

OFFICIAL OPINION NO. 87-04, Mayoral powers

February 5, 1987

Dennis A. Groff
Pennington County State's Attorney
300 Kansas City Street
Rapid City, South Dakota 57701

OFFICIAL OPINION 87-04

Mayoral powers

Dear Mr. Groff:

You have requested an official opinion from this office based upon the following factual situation:

FACTS:

The city of New Underwood has a full-time mayor. On several occasions in the past few months the mayor has issued uniform traffic citations to individuals whom he believes he has observed violating traffic laws. The mayor has also advised the city council that he will be responding to certain calls for assistance from city residents. The mayor is not a certified police officer, nor has he ever been employed in any law enforcement capacity. The mayor takes the position that SDCL 9-29-16 grants him the authority to act in this manner. Shortly after this mayor took office, the fulltime police officer employed by the city was relieved of his duties and that position eliminated.

Based upon these facts, you have asked the following questions:

QUESTIONS:

1. Does the language of SDCL 9-29-16 grant authority to the elected full-time mayor of a municipality to issue uniform traffic citations and otherwise engage in routine traffic control normally performed by uniformed officers and to respond to citizen complaints?

2. If the statutory grant of police powers to a mayor can include certain traffic control functions, how is that authority reconciled with the language of SDCL 9-29-19 and 9-29-19.1 which only authorizes the issuance of uniform traffic citations to individuals by a law enforcement officer?

3. If the full-time mayor of a municipality does have authority to issue traffic citations and perform other duties normally associated with routine traffic patrol, does the mayor's authority extend so as to allow him to hire other individuals to assist him in these activities free from any of the training and certification requirements normally associated with the employment of police officers?

IN RE QUESTION NO. 1:

SDCL 9-29-16 provides:

The mayor of a city having a common council, each member of a board of city commissioners, and each town marshal shall possess, within the jurisdiction of the municipality, all the powers conferred by law upon sheriffs to suppress disorder and keep the peace.

Through this statute, a mayor of a municipality derives all of the powers of a county sheriff to suppress disorder and keep the peace within the jurisdiction of his municipality. It is, however, important to note that the statute does not confer upon a mayor all of the power and authority of a duly certified law enforcement officer. The statute is a limited grant of those powers that a sheriff has to "suppress disorder and keep the peace." SDCL 9-29-16 (Emphasis added).

SDCL ch. 7-12 outlines the powers and duties of a county sheriff. The only statute within this chapter which specifically addresses what powers a sheriff has to keep the peace is the first clause of SDCL

7-12-1 which states, "[T]he sheriff shall keep and preserve the peace within his county, for which purpose he is empowered to call to his aid such persons or power of his county as he may deem necessary." (Emphasis added.) Applying this statute to SDCL 9-29-16 yields the conclusion that a mayor of a municipality has the power to call

to his aid such persons or power of his municipality as he may deem necessary to suppress disorder and keep the peace. In my opinion, this does not include authority for the mayor to issue traffic citations and engage in routine traffic control or to engage in other activities normally performed by certified law enforcement officers. Such a reading of SDCL 9-29-16 would be inconsistent with the provisions of SDCL ch. 23-3 on certification of law enforcement officers and would run afoul of the Legislature's specifically expressed recognition that law enforcement work "is of such a nature as to require education and training of a professional character." SDCL 23-3-26. Such reading of SDCL 9-29-16 would also bypass the intent of SDCL 9-14-16 which forbids a mayor to hold any other "office" under the municipality (including that of a policeman or marshal, SDCL 9-14-1) while an incumbent in the office of mayor.

A sheriff derives his authority to detain violators and issue traffic citations through his status as a "law enforcement officer." SDCL 23-IA-7 gives a "law enforcement officer" the authority to halt and detain a person for the period of time necessary to issue a petty offense complaint or summons. SDCL 32-33-1.1 allows a "law enforcement officer" to make an arrest at the scene of a traffic accident. SDCL 32-33-2 outlines the procedure an "officer" should follow in issuing a summons to a violator of the traffic laws in SDCL tit. 32. In my opinion, an "officer" proceeding under SDCL 32-33-2 is operating under the authority of SDCL 23-IA-7 in detaining the violator for the purpose of issuing the summons and therefore, must be a "law enforcement officer." Finally, you have pointed out in your own letter that SDCL 9-29-19.1 refers to the procedure a "law enforcement officer" should follow in arresting a person for a violation of a municipal ordinance.

The above-referenced statutes present the question of whether a mayor of a municipality is a "law enforcement officer" because of the authority given mayors by SDCL 9-29-16 to suppress disorder and keep the peace. A law enforcement officer" is defined by SDCL 22-1-2(20) as:

An officer or employee of the state or any of its political subdivisions or of the United States, or, while on duty, an agent or employee of a railroad or express company or security personnel of an airline or airport, who is responsible for the prevention or detection of crimes, for the enforcement of the criminal or highway traffic laws of the state, or for the supervision of confined persons convicted of a crime. [Emphasis added.]

Clearly a county sheriff falls within this definition. SDCL 7-12-4 gives sheriffs the duty to "see to it as far as may be possible that all the laws of this state and especially all laws relating to alcoholic beverages are faithfully executed and enforced." [Emphasis added.] Sheriffs are made responsible for supervision of confined persons convicted of a crime by SDCL 24-11-13 which states, "The sheriff. . . shall have charge of the jail of his county or municipality and of all persons by law confined therein." Thus, it is beyond dispute that county sheriffs are "law enforcement officers" and, therefore, have authority as such to issue traffic citations and engage in traffic control. The same is not true of a municipal mayor. Mayors have none of the statutory duties or responsibilities that sheriffs have to prevent or detect crime, to enforce the criminal or highway traffic laws or to supervise confined persons convicted of a crime. As a result, mayors of municipalities do not have the status of "law enforcement officers" and, therefore, may not issue traffic citations, engage in traffic control or carry out other functions assigned by statute to "law enforcement officers." This is not to say that mayors are denied the authority to make a citizen's arrest within the provisions of SDCL 23A-3-3.

Therefore, my answer to your first question is no. In my opinion, SDCL 9-29-16 only grants the mayor of a municipality the power to call to his aid such persons or power of the municipality as he may deem necessary to suppress disorder and keep the peace. SDCL 9-29-16 does not grant mayors the authority to issue traffic citations, engage in routine traffic control or to perform other functions assigned by statute to certified law enforcement officers.

Given my answer to your first question, I believe it is unnecessary to address your questions 2 and 3.

Sincerely,

Roger A. Tellinghuisen
ATTORNEY GENERAL