

1978 WL 34950 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 20, 1978

\*1 William E. Whitney, Jr., Esquire  
Union County Attorney  
Post Office Box 266  
Union, South Carolina 29379

Dear Mr. Whitney:

You have requested an opinion from this Office as to two matters involving the Union County Sheriff as follows:

1. As to whether or not the Union County Council can require the Sheriff to turn in all of his fees and costs for papers which he serves as constable for the Union Magistrate and accept a salary increase in lieu thereof, my opinion is that the Council cannot so require him.

A statute originally enacted in 1939 and applicable to Union County only provides in part as follows:

The following named county officials, to wit: Sheriff, . . . shall receive as compensation for their services such salaries and expenses as may be annually designated and provided for in the county appropriation act, and such salaries and expenses shall be in lieu of all fees of whatever nature or description collected by such officers, as provided by law, including all fees accruing by virtue of their offices. But the county sheriff shall be entitled to collect such fees and costs as may be provided for him for serving processes issued by the magistrate at Union and as constable for such magistrate. 41 STAT. 173 (1939). [Emphasis added.]

This statute was included in the 1962 Code of Laws of South Carolina [§ 14-3481] and has not been impliedly repealed by the provisions of Act No. 283 of 1975, the 'home rule' legislation, according to a provision which appears in Section 3 of the latter Act. That provision states that all laws relating to a specific county are to remain in effect until January 1, 1980, unless the General Assembly repeals them earlier. Only after that date are county councils empowered to enact ordinances in conflict with laws relating to their respective counties. Therefore, Act No. 120 of 1939 remains in effect until January 1, 1980, at least and provides the Sheriff with the authority to continue, at his option, to collect fees and costs for serving papers of the Union magistrate as that magistrate's constable. Cf., 1974-75 Op. Atty. Gen. No. 4216.

2. As to whether or not the Council can diet the county jail inmates along with the chain gang prisoners without infringing upon the Sheriff's duties and responsibilities, my opinion is that it might very well be construed as a usurpation of the Sheriff's statutory duties, to wit: [Section 24-5-10, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, provides in part that the 'sheriff shall have custody of the jail in his county . . . and the sheriff . . . shall receive and safely keep in prison any person delivered or committed to [him] . . .' Cf., [§ 24-7-60, CODE OF LAWS OF SOUTH CAROLINA](#), 1976 (providing that 'the governing body of the county shall diet . . . all convicts upon whom may be imposed sentence of labor . . .'); cf. also, [§ 24-7-70, CODE OF LAWS OF SOUTH CAROLINA](#), 1976 (providing that 'the county . . . governing bodies . . . shall diet all prisoners while in their care and custody outside of the jails . . .') and 46 STAT. 77 (1949) [formerly § 55-418, [CODE OF LAWS OF SOUTH CAROLINA](#), 1962, as amended] (providing that 'the dieting of prisoners and the maintenance of the jail in Florence County shall be under the control and direction of the governing body of the county . . .'). All of these statutes indicate that the Sheriff is the county official responsible for the custody of the county jail, including the maintenance of the inmates therein, and that special legislation such as the Florence County statute is necessary in order to vest that power in the county governing body. Of additional significance is a recent holding by the South Carolina Supreme Court in [Roton v. Sparks, et al.](#), — S.C. —, — S.E.2d — (Opinion No. 20673 filed

May 2, 1978) that the Sheriff has custody of the county jail pursuant to [Section 24-5-10 of the Code](#) and that the 'home rule' powers granted to a county council do not authorize that body to gain control of that facility by denominating it a 'county detention center.' The only reservation expressed with regard to this opinion is that I understand from the South Carolina Association of Counties that, in several counties, the county governing body diets the jail inmates in addition to the chain gang convicts. I also understand, however, that in each instance this arrangement was arrived at with the acquiescence of the county sheriff.

With kind regards,

\*2 Karen LeCraft Henderson  
Senior Assistant Attorney General

1978 WL 34950 (S.C.A.G.)

---

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.