



HENRY McMASTER
ATTORNEY GENERAL

May 8, 2009

The Honorable P. J. Tanner
Sheriff, Beaufort County
Post Office Box 1758
Beaufort, South Carolina 29901

Dear Sheriff Tanner:

In a letter to this office you requested an opinion regarding the requirement of a sheriff to provide courtroom security for the court of general sessions. You also questioned whether such security could be contracted to a private security company or are there other options to providing such security outside of sworn deputy sheriffs.

S.C. Code Ann. § 23-15-80 states that “[t]he sheriffs or their deputies shall attend all the circuit courts that may be held within their respective counties and enforce such rules as such courts may establish....” A prior opinion of this office dated July 28, 1997 dealt with the question of the duties and responsibilities of a sheriff with regard to the security of the courthouse and the courtroom. Reference was made to the decision of the State Supreme Court in State v. Brantley, 279 S.C. 215, 305 S.E.2d 234 (1983) in which the Court referred to the fact that a sheriff is “...an officer of the court, and his wilful failure to comply...(with an order of a court)...constituted a constructive contempt of court, which tended to ‘obstruct and embarrass or prevent the due administration of justice.’” 279 S.C. at 217. The 1997 opinion referred to Section 23-15-80 with regard to the question raised regarding a sheriff’s duties as to the security of the courthouse and a courtroom. See also: S.C. Code Ann. § 23-15-40 (“[t]he sheriff or his regular deputy, on the delivery thereof to him,...(shall)...serve, execute and return every process, rule, order or notice issued by any court of record in this State or by other competent authority.” Consistent with such, in the opinion of this office, a sheriff or his deputy is responsible for providing courtroom security for the court of general sessions and must comply with any rules or orders issued by the presiding judge.

You also questioned whether such security could be contracted to a private security company or are there other options to providing such security outside of sworn deputy sheriffs. It is generally recognized that a courthouse is public property. See: S.C. Code Ann. § 4-17-30 “...courthouses and jails and all other public property....”. An opinion of the Attorney General of North Dakota dated February 15, 2001 also referred to courthouses as constituting “public property.” See also: State of New Mexico, et al. v. Board of County Commissioners of Dona Ana County, 380 P.2d 830 (N.M. 1963).

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As to private security guards licensed by SLED pursuant to S.C. Code Ann. §§ 40-18-20 et seq., Section 40-18-110 states

[a] person who is registered or licensed under this chapter and who is hired or employed to provide security services on specific property is granted the authority and arrest power given to sheriff's deputies. The security officer may arrest a person violating or charged with violating a criminal statute of this State but possesses the power of arrest only on the property on which he is employed.

A prior opinion of this office dated September 29, 2006 determined that "...private security guards have no authority to exercise law enforcement authority except on the private property they are hired to protect...(citing Section 40-18-110)...." Another opinion dated April 2, 1980 concluded that "...a private security guard is not authorized...to exercise the power of arrest on public property." Citing these prior opinions, another opinion of this office dated April 7, 2008 held that "...a county would not be authorized to contract with a private security company for law enforcement purposes even though services...would constitute private security." See also: Op. Atty. Gen. dated September 29, 2006 ("...a municipality is not authorized to contract with a private security company for law enforcement purposes."); Op. Atty. Gen. dated June 8, 1993 ("...it does not appear that a county could contract with a private security firm to serve as guards at a county detention facility."); Op. Atty. Gen. dated April 2, 1980 ("...a municipality is not authorized to contract with a private security agency to provide the personnel of the private agency the power of arrest on public streets and public property."). Consistent with the above, in the opinion of this office, inasmuch as a county courthouse is public property, security for a public courthouse could not be contracted to a private security company. Generally, I am unaware of any other option other than the sheriff and his deputies providing such security.

With kind regards, I am,

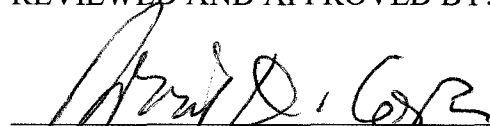
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General