



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

September 21, 2023

Elliot Burch, Esq.
Attorney, Town of McLain
Post Office Box 1215
Lucedale, Mississippi 39452

Re: Sheriff's Deputy's Authority to Issue Municipal Ticket Through Municipal Court While on Duty as Sheriff

Dear Mr. Burch:

The Office of the Attorney General has received your request for an official opinion.

Background

You state in your request that the town of McLain includes parts of Perry and Greene counties, and several of the town police officers also work for the local sheriffs' departments.

Question Presented

If a sheriff's deputy (who also works part time as an officer for the McLain police department) is working on a sheriff's department matter within the town of McLain and observes someone commit a traffic violation, may that sheriff's deputy issue a town of McLain traffic ticket?

Brief Response

We find no authority for a deputy sheriff to issue a municipal citation returnable through municipal court while acting in the capacity of and being paid as deputy sheriff.

Applicable Law and Discussion

The sheriff is the chief law enforcement officer of the county whose duty is to keep the peace within his county. Miss. Code Ann. § 19-25-67. Sheriffs have the power to appoint deputies to assist in carrying out the duties of the office, and those deputies have the power to carry out all "acts and duties enjoined upon their principals." Miss. Code Ann. § 19-25-19. On the other hand, the chief of police is the chief law enforcement officer of a municipality and has supervision and

control of all police officers employed by the municipality and who must perform the duties as required of him by ordinance. Miss. Code Ann. § 21-21-1.

A municipal police officer may also serve as a deputy sheriff. MS AG Op., *Strider* at *1 (Mar. 17, 2000). However, we find no authority for a deputy sheriff to carry out the duties of a municipal police officer while acting in the capacity as a deputy sheriff. This office has opined that any individual who serves as both a municipal police officer and deputy sheriff shall keep his or her duties for each position separate and take care not to perform duties for one entity while being paid by the other. *Strider* at *1. This is because individuals cannot be paid by both entities at the same time. MS AG Op., *Thomas* at *1 (Sept. 10, 2004). Accordingly, the duties must be clearly differentiated as either those of a municipal officer to be paid by the municipality or as those of a deputy sheriff to be paid by the sheriff's department. *Id.* It is therefore our opinion that a deputy sheriff has no authority to issue a municipal citation returnable through municipal court while acting in the capacity of and being paid as deputy sheriff. However, the deputy sheriff may report his observations to an on-duty municipal officer.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Abigail C. Overby

Abigail C. Overby
Special Assistant Attorney General