



HENRY McMASTER
ATTORNEY GENERAL

May 6, 2009

James A. Preacher, Jr., Chief of Police
Town of Ehrhardt
P. O. Box 185
Ehrhardt, South Carolina 29081

Dear Chief Preacher:

In a letter to this office you questioned whether a Class 3 officer has “full police custodial arrest powers and would the arrest be legal?” You referenced a prior opinion of this office dated January 25, 2005 which commented that, generally, although these officers undergo training at the State Criminal Justice Academy, they are typically considered as having duties limited in scope, such as working at sporting events, crowd control, traffic at fairs and football games, and court room security. It was stated in the opinion that the duties of these officers are more limited than those duties of regular law enforcement officers, such as full-time deputies and State troopers. Such conclusion was in keeping with the determination of the powers of these officers by the Department of Public Safety which promulgated regulations regarding training requirements for basic law enforcement certification and, in particular, Department of Public Safety Regulation 38-007. The January, 2005 opinion commented that “[t]his office would defer to the Department’s interpretation since they are the agency that generally oversees the training requirements for these officers.”

The 2005 opinion referenced DPS Regulation 38-007 which distinguishes between Class 1 (“law enforcement officers with full powers”), Class 2 (“jailers, correctional officers and juvenile correctional officers”) and Class 3 certifications. As to Class 3 certifications, subsection (C) of such provision states that

[c]andidates for basic certification as law enforcement officers with limited powers of arrest or special duties shall successfully complete a training program as approved by the Department and will be certified as Class 3-SLE. (emphasis added).

As far as statutes referring to Class 3 officers, S.C. Code Ann. § 56-5-170 refers to “county government litter enforcement vehicles used by certified law enforcement Class 3 litter control officers.” Therefore, litter control officers are generally considered as having Class 3 law enforcement certifications. S.C. Code Ann. § 4-9-145(A) provides for the appointment and commissioning of code enforcement officers as litter control officers. However, such provision further states that “...no code enforcement officer commission under this section may perform a custodial arrest, except as provided in subsection (B).” Subsection (B)(2) states that

(a) A litter control officer appointed and commissioned pursuant to subsection (A) may exercise the power of arrest with respect to his primary duties of enforcement of litter control laws and ordinances and other state and local laws and ordinances as may arise incidental to the enforcement of his primary duties only if the officer has been certified as a law enforcement officer pursuant to Article 9, Chapter 6, Title 23...(now S.C. Code Ann. §§ 23-23-10 et seq.)...

(b) In the absence of an arrest for a violation of the litter control laws and ordinances, a litter control officer authorized to exercise the power of arrest pursuant to subitem (a) may not stop a person or make an incidental arrest of a person for a violation of other state and local laws and ordinances. (emphasis added).

Similarly, an opinion of this office dated April 14, 2000 dealt with the question of whether a Class 3 officer could detain a suspect until a Class 1 officer arrives to take the suspect into custody. The opinion stated that

[t]he United States Supreme Court has held that such a detention constitutes an seizure and is, therefore, subject to the same protection under the Fourth Amendment as that of an arrest...Similarly, this office has advised that the detention of an individual longer than necessary to issue the citation by a code enforcement officer would be unlawful...Thus, a Class 3 officer, or an administrative code officer, is similarly without statutory authority to detain a suspect until another officer arrives because the detention, itself, is an arrest.

Consistent with such restrictions on the powers of a Class 3 litter officer, in the opinion of this office, a Class 3 officer does not have full police custodial powers and is limited in his law enforcement authority with limited duties consistent with the Regulations and statutory authority cited above.

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With kind regards, I am,

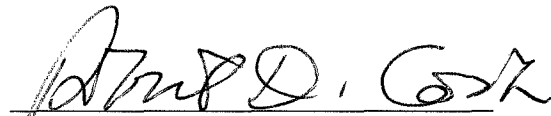
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General