



ALAN WILSON
ATTORNEY GENERAL

March 29, 2024

Sheriff Lee Boan
Kershaw County Sheriff Office
821 Ridgeway Rd.
P.O. Box 70
Lugoff, SC 29078

Dear Sheriff Boan:

We received your letter requesting an Attorney General's opinion regarding Kershaw County Sheriff's deputies' presence at Kershaw County Council (County Council) public meetings. You present the following questions:

1. Can the County Council Chair (who runs the council meetings) or any County Council member tell my deputies what to do during County Council meetings?
2. Do my deputies have the legal authority to use physical force to enforce any County Council rules including, but not limited to, public comment guidelines?

We will address each of your questions in turn.

Law/Analysis

It is our understanding that Kershaw County operates under a council-administrator form of county government pursuant to sections 4-9-610 to -670 of the South Carolina Code (2021), which is included in the body of legislation known as the Home Rule Act.¹ We have recognized in previous opinions that “[a] county council is generally considered as having only limited authority in dealing with the authority or duties of an elected official.” Op. S.C. Att’y Gen., 2006 WL 1207277 (S.C.A.G. April 20, 2006); *see also* S.C. Code Ann. § 4-9-30(7) (2021); Op. S.C. Att’y Gen., 2012 WL 1774920 (S.C.A.G. May 7, 2012); Op. S.C. Att’y Gen., 2006 WL 1877110 (S.C.A.G. June 19, 2006). “With the exception of organizational policies established by the governing body, the county administrator shall exercise no authority over any elected officials of the county whose offices were created either by the Constitution or by the general law of the State.” S.C. Code Ann. § 4-9-650.

¹ S.C. Code Ann. §§ 4-9-10, *et seq.* (2021 & Supp. 2023).

In South Carolina, sheriffs are elected constitutional officers. S.C. Const, art. V, § 24. Our State Constitution provides that the General Assembly shall provide by law for the duties of the office of county sheriff. *Id.* This Office has consistently opined that a sheriff is the chief law enforcement officer of a county. *See e.g. Op. S.C. Att’y Gen.*, 2015 WL 3919079 (S.C.A.G. June 11, 2015); *Op. S.C. Att’y Gen.*, 2005 WL 774155 (S.C.A.G. March 1, 2005). Section 23-13-10 of the South Carolina Code (2007) defines the relationship between sheriffs and sheriff’s deputies, providing:

The sheriff may appoint one or more deputies to be approved by the judge of the circuit court or any circuit judge presiding therein. Such appointment shall be evidenced by a certificate thereof, signed by the sheriff, and shall continue during his pleasure. The sheriff shall in all cases be answerable for neglect of duty or misconduct in office of any deputy.

As recognized by the Supreme Court of South Carolina, “[I]t is well settled in South Carolina that a deputy sheriff serves at the sheriff’s ‘pleasure.’” *Rhodes v. Smith*, 273 S.C. 13, 15, 254 S.E.2d 49, 50 (1979) (quoting S.C. Code Ann. § 23-13-10).

In *Cone v. Nettles*, the Supreme Court of South Carolina held sheriffs and sheriff’s deputies are State, not county, officials. 308 S.C. 109, 112, 417 S.E.2d 523, 524 (1992). The Court, recognized the District Court for the District of South Carolina’s holding in *Gulledge v. Smart*,² providing “the State has the ‘potential power of control’ over the office of sheriff” and “a deputy, as an agent of the sheriff, is also ‘more closely connected to the state than to the county,’ hence, a state official.” 308 S.C. at 112, 417 S.E.2d at 525 (quoting *Gulledge*, 691 F.Supp. at 955). In *Heath v. Aiken County*, the Supreme Court of South Carolina held sheriff’s deputies are State, not county, employees for purposes of section 4-9-30(7)’s personnel policies³ and grievance procedure.⁴ 295 S.C. 416, 418-19, 368 S.E.2d 904, 905-06 (1988). The Court explained the implementation of a personnel policy, which included working hour limitations, attendance and leave regulations, and

² 691 F.Supp. 947 (D.C.S.C. 1988), *aff’d* 878 F.2d 379 (4th Cir. 1989).

³ S.C. Code Ann. § 4-9-30(7) (providing a county governing body is empowered “to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people, and 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. This employment and discharge authority does not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government”).

⁴ We note the General Assembly amended section 4-9-30(7) to clarify references relating to county grievance procedures after the filing of the underlying declaratory judgment action in *Heath v. Heath*, 295 S.C. at 418 n.2, 368 S.E.2d at 905 n.2. This Office opined that “with the amendment, no employee of an elected official, such as a sheriff, who is discharged by such official, is entitled to a grievance hearing under Section 4-9-30(7).” *Op. S.C. Att’y Gen.*, 1988 WL 383551 (S.C.A.G. September 14, 1988).

work schedule assignments, “would afford [a county council] a degree of day-to-day control over deputies irreconcilable with the common and statutory law of this state.” Id. at 419, 368 S.E.2d at 905. The Court noted the District Court for the District of South Carolina has recognized that, in the context of a Title 42 U.S.C. § 1983 action, “it is abundantly clear that historically in South Carolina the deputy sheriffs are answerable only to the sheriff and not the county government.” Id. at 419 n.3, 368 S.E. 2d 905 n.3 (quoting Allen v. Fidelity & Deposit Co. of Maryland, 515 F.Supp. 1185, 1190 (D.S.C. 1981), *aff’d*, 694 F.2d 716 (4th Cir.1982)). In this federal district court case, the District Court held Aiken County could not be held liable for the actions of the County Sheriff and his deputies when, *inter alia*, the County was “precluded from exercising any supervisory function or control over the Sheriff or his deputies.” Allen, 515 F.Supp. at 1190. In reaching this conclusion, the District Court explained:

In Aiken County, as in most other counties of South Carolina, law enforcement is the sole responsibility of the elected sheriff and his deputies appointed by him whose duties are specified by the constitution of the State, the statutes and case law. It has long been clear that the County has no authority over the Sheriff or his deputies as to matters of hiring, firing, training, discipline or the manner in which the duties of the office are carried out. The sheriff in South Carolina has under common law and statutes always been solely responsible for his own acts and those of his deputies.

In South Carolina, the sheriff and his deputies have the sole responsibility for law enforcement. The county government cannot hire or fire the deputies nor can it tell the sheriff the manner or method by which he and his deputies are to perform the official acts of his office.

Id. at 1189-90; *see also* Patel by Patel v. McIntyre, 667 F. Supp. 1131, 1146 (D.S.C. 1987), *aff’d sub nom. Patel by Patel v. Dyar, 848 F.2d 185 (4th Cir. 1988) (“[I]t is well established in South Carolina case law that law enforcement at the county level is the exclusive province of the sheriff.”).*

Additionally, this Office determined in a June 2015 opinion that “it is clear the Sheriff, as the chief law enforcement officer of the county vested with the power to appoint deputies, certainly serves as a supervisor to his deputies and, assuming the proper procedures for appointment are followed and the deputy is otherwise qualified, has discretion to choose, supervise and assign his employees.” Op. S.C. Att’y Gen., 2015 WL 3919079 (S.C.A.G. June 11, 2015). This Office has further opined that although county councils have the authority to appropriate funds for the operation of a sheriff’s office, county councils do “not have the authority through the budget process to interfere with the operations of a sheriff’s department.” Op. S.C. Att’y Gen., 2020 WL 5259200 (S.C.A.G. August 17, 2020); *see also* Op. S.C. Att’y Gen., 1989 WL 406145 (S.C.A.G. May 8, 1989). Moreover, we have recognized “police officers must retain a wide degree of discretion in carrying out their duties of enforcing the laws.” Op. S.C. Att’y Gen., 2008 WL 1960284 (S.C.A.G. April 17, 2008). Based on the foregoing authorities, we believe a court would

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likely find county council members' limited authority over elected officials does not extend to giving direct orders to a county sheriff or his or her deputies.⁵

As previously stated, a sheriff is the chief law enforcement officer of a county. "When duly qualified a deputy sheriff may perform any and all of the duties appertaining to the office of his principal." S.C. Code Ann. § 23-13-50 (2007). "A deputy . . . acts as his sheriff's agent under South Carolina law." Heath, 295 S.C. at 418-19, 368 S.E.2d at 905. The oath of office of a deputy sheriff affirms the office enforces the *criminal* laws of the State. S.C. Code Ann. § 23-13-20 (2007) ("[Each deputy sheriff] shall take the following oath (or affirmation) to wit: 'I further solemnly swear (or affirm) that during my term of office as county deputy, I will study the act prescribing my duties, will be alert and vigilant to enforce the criminal laws of the State and to detect and bring to punishment every violator of them, . . .'"). We have previously concluded local ordinances—both county and municipal—constitute criminal laws of the State. *See e.g. Op. S.C. Att'y Gen.*, 2010 WL 2678695 (S.C.A.G. June 28, 2010); *Op. S.C. Att'y Gen.*, 2009 WL 276749 (S.C.A.G. January 12, 2009); *Op. S.C. Att'y Gen.*, 1996 WL 452786 (S.C.A.G. May 20, 1996). As such, this Office has determined county sheriffs have the authority to enforce county ordinances, generally. *Op. S.C. Att'y Gen.*, 2009 WL 276749 (S.C.A.G. January 12, 2009); *Op. S.C. Att'y Gen.*, 1996 WL 452786 (S.C.A.G. May 20, 1996). It is our understanding the Kershaw County Council has prescribed public comment guidelines; however, it does not appear these guidelines have been codified as a county ordinance. Based on this understanding, we believe a court would find violations of public comment guidelines fall outside the scope of the State's criminal laws, unless such conduct also constitutes a violation of State criminal law. Accordingly, we believe a court would likely hold a sheriff and his or her deputies lack authority to use physical force to enforce public comment guidelines.

Conclusion

We believe a court would likely determine county council members' limited authority over elected officials does not extend to giving direct orders to a county sheriff or his or her deputies during public county council meetings. Further, we believe a court would find public comment guidelines fall outside the scope of the State's criminal laws and therefore, unless such conduct also constitutes a violation of State criminal law, a sheriff and his or her deputies lack authority to enforce such guidelines with physical force.

Sincerely,

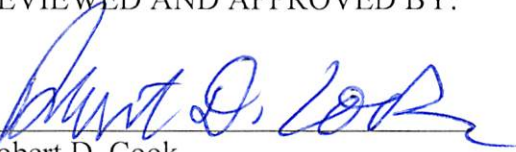


Elizabeth McCann
Assistant Attorney General

⁵ We note our analysis does not contemplate a sheriff's deputy acting as a sergeant-at-arms at a county council meeting.

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REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General