaries.

In conclusion, I believe the proposed bill enclosed with your inquiry, establishing sheriffs' salaries according to county population, would, if enacted as proposed, pass constitutional muster and would not infringe upon county councils' powers or duties under home rule.

Sincerely,



T. Travis Medlock
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Enclosure