



ALAN WILSON
ATTORNEY GENERAL

January 6, 2012

The Honorable Glenn G. Reese
Senator, District No. 11
502 Gressette Senate Office Building
Columbia, SC 29202

Dear Senator Reese:

We received your opinion request regarding the Policies and Procedures Manual for South Carolina State Constables (the "Manual"), which was updated on September 8, 2011, by the Constable Advisory Council (the "Council") of the South Carolina Law Enforcement Division ("SLED").¹ The Manual requires a commissioned Group III constable to perform 120 hours of annual voluntary activity with a law enforcement agency to maintain his/her commission.² You ask whether SLED has authority to require commissioned Group III constables to perform this additional service.

S.C. Code Ann. §23-1-60(A) authorizes the appointment of constables by the Governor "to assist in the detection of crime and the enforcement of any criminal laws of this State." The appointments are made without compensation from the State. They may be revoked by the Governor at his/her pleasure, and the term of appointment is for the term of the Governor. The statute further provides for reappointment of Constables by a successor Governor. See §23-1-60(B). Specific to your question, §23-1-60(C) provides that:

[a]ll persons appointed pursuant to the provisions of this section are required to furnish evidence that they are knowledgeable as to the duties and responsibilities of a law enforcement officer or are required to undergo training in this field as may be prescribed by the Chief of [SLED].

Additionally, we note Executive Orders 90-08 and 99-18 of the Governor provide that no person shall be appointed a constable except in accordance with the policies and procedures adopted by SLED. Cf. Op. S.C. Atty. Gen., May 13, 1997 [advising that an executive order of the Governor does not expire upon completion of the issuing Governor's term of office, but continues until amended, set aside or revoked].

It has been the opinion of this office that SLED has regulatory authority over all commissioned state constables. In an opinion dated September 6, 1990, we advised that the Department of Health and Environmental Control's Drug Control Bureau inspectors and special agents holding state constable

¹The Council was created by SLED to advise the SLED Director and SLED Regulatory regarding the administration of the Constable program. The Council's Mission Statement may be viewed online at <http://constables.sled.sc.gov/cac/CAC.htm>.

²The Manual, including prior editions, is available online at <http://constables.sled.sc.gov/>.

commissions were required to comply with SLED's policies established for state constables. In an opinion dated February 1, 1995, we discussed SLED's authority to regulate university officers who were also commissioned as state constables. In another opinion dated July 26, 1984, we concluded that, because magistrates' constables must receive training required by SLED pursuant to §22-9-180, it was within SLED's authority to establish the type of training required for these constables. To us, providing regulatory authority to SLED fosters uniformity of law enforcement services and the conduct of state constables, ensures compliance with federal and state laws governing law enforcement conduct, and better serves law enforcement and the public in this area. See §§23-23-10 et seq. [providing that minimum standards for training of law enforcement officers in South Carolina are determined by the South Carolina Law Enforcement Training Council and is administered by the Criminal Justice Academy]; Op. S.C. Atty. Gen., April 7, 2011 [advising that, because the Legislature expressly empowered SLED to administer the collection of DNA samples for the State DNA Database, a DNA collection program outside the parameters of the DNA Act would be inconsistent with legislative intent for uniformity in this area]; cf. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979) [statutory provisions should be given a reasonable and practical construction consistent with the purpose and policy expressed in the legislation].

Therefore, a person who holds a state constable commission is required to comply with the policies and procedures for constables as mandated by SLED.³ SLED has regulatory authority over state constables, and is thereby authorized to establish training requirements, to set standards for conduct and prescribe limits on the use of authority, to determine the suitability and fitness of candidates, and to enforce its policies. Cf. Op. S.C. Atty. Gen., August 3, 2006 [concluding that private security guards are licensed by SLED, which is also authorized to promulgate regulations regarding the conduct of private security guards]. SLED's regulatory authority in this area would certainly include a requirement that a Group III constable perform 120 hours of annual voluntary activity to maintain his/her commission. This office will defer to the administrative authority of SLED in this regard. See Op. S.C. Atty. Gen., June 5, 1987 [deferring to SLED's administrative authority to determine the requisite training for state constable commissions].

If you have any further questions, please advise.

Very truly yours,



N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

³We note §23-1-60(D) further provides that a voluntary constable appointed pursuant to subsection (A) must be included under the provisions of the workers' compensation laws only while performing duties in connection with his appointment and as authorized by SLED.