



ALAN WILSON  
ATTORNEY GENERAL

March 2, 2018

C.A. Robinson, Chief of Police  
City of York Police Department  
PO Box 500  
York, SC 29745

Dear Chief Robinson:

We received your request seeking an opinion on who has the authority to swear in newly-hired municipal police officers.

**Issue (as quoted from your letter):**

I am writing to request an opinion on a matter involving the swearing in of newly hired law enforcement officers, as there is some debate among city personnel, and no definitive answer that I have been given. . . .

I inquired with the South Carolina Criminal Justice Academy to see if the administration of the Oath of Office for newly hired police officers had to be conducted by the Mayor. The reply that I received from Chief Legal Counsel Brandy Duncan is as follows, "*I don't know of anything that prescribes who must administer the oath. The oath is required by Article III, Section 26 of the South Carolina Constitution and S.C. Code 8-3-10. For law enforcement, typically the Sheriff, Chief, or Agency Head will administer the oath. Also, many departments have written versions of the oath that they have the officer and the person sign at the time the oath is given.*"

Based on the above information, I have been administering the Oath of Office to newly hired officers. . . . Due to the differentiating information I have been provided, and not being able to locate anything in the State Law that specifically delineates this process on my own, I would like to request an opinion from your office as to exactly who has the authority to administer the Oath of Office to newly hired police officers.

**Law/Analysis:**

It is the opinion of this Office that a court faced with the question presented in your letter most likely would conclude that the oath required of municipal police officers in South Carolina

oath under South Carolina law, which at a minimum includes a judicial officer (such as a circuit judge), a clerk of court, or a notary public. *See Op. S.C. Att'y Gen.*, 1968 WL 12205 (April 15, 1968); *see also Op. S.C. Att'y Gen.*, 1984 WL 159867 (May 24, 1984). This opinion should not be construed to invalidate or otherwise call into question the validity of the appointment of any law enforcement officers merely because their oath was not administered by an officer in the categories listed above. *See State v. Griffin*, 416 S.C. 266, 785 S.E.2d 786 (2016); *see also State v. McGraw*, 35 S.C. 283, 14 S.E. 630 (1892). However, we advise that the constitutionally-required oath should be administered by a judicial officer, a clerk of court, or a notary public, given that each of these offices have the express or inherent general authority under established South Carolina law to administer an oath. *See Op. S.C. Att'y Gen.*, 1984 WL 159867 (May 24, 1984).

All law enforcement officers in South Carolina, including municipal police officers, must take the oath of office prescribed by the South Carolina Constitution. *See* S.C. Code Ann. § 8-3-10; *see also Richardson v. Town of Mt. Pleasant*, 350 S.C. 291, 566 S.E.2d 523 (2002) (discussing municipal police officers as public officers). Article III, Section 26 of the South Carolina Constitution provides:

Members of the General Assembly, and all officers, before they enter upon the duties of their respective offices, and all members of the bar, before they enter upon the practice of their profession, shall take and subscribe the following oath: "I do solemnly swear (or affirm) that I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been elected, (or appointed), and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect and defend the Constitution of this State and of the United States. So help me God."

S.C. Const. art. III, § 26; *see also Op. S.C. Att'y Gen.*, 2010 WL 4982605 (November 3, 2010) (discussing S.C. Code Ann. § 8-3-10 and the requirement that public officials must take the oath of office). As background to the question presented, we note that certain statutes within the South Carolina Code of Laws also expressly prescribe the oath specifically for certain specific law enforcement officers. *See discussion, infra*. For example, Section 23-3-20 provides that that "[a]ll officers and agents of [SLED] shall take and subscribe to the oath provided by law for peace officers." S.C. Code Ann. § 23-3-20 (2007). Section 23-28-20(C)(1) requires that reserve police officers "take the oath of office required by law." S.C. Code Ann. § Section 23-7-30 prescribes the constitutional oath for special state constables. S.C. Code Ann. § 23-7-30 (2007).

As further background, we also note that Section 23-11-20 prescribes the oath for county sheriffs and does expressly prescribe who must administer the oath to the sheriff, and we quote that Section in full here:

Every sheriff before entering upon the duties of his office shall, in addition to the oath of office prescribed in Article 3, section 26, of the Constitution, take the oath required of such officer by § 8-3-20 and such oaths shall be endorsed on the commission and shall be taken and subscribed before the clerk of the court of the county. At the next term of the circuit court in the county he shall produce his commission, which shall be read in open court and recorded in the journal.

S.C. Code Ann. § 23-11-20 (2007) (emphasis added). Conversely, Section 23-13-20 prescribes that a deputy sheriff, who is appointed by the sheriff with the approval of a circuit judge, must take the constitutional oath and an additional oath set out in the statute, but that Section is silent as to who must administer the oath to the deputy. S.C. Code Ann. § 23-13-20 (2007) (setting out the oath); *see also* S.C. Code Ann. § 23-13-10 (2007) (appointment of a deputy "to be approved by the judge of the circuit court or any circuit judge presiding therein"). However, that Section does expressly require that a copy of the deputy's oath must be "filed with and kept by the clerk of court for the county." § 23-13-20.

Turning to the question of swearing in municipal police officers, we concur with the assessment of the Chief Legal Counsel for the South Carolina Criminal Justice Academy that South Carolina law does not expressly set out who may or must administer the oath of office to municipal police officers. *See* S.C. Code Ann. § 5-7-110 (2004); *cf.* S.C. Code Ann. § 23-11-20 (2007) (expressly providing that a sheriff's oath of office be taken before a clerk of court). We also take at face value the descriptive statement that "[f]or law enforcement, typically the Sheriff, Chief, or Agency Head will administer the oath. Also, many departments have written versions of the oath that they have the officer and the person sign at the time the oath is given." *Question presented, supra*. Given that this is the practice in the field, we believe that a court would give some weight to this practical application when considering the question you present. That said, our Office has issued several opinions in the past which address the authority to administer an oath, two of which we discuss below. *See discussion, infra*.

The opinion most on point is a 1968 opinion directed to the Mayor of Leesville, SC concerning the authority to swear in a police officer appointed by the town council under the 1962 Code of Laws: *Op. S.C. Att'y Gen.*, 1968 WL 12205 (April 15, 1968). Because the law did not prescribe a special oath, that opinion concluded that "it was undoubtedly contemplated" that the police officer would simply swear the oath prescribed in the SC Constitution. *Id.* There we opined:

Any person who is commissioned as a notary public can administer the oath above referred to. Thus, you could administer it if you were a notary, as could any other member of the council if he were a notary. By the same token, it is not necessary that a member of council give the oath, and, as before said, any Notary public could do thus.

*Id.* While this statement of law made fifty years ago is still accurate today, it should not be misconstrued as a conclusion that only a notary public may administer the oath. In fact South Carolina law extends the general authority to administer oaths to certain other public offices as well, as described in a 1984 opinion of this Office:

The general authority to administer oaths is obtained either through the inherent power of the court or is conferred by statute. This general authority to administer oaths is conferred by statute on Clerks of Court (§ 14-17-250), Notaries (§ 26-1-90), and Circuit Courts (§ 14-5-330).

*Op. S.C. Att'y Gen.*, 1984 WL 159867 (May 24, 1984). For that reason, we take this opportunity to clarify that our statement in the 1968 opinion should be understood in the context of a discussion of the most likely source of general legal authority for a town mayor to administer an oath, which was to also be a notary public. *See Op. S.C. Att'y Gen.*, 1984 WL 159867 (May 24, 1984).

A court faced with the question presented in your letter most likely would begin by construing Section 5-7-110, which expressly provides that municipalities may establish a police force. S.C. Code Ann. § 5-7-110 (2004); *see also Richardson v. Town of Mount Pleasant*, 350 S.C. 291, 298, 566 S.E.2d 523, 527 (2002) (discussing the office of municipal police officer as a creature of statute which did not exist under the common law). As this Office has previously opined:

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *State v. Morgan*, 352 S.C. 359, 574 S., E.2d 203 (Ct. App. 2002) (citing *State v. Baucom*, 340 S.C. 339, 531 S.E.2d 922 (2000)). All rules of statutory interpretation are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999).

*Op. S.C. Att'y Gen.*, 2005 WL 1983358 (July 14, 2005). Section 5-7-110 provides in relevant part that:

Any municipality may appoint or elect as many police officers, regular or special, as may be necessary for the proper law enforcement in such municipality and fix their salaries and prescribe their duties.

Police officers shall be vested with all the powers and duties conferred by law upon constables, in addition to the special duties imposed upon them by the municipality.

S.C. Code Ann. § 5-7-110 (2004). That Section goes on to provide for the jurisdiction of municipal officers, but is silent on the administration of the oath of office. *Id.* By comparison, the General Assembly has undertaken to set out directions for the administration of the oath of office for a Sheriff, for example. *See* S.C. Code Ann. § 23-11-20 (2007). In the absence of any such specific limitations by the General Assembly on the oaths of municipal police officers, we believe that a court would conclude that the General Assembly intended for general principles of South Carolina law to apply. *See, e.g., Op. S.C. Att'y Gen.*, 1985 WL 259106 (January 7, 1985) (discussing the interplay of statutory law, common law, and public policy in our legal system). In South Carolina, these general principles of law include the general authority of certain public officers to administer oaths. *See Op. S.C. Att'y Gen.*, 1984 WL 159867 (May 24, 1984). For that reason, and consistent with both our 1968 and 1984 opinions and for the reasons set out therein, we opine today that a court faced with the question presented in your letter most likely would conclude that any public officer possessing general authority to administer an oath in the State of South Carolina may administer the oath of office to a municipal police officer. *See id.; see also Op. S.C. Att'y Gen.*, 1968 WL 12205 (April 15, 1968).

We caution that the limited power to administer oaths in certain specific contexts should not be misconstrued as a general power to administer oaths in any context. *See Op. S.C. Att'y Gen.*, 1984 WL 159867 (May 24, 1984). For example, the 1984 opinion of our Officer described above related to the performance of marriage ceremonies, which is relevant here because marriages may be performed by, inter alia, "officers authorized to administer oaths in this State." *Id.; cf.* S.C. Code Ann. § 20-1-20. The question was whether marriages could be performed by ministerial recorders, who have limited authority by implication to administer oaths for the purpose of issuing arrests and search warrants. *Id.* There we noted that "[t]here is no general statutory authority for ministerial recorders to administer oaths." *Id.* That opinion went on to conclude that the ministerial recorder could not perform marriages, because the limited power of a ministerial recorder to administer an oath as "necessary to the issuance of arrest and search warrants" did not extend to a general authority to administer oaths so as to qualify the recorder as an "officer[] authorized to administer oaths in this State." *Id.* We quote at length from that opinion here:

To argue that this limited authority to administer oaths is a sufficient basis for allowing ministerial recorders to perform marriage ceremonies would result in an absurd conclusion when applied to similar statutes which give limited authority to administer oaths to Boards which license and regulate the various professions. The Medical Board (§ 40-47-210), the Nursing Board (§ 40-33-960), among others, are given statutory authority to administer oaths and affirmations for the purpose of investigations or proceedings on disciplinary actions brought before them. The logical extension of the argument that the authority to administer oaths for arrest and search warrants brings the ministerial recorder under the purview of § 20-1-20 would mean that any member of a professional disciplinary Board would have the authority to perform a marriage ceremony in South Carolina. We do not believe that such was the intention of the legislature in promulgating § 20-1-20.

*Id.* Of course, it is possible that a court faced with the question presented in your letter might conclude that there is some implicit authority for certain public officials to administer the oath of office to law enforcement officers under their supervision. *See, e.g., Heath v. Aiken County*, 295 S.C. 416, 369 S.E.2d 904 (2001) (discussing the special relationship, rooted in the common law, between a sheriff and their deputies). However, when a law enforcement officer is not sworn by a person with an established legal basis for administering the constitutional oath and that officer goes on to exercise the sovereign power of the state to arrest persons, that lack of compliance with established law in taking the oath might invite collateral attacks on the officer's authority. *See, e.g., State v. Griffin*, 413 S.C. 258, 776 S.E.2d 87 (2015). Those collateral attacks ultimately are unlikely to succeed, but they still require substantial taxpayer resources to defend against in court. *See id.* For this reason, we advise here that the constitutionally-required oath should be administered to municipal officers by a judicial officer, a clerk of court, or a notary public, given that each of these offices have the express or inherent general authority under South Carolina law to administer an oath. *See Op. S.C. Att'y Gen.*, 1984 WL 159867 (May 24, 1984).

Finally, in order to be as responsive to your question as possible, we note that the South Carolina Supreme Court has issued at least one reported cases addressing the authority of a law enforcement officer who apparently was not properly sworn: *State v. Griffin*, 416 S.C. 266, 785 S.E.2d 786 (2016). In *Griffin*, the defendant appealed his conviction stemming from a 2010 arrest on the basis that he "was unlawfully stopped, seized, detained, and arrested by deputies who had not been duly qualified to serve as deputy sheriffs." *State v. Griffin*, 413 S.C. 258, 260, 776 S.E.2d 85, 88 (2015). As discussed earlier in this opinion, the South Carolina Code requires that appointments of deputy sheriffs must be approved by the circuit court and their oaths must

be filed with the clerk of court. S.C. Code Ann §§ 23-13-10 & 23-13-20. In *Griffin*, however, the clerk of court testified that although she had been "been employed in the clerk's office since 1985" but "the first time any oath certificates were filed in the court was on September 30, 2011." *Id.* at 261, 776 S.E.2d at 88. It also appears that the deputies were not approved by the circuit court until 2011, after Mr. Griffin's arrest in 2010. *Id.* On appeal, the Court of Appeals upheld the conviction on the basis that the deputies could "be considered de facto deputies despite their failure to comply with all of the requirements of sections 23-13-10 and 23-13-20." *Id.* at 264, 776 S.E.2d at 90. The opinion of Court of Appeals also included substantial legal analysis discussing numerous authorities for its conclusion.<sup>1</sup> *Id.* Ultimately the South Carolina Supreme Court affirmed Mr. Griffin's conviction, but vacated the Court of Appeals' reasoning:

[W]e find such an analysis unnecessary, as it is well established that "the illegality of an initial arrest [does] not bar the accused person's subsequent prosecution and conviction of the offense charged." *State v. Biehl*, 271 S.C. 201, 246 S.E.2d 859 (1978); *see also Frisbie v. Collins*, 342 U.S. 519, 72 S.Ct. 509, 96 L.Ed. 541 (1952); *State v. Holliday*, 255 S.C. 142, 177 S.E.2d 541 (1970); 5 Am. Jur. 2d Arrest § 129 (2016) ("The illegality of an arrest does not preclude trial of the accused for the offense."). Petitioner asked for his case to be dismissed with prejudice, a remedy that runs contrary to the established law of South Carolina. Therefore, the trial court did not err in denying Petitioner's motion to dismiss, regardless of whether the underlying arrest was unlawful or committed lawfully by de facto sheriff's deputies.

*State v. Griffin*, 416 S.C. at 268, 785 S.E.2d at 787 (2016).

#### **Conclusion:**

In conclusion, for the reasons set forth above, it is the opinion of this Office that the oath required of municipal police officers in South Carolina may be administered by any public officer who possesses the general authority to administer an oath under South Carolina law, which at a minimum includes a judicial officer (such as a circuit judge), a clerk of court, or a notary public. *See Op. S.C. Att'y Gen.*, 1968 WL 12205 (April 15, 1968); *see also Op. S.C. Att'y Gen.*, 1984 WL 159867 (May 24, 1984). As noted above, this opinion should not be construed to invalidate or otherwise call into question the validity of the appointment of any law enforcement officers merely because their oath was not administered by an officer in the categories listed

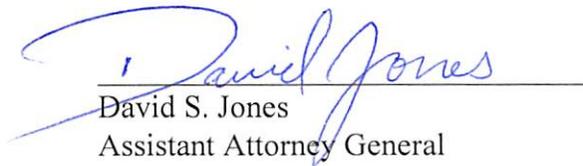
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<sup>1</sup> For example, the Court of Appeals opined that "[i]n *State v. McGraw*, our supreme court considered whether a deputy was properly appointed. 35 S.C. 283, 287, 289, 14 S.E. 630, 631 (1892). It found that although the deputy had been appointed and had acted as a deputy, the deputy had never taken the oath of office and his appointment had never been formally approved by a circuit court judge. *Id.* at 287, 14 S.E. at 631. Notwithstanding these deficiencies, the court determined the deputy was "at least a de facto officer." *Id.* at 289, 14 S.E. at 631."

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above. *See State v. Griffin*, 416 S.C. 266, 785 S.E.2d 786 (2016); *see also State v. McGraw*, 35 S.C. 283, 14 S.E. 630 (1892). This opinion also should not be read as an attempt to comment on any pending litigation or criminal proceeding.

Sincerely,

  
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David S. Jones  
Assistant Attorney General

REVIEWED AND APPROVED BY:

  
\_\_\_\_\_  
Robert D. Cook  
Solicitor General