

1979 WL 43081 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 25, 1979

\*1 John Henry Williams, Esquire  
Aiken County Attorney  
Post Office Box 463  
Aiken, South Carolina 29801

Dear Mr. Williams:

In response to your request for an opinion from this Office as to whether or not a magistrate's constable comes within the purview of [Section 4-9-30\(7\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, so as to be entitled to a hearing before the Aiken County Council and possible reinstatement by that body after having been removed by the appointing magistrate, I agree with your conclusion that he is not so entitled as hereinafter discussed.

[Section 4-9-30\(7\)](#) empowers a county council:

. . . to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government but this authority shall not extend to any personnel employed in departments or agencies under the direction of . . . an official appointed by an authority outside county government. Any employee discharged by the administrator, elected official or designated department head shall be granted a public hearing before the entire county council . . . [Emphasis added.]

The above emphasized language expressly denies the hiring and firing power to the county council as to personnel employed in agencies under the direction of an official not appointed by county government and expressly limits the scope of county council review to county employees who are discharged by the county administrator, an elected official or a designated department head. First, a magistrate's constable is appointed, not employed, for a two-year term of office by a magistrate [[§ 22-9-10, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended], who is an official appointed by an authority outside county government, namely, the Governor with the advice and consent of the Senate. [S.C. CONST. art. V § 23](#). He is also subject to removal by the appointing magistrate pursuant to [Section 22-9-10](#). Moreover, a magistrate is not a county administrator, an elected official or a designated department head of a county department. Therefore, I think that a magistrate's constable is not included within the purview of [Section 4-9-30\(7\)](#).

Additionally, in [Rhodes v. Smith](#), — S.C. — (Opinion No. 20919 filed March 21, 1979), the South Carolina Supreme Court found that a deputy sheriff is not entitled to use the county employee grievance procedure provided for by [Sections 8-17-110 et seq., CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, because he serves at the pleasure of the sheriff pursuant to a general law antedating the county employee grievance procedure act. The reasoning employed by the Court therein is applicable here, to wit:

Statutes of a specific nature are not to be considered as repealed by a later general statute unless there is a direct reference to the former statute or the intent of the legislature to repeal the earlier statute is implicit. [Citations omitted.] Slip Op. at 8.

\*2 Inasmuch as [Section 4-9-30\(7\)](#) does not expressly repeal [Section 22-9-10](#) nor does it impliedly do so in view of its specifically restricted scope, I think that this principle of statutory construction is an additional basis for concluding that a magistrate's constable is not entitled to a hearing before, and possible reinstatement by, the Aiken County Council.

With kind regards,

Karen LeCraft Henderson  
Senior Assistant Attorney General

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