



ALAN WILSON
ATTORNEY GENERAL

September 22, 2017

Mr. Jarrod M. Bruder
Executive Director
South Carolina Sheriffs' Association
112 Westpark Blvd.
Columbia, South Carolina 29210

Dear Mr. Bruder:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

As Executive Director of the South Carolina Sheriffs' Association, I am in constant communication with the forty-six Sheriffs of South Carolina regarding law enforcement and detention practices in their respective counties. One issue that has been brought to my attention deals with the custody and control of local detention facilities. S.C. Code Ann. § 24-5-10 essentially gives the Sheriff custody and control of the jail. S.C. Code Ann. § 24-5-12 then provides the Sheriff with a lawful manner of devolving custody and control back to the county governing body. In 2010, Act Number 327 further amended S.C. Code Ann. § 24-5-12 by providing a lawful manner for the county governing body to return control and custody of the jail to the Sheriff by mutual agreement. In my humble opinion, it seems that South Carolina law anticipates a scenario where either the Sheriff or the county governing body maintains custody and control of the county detention facility, but not both simultaneously. With that in mind, I write to seek clarification on the questions listed below.

May a county governing body and Sheriff enter into a contract concerning custody and control of the county jail, creating somewhat of a hybrid of the scenarios anticipated under S.C. Code Ann. §§ 24-5-10 and 24-5-12 which appear to allow of *either* the Sheriff or the governing body to have custody of the jail, *but not both*? For example:

1. Assuming a county governing body lawfully has control and custody of the county jail, may the county governing body and the Sheriff enter into a contract whereby:
 - a. The Sheriff is granted management authority over the day to day operations of the jail; full employment authority over the jail director and other employees; sole discretion to develop/amend policies and procedures for jail operations; and the right to cancel contract upon written notice to the governing body; and
 - b. The governing body is bound during the current [S]heriff's term of office (and successive terms), but retains its custody of the jail to the extent the

governing body has no obligation to extend the contract to any future Sheriff; or the governing body may cancel the contract for any other reason upon written notice to the Sheriff; the governing body retains some degree of oversight by requiring reports, accountings, policies, governing body approval for non-budgetary matters, or any other oversight or control provisions beyond those which might already be required by applicable law if the Sheriff had custody of [the] jail?

2. Would the answer to the aforementioned question be different if the county governing body's assertion of custody and control over the county jail is predicated upon special legislation or local laws passed by the General Assembly in the mid-20th century placing custody of the jail within that county to its governing body?

Again, in my humble opinion, it seems that a contract between the county governing body and the Sheriff would violate the spirit (if not the letter) of the general law of this State. Not only would a contract between the county governing body and the Sheriff circumvent the intent of S.C. Code Ann § 24-5-10 and 25-5-12, but it also has the potential to create a dual-master employment scenario for employees of the detention facility where they would essentially be employees of the Sheriff until and unless the county cancelled the contract with the Sheriff, or the Sheriff cancelled. Additionally, I am concerned that such an arrangement could erode the long-established statutory and case law in our state which makes it very clear that a Sheriff is not subject to the discretion and control of a county government.

Law/Analysis

I. A county governing body lacks authority to grant a sheriff management authority over a county jail by contract.

It is this Office's opinion that a court would likely find the terms of the proposed contract described in your letter violate the plain language of S.C. Code Ann. § 24-5-20, and the legislative intent expressed in S.C. Code Ann. §§ 24-5-10, -12. This Office's opinion is informed by the text of the statutes and the rules of statutory interpretation. Statutory interpretation of the South Carolina Code of Laws requires a determination of the General Assembly's intent. Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers." State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh'g denied* (Aug. 5, 2015).

As noted in your letter, Section 24-5-10 grants the custody of the county jail to the sheriff as follows:

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The sheriff shall have custody of the jail in his county and, if he appoint a jailer to keep it, the sheriff shall be liable for such jailer and the sheriff or jailer shall receive and safely keep in prison any person delivered or committed to either of them, according to law.

S.C. Code Ann. § 24-5-10.

Further, Section 24-5-12 allows the sheriff to devolve his custody of the county jail to the county governing body and similarly allows the county governing body to devolve custody of the county jail back to the sheriff as follows:

Notwithstanding the provisions of Section 24-5-10 or any other provision of law, the sheriff of any county may, upon approval of the governing body of the county, devolve all of his powers and duties relating to the custody of the county jail and the appointment of a facility manager on the governing body of the county; provided, a sheriff who has been defeated in a primary or general election may not devolve said duties on the governing body of the county. Once a sheriff has devolved these powers and duties to the governing body, custody of the jail shall remain with the governing body unless, by mutual agreement and approval of the sheriff, the governing body devolves its powers and duties relating to the custody of the county jail to the sheriff.

S.C. Code Ann. § 24-5-12 (emphasis added).

Further, a “facility manager” must be appointed, either by the sheriff or the chief administrative officer of the county according to who has control of the county jail, as follows:

Except as otherwise provided, every sheriff in this State who has control of a jail shall appoint a qualified person as facility manager. This person shall have the control and custody of the jail under the supervision of the sheriff. However, should the sheriff not have control of the jail, then this appointment falls to the chief administrative officer of the county in whose jurisdiction the jail lies.

S.C. Code Ann. § 24-5-20 (emphasis added). This appointment authority is again specific to who has “control” of the jail and there is no express language within the text of the statute allowing either party to delegate this authority. Although Section 24-5-20 does not state that “control of a jail” refers to “custody of the county jail” as used in Sections 24-5-10, -12, this is a “reasonable and fair interpretation” consistent with the General Assembly’s design and policy of the statutory scheme. State v. Henkel, 413 S.C. at 14, 774 S.E.2d at 461. Therefore, the contract terms suggested in your letter at 1.a which would grant the sheriff full employment authority over the jail director and other employees, would apparently violate Section 24-5-20. If the county governing body has custody and control of a county jail, the chief administrator of the county in which the jail is situated is statutorily assigned to appoint and supervise the facility manager.

Finally, Section 24-5-120 previously required the sheriff to “report to the governing body of his county the actual condition of the jail, the repairs which may be wanted and their probable cost.” S.C. Code Ann. § 24-5-120 (Supp. 2011). However, 2010 Act No. 237 amended this statute to assign the

facility manager this task of annually reporting to the county governing body regarding the condition of the county jails. S.C. Code Ann. § 24-5-120 (Supp. 2016). Because the facility manager is tasked with annually reporting to the county governing body, some of the oversight provisions assigned to the sheriff, described in your letter at 1.b, are again statutorily assigned to another party.

It is this Office's opinion that a court would likely find, based on the plain language and context of S.C. Code §§ 24-5-10, -12, -20, the General Assembly intended either the sheriff or the county governing body to have sole custody and control of the county jail with a facility manager acting under such party's supervision. The contract described in your letter presents multiple provisions which assign duties to a sheriff which are statutorily assigned to other parties. Therefore, a court would likely find that the terms of such a contract would be contrary to the general laws of the state and unenforceable. See S.C. Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, LLC, 379 S.C. 645, 657, 667 S.E.2d 7, 14 (Ct. App. 2008) ("In general, therefore, parties may bind themselves as they see fit by contract, unless the contract would violate the law or is contrary to public policy."); Trustees of Columbia Acad. v. Bd. of Trustees of Richland Cty. Sch. Dist. No. 1, 265 S.C. 194, 204, 217 S.E.2d 587, 590 (1975) ("In all cases of the construction of a contract, the intent of the parties should be carried out unless to do so would violate some established principle of law.").

II. Special Legislation

This Office's opinion would not change if the county governing body's assertion of custody and control over the county jail is predicated upon special legislation rather than the sheriff devolving control as provided in S.C. Code Ann. § 24-5-12.

In Henry v. Horry Cty., 334 S.C. 461, 514 S.E.2d 122 (1999), the South Carolina Supreme Court granted the Horry County sheriff custody and control of the Horry County Detention Center (the "jail"). In 1959, the General Assembly created the Horry County Police Commission by statute and granted it exclusive jurisdiction over the jail. 334 S.C. at 463, 514 S.E.2d at 123. In 1981, the Horry County Council abolished the Horry County Police Commission by ordinance and devolved its functions, including jurisdiction over the jail, to the Horry County Council and/or the Horry County Administrator. 334 S.C. at 464, 514 S.E.2d at 123. The Court found that the Acts taking custody of the jail from the sheriff "were unconstitutional when passed as special legislation because they were in direct conflict with the general law." 334 S.C. at 466, 514 S.E.2d at 124-25.

Following Henry, this Office received an opinion request from Sumter County Sheriff, Tommy R. Mims, regarding the legality of Sumter County Ordinance 84-107 which devolved the duties of the sheriff over the Sumter County Jail. Op. S.C. Atty. Gen., 2000 WL 1803589 (November 3, 2000). The opinion described the relevant legislative acts as follows:

This Act [Ordinance 84-107] reinforced S.C. Code Ann. § 55-410 (1962) that gave control over the Sumter County jail to the "governing body of the county," and released the sheriff of custody and control of the jail. Although § 55-410 had not been repealed by the General Assembly or struck down by a court, Sumter County passed Ordinance 84-107, "confirming that Sumter County, S.C., is the holder of all the powers and duties formerly held by the sheriff relating to the custody of the Sumter County Jail"

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Id. The opinion acknowledged the similarity between the facts described in the opinion request and those in Henry and further opined that the constitutionality of Ordinance 84-107 and S.C. Code Ann. § 55-410 (1962) was “questionable.” Id. However, the opinion explained that this Office “can only comment upon constitutional problems.” Id. The opinion suggested that Sheriff Mims file a declaratory judgement action if he wished for the courts to declare the acts unconstitutional and to grant him custody and control over the county jail. Id. While a court could find such legislation granting custody of the county jail to the county governing body to be unconstitutional special legislation under Henry, such legislation remains controlling and must be followed until a court declares it unconstitutional. See Beaufort Cty. Bd. of Educ. v. Lighthouse Charter Sch. Comm., 335 S.C. 230, 241, 516 S.E.2d 655, 660–61 (1999) (“An administrative agency must follow the law as written until its constitutionality is judicially determined; an agency has no authority to pass on the constitutionality of a statute.”).

Conclusion

It is this Office’s opinion that a court would likely find that, based on the plain language and context of S.C. Code §§ 24-5-10, -12, -20, the General Assembly intended either the sheriff or the county governing body to have sole custody and control of the county jail with a facility manager acting under such party’s supervision. The contract described in your letter presents multiple provisions which assign duties to a sheriff which are statutorily assigned to other parties. Therefore, a court would likely find that the terms of such a contract would be contrary to the general laws of the state and unenforceable. If the county wishes to surrender its control over the county jail to the sheriff, it should follow the method to do so provided by the General Assembly in S.C. Code Ann. 24-5-12. This Office cannot determine whether a county’s custody and control over a county jail is based on unconstitutional special legislation. If a sheriff wishes to challenge such a county’s custody over a county jail, he may petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20 (1976 Code, as amended). If it is later determined otherwise, or if you have any further questions or issues, please let us know

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General