

The State of South Carolina

U 1791



Office of the Attorney General

Case No. 1791-0
P231

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August 14, 1985

Robert O. Collins, Chairman
Barnwell County Council
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Dear Mr. Collins:

You have requested the opinion of this Office on the possible role a county council may play in terminating a deputy sheriff. Consistent with previous opinions of the South Carolina Supreme Court, as well as prior opinions of this Office, we would advise that the hiring and discharge of a deputy sheriff are matters solely within the prerogative of a sheriff.

Section 23-13-10 of the Code provides that the appointment of a deputy sheriff shall continue during the pleasure of the sheriff. Our Supreme Court has held that this provision gives a sheriff absolute authority as to the discharge of his deputies. Thus, county grievance procedures are inapplicable to the discharge of a deputy sheriff by the sheriff. Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979). 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 its decision the Court noted that Section 23-13-10 provided similar power to sheriffs. See also: Op. Atty. Gen. dated January 24, 1985.

Citing the decision of the South Carolina Supreme Court in Willis v. Aiken County, 203 S.C. 96, 26 S.E.2d 313 (1943), the United States District Court in Allen v. Fidelity and Deposit Company of Maryland, 515 F.Supp. 1185 (D.S.C. 1981), stated that

Continuation Sheet Number 2
To: Mr. Robert O. Collins
August 14, 1985

a deputy sheriff pursuant to both common law and statutory law has been considered an agent of a sheriff, not an employee of a county. See also: Trammell v. Fidelity and Casualty Co. of N.Y., 45 F.Supp. 366 (D.S.C. 1942); Ex parte Hanks, 15 S.C. Eq. (Chev. Eq.) 203 (1840). In Allen the court, noting the decision of the South Carolina Supreme Court in Barksdale v. Posey, 20 S.C.L. (2 Hill) 647 (1835) also stated that a deputy sheriff "... serves at the sheriff's 'pleasure', not that of the county." 515 F.Supp. at 1190. Citing the decision of the Supreme Court in State v. Goldsmith, 96 S.C. 484, 81 S.E. 147 (1913) which construed Section 23-13-10 as giving virtual unlimited removal powers to a sheriff, the court in Allen further determined that "... it is abundantly clear that historically in South Carolina the deputy sheriffs are answerable only to the sheriff and not to the county government." 515 F.Supp. at 1190. The provision contained in § 23-13-10, which makes the sheriff "answerable for neglect of duty or misconduct in office of any deputy" provides an important basis for the Sheriff's having absolute control over the hiring and firing of his deputies. As stated by the Court in Allen, "[e]ven at common law, a deputy was the personal agent and representative of the sheriff, and the sheriff was legally accountable for any negligent or intentional acts or omissions on the part of his deputies." 515 F.Supp. at 1190. Referencing the above, it is clear that a sheriff possesses absolute control with regard to the hiring and firing of his deputies.

As to any question as to whether action could be taken by the county council to withdraw the appropriation for a particular deputy sheriff's position so as to result in the termination of the particular deputy, it is the opinion of this Office that it is extremely doubtful as to whether such action could be taken. While obviously a county council is vested with discretion in dealing with any appropriations from the standpoint of general economic and efficiency concerns, such discretion could not be utilized in a manner which would interfere with the decisions of a sheriff as to hiring and discharge of a deputy sheriff. Generally, courts have closely examined situations where attempts were made to withhold appropriations for sheriffs once they were appointed. Flaherty v. Milliken, 86 N.E. 558 (1908). Moreover, in a previous opinion of this Office dated February 7, 1978, it was stated that

"(w)ith reference to budgetary matters,
while it is true that the council exercises
totally the budgetary authority of ... (a)
... county and, consequently, can decrease,
increase or otherwise alter appropriations

Continuation Sheet Number 3
To: Mr. Robert O. Collins
August 14, 1985

for specific county offices and functions [Section 4-9-140, Code of Laws of South Carolina, 1976] nevertheless, it cannot so decrease the appropriations of an elected official's office so as to prevent the proper functioning thereof...."

The opinion also referenced the provision in the "home rule" act, Section 4-9-30(5) which states:

"if any appropriation relative to police protection would result in reorganization or restructuring of a sheriff's department or, if any appropriation relative to police protection would limit the duties of the sheriff or provide for police protection duplicating the duties and functions presently being performed by a sheriff, it shall not take effect until the qualified electors of the county shall first approve the appropriation by referendum called by the governing body of the county.

Another opinion of this Office dated February 22, 1985 dealt with the question of the authority of a county council to refuse to provide compensation for a particular magisterial position. The opinion cited State statutory provisions which authorize the General Assembly to provide the number of magistrates in each county and which state that magistrates are to receive salaries. Referencing such provisions, this Office determined that a county could not refuse to provide compensation for an individual who held a particular magisterial office, a position established by the General Assembly. Such is consistent with the general principle that a governing body cannot indirectly by a reduction of compensation of an office abolish it where it is not empowered to abolish the office directly. 67 C.J.S. Officers, Section 229, p. 730.

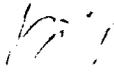
As to your question, as discussed above, a sheriff possesses absolute control insofar as the hiring and discharge of his deputies is concerned. Therefore, it is extremely doubtful whether action could be taken by a county council to withdraw the appropriation of the position of a particular deputy sheriff. Such could be construed as indirectly terminating a particular deputy sheriff's position which is a position the county council is not empowered to abolish directly.

Continuation Sheet Number 4
To: Mr. Robert O. Collins
August 14, 1985

As to county council's general authority with respect to appropriations for sheriffs' departments, we express no opinion. Our opinion addresses only the question of county council's utilizing its appropriation authority indirectly to "discharge" a particular deputy sheriff.

If there are any questions, please advise.

Sincerely,


Robert D. Cook
Executive Assistant for Opinions

RDC:djg