

## The State of South Carolina



Office of the Attorney General

*Opinion No 86-58*  
*P 182*

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May 15, 1986

Carl Knight, Sheriff  
County of Dorchester  
100 Sears Street  
St. George, South Carolina 29477

Dear Sheriff Knight:

Mr. Arnold Goodstein has written this Office on your behalf raising the question of whether the State Criminal Justice Academy was authorized to prohibit a Dorchester County deputy sheriff from performing law enforcement duties. You had received a letter from the Academy advising you of the "dismissal" of the deputy for having failed to achieve a passing score on certain tests administered by the Academy.

In prior opinions, this Office has advised that the hiring and discharge of a deputy sheriff are matters solely within the prerogative of a sheriff. See: Opinions dated August 14, 1985 and January 24, 1985. Such opinions referenced that the State Supreme Court in Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979), recognized that pursuant to Section 23-13-10 of the Code a deputy sheriff serves at the pleasure of the sheriff. The Court also indicated that particular statutes, namely, Sections 8-17-110, et seq. of the Code, which provide for county and municipal grievance procedures generally, are inapplicable to individuals serving as deputy sheriffs. More recently, the Court reaffirmed its decision in Rhodes in Anders v. County Council for Richland County, \_\_\_ S.C. \_\_\_, 325 S.E.2d 538 (1985) wherein the Court noted that Section 4-9-30(7) of the "home rule" act, which provides grievance procedures for county employees, is inapplicable to employees of a solicitor. Instead, the Court determined that Section 1-7-405 of the Code, which states that employees of a solicitor serve at his pleasure, controls. In Anders, the Court noted that Section 23-13-10 provided similar power to sheriffs.

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In addition to the above provision giving sheriffs absolute authority as to the hiring and discharge of a deputy sheriff, this Office in an opinion dated May 13, 1980 recognized that the office of sheriff is a constitutional office and, therefore, can be regulated only in a manner prescribed by the State Constitution. See: Article V, Section 24 of the South Carolina Constitution. Such provision states that the General Assembly shall provide by law for the duties and compensation of a county sheriff. The opinion particularly determined, therefore, that the duties and powers of a sheriff may be varied, abridged or increased only at the pleasure of the Legislature.

Consistent with such, the General Assembly enacted Section 23-23-40 of the 1976 Code of Laws, as amended, which states in part:

(n)o law enforcement officer employed or appointed on or after January 1, 1972, by any public law enforcement agency in this State shall be empowered or authorized to enforce the laws or ordinances of this State or any political subdivision thereof unless he has, within one year after his date of appointment, successfully completed the minimum basic training requirements established pursuant to this article. Should any such person fail to successfully complete such basic training requirements within one year from his date of employment, he shall not perform any of the duties of a law enforcement officer involving control or direction of members of the public or exercising the power of arrest until he has successfully completed such basic training requirements. He shall not be eligible for employment or appointment by any other agency in South Carolina as a law enforcement officer, nor shall he be eligible for any compensation by any law enforcement agency for services performed as an officer....

Certain specific exceptions exempt particular individuals from the training requirement. This Office in prior opinions has consistently recognized the mandatory training required by such provision in order that any law enforcement officer be empowered with the authority to make an arrest. See: Opinions dated May 11, 1978; February 1, 1979; March 24, 1983. The applicability of

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such provision to a deputy sheriff was recognized in the March 24, 1983 opinion. The February 1, 1979 opinion also advised that while there are no statutory penalties applicable to a department head who wilfully neglects the referenced training requirement,

... if a situation develops where there is failure to meet the training requirement, allowing a non-qualified individual to perform the duties of a law enforcement officer may result in possible civil suits or questions regarding the propriety and legality of any actions taken by such individual as a law enforcement officer.

Therefore, while a sheriff has absolute authority as to the hiring and discharge of a deputy sheriff, unless a deputy sheriff is otherwise exempted by a provision of Section 23-23-40, he must successfully complete the minimum basic training requirements established by such provision to have law enforcement authority.

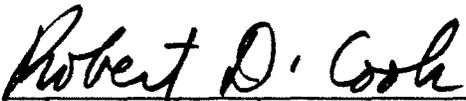
If there is anything further, please advise.

Sincerely,

  
Charles H. Richardson  
Assistant Attorney General

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REVIEWED AND APPROVED BY:

  
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