

The State of South Carolina



Office of the Attorney General

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June 5, 1987

The Honorable Johnny Mack Brown
Sheriff of Greenville County
Law Enforcement Center
Greenville, South Carolina 29601

Dear Sheriff Brown:

You recently asked this Office whether police officers employed by the Slater-Marietta Fire District and the Gantt Fire, Sewer and Police District, as authorized by the General Assembly, have been granted law enforcement authority by the enabling legislation, or whether such police officers must be commissioned as constables.

We understand that such police officers of these districts have been issued constables' commissions since at least Governor Riley's first term in office. We further understand that the South Carolina Law Enforcement Division has interpreted the relevant laws to require a constable commissioned by the Governor to undergo the requisite law enforcement training (unless the individual is exempt by the grandfather clause) at the Criminal Justice Academy if the individual is to have arrest powers. If a constable's commission is deemed to be honorary and the individual is not to have arrest powers, then no training is necessary. Because the agency charged with interpretation of the relevant law has already made the determination which you are in effect seeking, office policy precludes our attempting to supersede the administrative authority of the South Carolina Law Enforcement Division. Cf., Griggs v. Hodge, 229 S.C. 245, 92 S.E.2d 654 (1956). We must therefore defer to the interpretation of SLED as to the questions you have raised.

While this Office defers to the determination previously made by SLED, we advise that we concur in that determination. Act No. 834 of 1976 amends Act No. 1170 of 1968 to authorize the

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governing body of the Slater-Marietta Fire District to "establish a system of police protection within the district. The number and duties of whatever police officers are employed by the board shall be as the board shall determine." Similarly, Act No. 542 of 1963 amends Act No. 855 of 1954 to authorize the Gantt Fire, Sewer and Police District to "[e]stablish, operate and maintain a system of fire and police protection." Act No. 855 authorizes the Gantt District board to "[a]ppoint officers, agents, employees and servants, to prescribe the duties of such, to fix their compensation, and to determine if and to what extent they shall be bonded for the faithful performance of their duties." These statutes do not appear to be sufficient, by themselves, to confer law enforcement authority on the duly selected police officers.

Article V, Section 24 of the State Constitution provides in relevant part that:

The General Assembly may also provide by law for the selection, duties and compensation of other appropriate officials to enforce the criminal laws of the State, to prosecute persons under such laws, and to carry on the administrative functions of the courts of the State. ...

Acting pursuant thereto, the General Assembly has created, or permitted the creation of, the positions of magistrates' constables, Section 22-9-10 et seq., Code of Laws of South Carolina (1976); constables to be appointed by the Governor, Section 23-1-60; agents of the South Carolina Law Enforcement Division, Section 23-3-10; highway patrolmen, Sections 23-5-10 et seq.; special state constables, Section 23-7-10; deputy sheriffs, Section 23-13-10 et seq.; and municipal police officers, Section 5-7-110. By Section 24-1-280 of the Code, employees of the Department of Corrections are considered to be peace officers. Finally, Section 23-27-10 et seq. allows special purpose districts for the purpose of police protection to be established; police officers serving thereunder are deputized by the sheriff if such a district should be created. This constitutional provision authorized the General Assembly to grant police powers to the districts in question; the General Assembly did so but did not provide specific authority for police officers to carry out their duties as has been done for all other types of police officers.

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Based on the foregoing, this Office concurs with the conclusion reached by the South Carolina Law Enforcement Division that police officers of the Slater-Marietta and Gantt districts would require commissions as constables and the requisite training as law enforcement officers to be able to carry out their duties as police officers.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

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