



ALAN WILSON
ATTORNEY GENERAL

April 4, 2013

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Dear Ms. Duncan:

You request an opinion of this Office on behalf of the South Carolina Criminal Justice Academy regarding the appointment of reserve police officers by the Greenville-Spartanburg Airport District ("GSP"). By way of background, you indicate that it appears GSP has no independent authority to commission their police officers but, rather, GSP must seek commissioning as State constables through the South Carolina Law Enforcement Division ("SLED"). You ask whether GSP would be able to independently commission reserve police officers.

We must first consider the cardinal rule of statutory interpretation to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the Legislature in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Co., 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991).

S.C. Code Ann. §§55-11-110 *et seq.* provides for the creation of GSP. Initially, we note that GSP is constituted a political subdivision of the State, and a body politic and corporate. *Id.* In addition, §55-11-120 provides for the creation of GSP Commission ("Commission") to perform the corporate powers and duties of GSP. Specifically, §55-11-210 sets forth the authority of the Commission:

. . . to employ police officers commissioned by the Governor to enforce all laws and the rules and regulations authorized in this section, and these officers shall be authorized to issue summonses for violations in the manner authorized for state highway patrolmen. . . . [Emphasis added].

These officers, therefore, derive their law enforcement authority solely from a State constable's commission. See Op. S.C. Atty. Gen., June 3, 1998 (1998 WL 746019). Pursuant to §23-1-60(A), State constables are appointed by the Governor as he/she "deems necessary to assist in the detection of crime and the enforcement of the criminal laws of this State." This Office, citing the decision of the South Carolina Supreme Court in State v. Luster, 178 S.C. 199, 182 S.E. 427 (1935), has often concluded that State constables [commissioned pursuant to §23-1-60] possess the authority of regularly commissioned peace officers, including the power of arrest. See, e.g., Op. S.C. Atty. Gen., January 25, 1996 (1996 WL 82898). In Luster, the Court stated:

[t]he trial judge held, and so instructed the jury, that Miliam, under the Commission given him by the Governor, was a peace officer of the State, and as such officer had the right and authority to arrest anywhere without a warrant any person committing a misdemeanor in his presence. This charge or holding, was unquestionably correct and was applicable under the facts of the case.

Id., 182 S.E. at 429. Thus, a State constable clearly possesses statewide law enforcement authority as a peace officer. The Court has stated that constables perform all the duties of law enforcement officers and, in particular, "a constable stands on the same footing as a sheriff." State v. Franklin, 80 S.C. 332, 338, 60 S.E. 953, 955 (1908). Therefore, a State constable whose commission has not been limited by the issuing authority, would generally be authorized to enforce all the laws of South Carolina anywhere in the State.

Significantly, this Office noted in an opinion dated January 6, 2012 (2012 WL 440545) that Executive Orders 90-08 and 99-18 of the Governor provide that no person shall be commissioned a constable except in accordance with the policies and procedures adopted by SLED.¹ We have also previously advised that SLED is granted regulatory authority over all State constables. Id. In fact, we noted that SLED 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. Id.² [advising that SLED's regulatory authority would certainly include a requirement that a Group III constable perform 120 hours of annual voluntary activity to maintain his/her commission]. Therefore, a person such as a GSP police officer who holds a State constable commission is required to comply with SLED's policies and procedures established for State constables - such authority would certainly extend to whether or not to commission an individual as a State constable. Id. In other words, §55-11-210 simply enables GSP to employ otherwise commissioned State constables whose authority stems from SLED. This Office, of course, will defer to the administrative authority of SLED to commission and regulate State constables. Id. [advising that "... providing regulatory authority to SLED fosters uniformity of law enforcement services and the conduct of State constables, ensures compliance

¹Cf. Op. S.C. Atty. Gen., May 13, 1997 (1997 WL 323771) [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].

²We note that SLED has published its Policies and Procedures Manual for South Carolina State Constables, which was updated on September 8, 2011, by SLED's Constable Advisory Council. The Council was created by SLED to advise the SLED Director and SLED Regulatory regarding the administration of the State constable program. See <http://constables.sled.sc.gov/cac/CAC.htm>.

with federal and state laws governing law enforcement conduct, and better serves law enforcement and the public in this area”]; cf. Ops. S.C. Atty. Gen., August 3, 2006 (2006 WL 2593075) [concluding that private security guards are licensed by SLED, which is also authorized to promulgate regulations regarding the conduct of private security guards]; February 1, 1995 (1995 WL 803316) [discussing SLED's authority to regulate university officers who were also commissioned as State constables].

We have been informed by SLED that constables of GSP have statewide authority, but would be restricted in connection with their duties as GSP police officers. Op. S.C. Atty. Gen., February 8, 1995 (1995 WL 803320); see also Op. S.C. Atty. Gen., February 13, 1978 (1978 WL 22510) [police officers employed by the Richland-Lexington Airport Commission have the authority to enforce all laws, rules, and regulations applicable to the roads, streets, and parking facilities under the control of the Airport Commission]; cf. §59-116-20 [college and university police officers must obtain state constable commissions but their jurisdictions pursuant to such appointment “is limited to the campus grounds and streets and roads through and contiguous to them”]; §§50-3-310 and -340 [commissioned Department of Natural Resources officers “when acting in their official capacity, have statewide authority for the enforcement of all laws relating to wildlife, marine, and natural resources”].

It is also worth noting that this Office has distinguished State constables from other public law enforcement agencies, because with respect to State constables the Governor is the appointing authority and constables are subject to SLED’s regulatory authority. Op. S.C. Atty. Gen., March 16, 2012 (2012 WL 989298). In an opinion dated May 31, 1984 (1984 WL 249696), we stated that “[a] constable not compensated by the State is not regularly salaried or on the payroll of a law enforcement agency, and is therefore not subject the enforcement agency, and is therefore not subject to the Training Article.” Thus, we found that a State constable employed as a fire marshal for a fire district would not fall within the requirements of §23-23-40 with respect to training of law enforcement agencies. See Op. S.C. Atty. Gen., February 26, 2013 (2013 WL 861299); cf. §23-23-10(D) [defining a “law enforcement officer” as “... an appointed officer or employee hired by and regularly on the payroll of the State or any of its political subdivisions, who is granted statutory authority to enforce all or some of the criminal, traffic, and penal laws of the State and who possesses, with respect to those laws, the power to effect arrests for offenses committed or alleged to have been committed”]. In Op. S.C. Atty. Gen., Jan. 28, 1975 (1975 WL 22253), we stated that “[g]overnor’s constables without compensation are not employed or appointed by a public law enforcement agency, but by the Governor.”

Also illustrative is the decision of the South Carolina Supreme Court in Richardson v. Town of Mt. Pleasant, 350 S.C. 291, 566 S.E.2d 523 (2002), a case discussing whether or not a police officer serving the Town was a constable for purposes of the dual office holding exemption in S.C. Const. art. XVII, §1A. In Richardson, the Court construed this provision in the specific context of the meaning of the term “constable.” Specifically, the Court addressed the issue of whether a municipal police officer was a “constable” for purposes of the exception. The officer argued that because §5-7-110 specifies that “police officers shall be vested with all the powers and duties conferred upon constables,” the exception applied for purposes of dual office holding. The Court rejected this argument, holding that “[r]espondent, in his capacity as a municipal police officer, is not a constable exempt from the constitutional provisions forbidding dual office holding.” Id., 566 S.E.2d at 527. In the Court's view, the Legislature “has distinguished between the office of constable and that of municipal police officer.” Id. Relevant to your

inquiry, we further note the Richardson Court reasoned that if municipal police officers were “constables” under existing state law, then no express delegation by the Legislature of certain powers of a constable would have been necessary. For purposes of Article XVII, §1A, therefore, the Court concluded that “[a] constable is a person who holds a state commission, is employed in such capacity by a magistrate, or otherwise meets one of the statutory definitions.” Id.

The Richardson Court further articulated which officers were entitled under state law to the “constable” exemption pursuant to Article XVII, §1A. The Court concluded that Governor's constables appointed pursuant to §23-1-60 were obviously included within the exception. Moreover, the majority decision deemed magistrate's constables, created by Title 22, Chapter 9 of the Code as ““most nearly” meeting the common and ordinary definition of “constable.” Finally, in the view of the majority, certain other law enforcement officers “are required or authorized to obtain state constable's commissions.” Id. The Court noted that these “several different types of constable's offices” stand in marked contrast to municipal police officers, who “need not obtain commissions from the governor to exercise the power and duties of a state constable.” Id., 566 S.E.2d at 526. In the Court's words, these positions are enumerated specifically as follows:

[s]ome law enforcement officers are required or authorized to obtain state constable commissions. Generally, the jurisdiction of these law enforcement officers is circumscribed by statute. See, e.g., S.C. Code Ann. §59-116-20 (1990) (college and university police officers must obtain state constable commissions but their jurisdictions pursuant to such appointment “is limited to the campus grounds and streets and roads through and contiguous to them”); compare, e.g. S.C. Code Ann. §§50-3-310 and -340 (Supp. 2001) (commissioned Department of Natural Resources (DNR) officers “when acting in their official capacity, have statewide authority for the enforcement of all laws relating to wildlife, marine, and natural resources”); see also S.C. Code Ann. §51-3-147 (1976) (commissioned Parks, Recreation and Tourism (PRT) officials have enforcement powers of any state constable.)

The governor is also empowered to appoint special state constables whose jurisdiction “is limited to the lands and premises acquired by the United States government in Aiken, Allendale, and Barnwell counties.” S.C. Code Ann. §23-7-4 (Supp. 2001). These “Savannah River” constables possess “all of the rights and powers prescribed by law for magistrate's constables and deputy sheriffs and powers usually exercised by marshals and policemen of towns and cities.” S.C. Code Ann. §23-7-50 (Supp. 2001); see also S.C. Code Ann. §58-13-910 (Supp. 2001) (governor authorized to “certify” special offices or constables for the protection of common carriers).

Id., 566 S.E.2d at 526. Again, the key distinction which the Richardson Court made with respect to the applicability of the “constable” exemption contained in Article XVII, §1A is whether a particular law enforcement officer must obtain a commission from the Governor “to exercise the powers and duties of a state constable.”

Moreover, we note that the position of reserve police officer is established pursuant to §§23-28-10 *et seq.* Reserve police officers provide an extremely valuable service to communities in this State. Pursuant to §23-28-20(A), “[t]he chief with the approval of the governing body or its chief operating officer or sheriff may appoint the number of reserve police officers as may be needed but not exceeding the number of regular full-time officers of his department.” Most important, we note that the proper “appointing authority,” although not defined by statute, would be a “chief” having power by law, or otherwise lawfully delegated authority, to make such appointments. Shuler v. Tri-County Electric Co-Op, Inc., 385 S.C. 470, 684 S.E.2d 765 (2009). Further, §23-28-10 defines “reserves” as “... persons given part-time police powers without being assigned regularly to full-time law enforcement duties.” “Chief” is defined as “the chief law enforcement officer of a state agency, municipality, county, county sheriff, or other entity of the State having police powers.” As to the general powers and duties of reserves, §23-28-20(A) states, in part, that “[t]he powers and duties of reserves must be prescribed by the chief...” Section 23-28-70 states that reserves shall serve and function as law enforcement officers only on specific orders and directions of the chief. We have previously advised that reserve police officers are given very limited law enforcement authority. *See, e.g., Op. S.C. Atty. Gen.*, March 3, 2011 (2011 WL 1444711). For example, it is specifically provided in §23-28-70 that reserves “may not assume full-time duties of law enforcement officers without complying with all requirements for full-time officers.” Subsection (B) of the same statute states that each reserve officer must be in proximate contact, by radio or another device, with the full-time officer to whom he is assigned. A reserve police officer must perform his duties while accompanied by a full-time, certified South Carolina police officer³ or deputy sheriff for a minimum of two hundred forty hours and receive the approval of the chief before he may work as provided in subsection (B). In addition, requirements for becoming a reserve police officer are provided in §23-28-20(C). Sections 23-28-30 and -40 provide for the training of reserve police officers. Section 28-23-30 provides in pertinent part that a reserve officer “may not assume a police function until he has successfully completed a course of training of at least sixty hours and passed a comprehensive test prepared by the Law Enforcement Training Council and administered by the local law enforcement agency.” We concluded in an opinion dated December 13, 2007 (2007 WL 4686604) that, because of the limitations and distinctions as to reserve police officers regarding their certification and training, “there is a distinction between a reserve police officer and a certified law enforcement officer. As a result, . . . a reserve police officer would not be considered a certified law enforcement officer for purposes of [qualifications for sheriff].”

We addressed a similar question in an opinion of this Office dated July 12, 1999 (1999 WL 626645). The requestor asked whether Rangers employed by the Irmo-Chapin Recreation Commission (“Irmo-Chapin”) possessed the power of arrest. The enabling statute provided that Irmo-Chapin could “employ qualified law enforcement officers” to enforce rules and regulations and the laws of the State in the district’s facilities. However, we determined that the specific language of the statute merely enabled Irmo-Chapin to employ Rangers; nothing purported to bestow independent law enforcement authority upon the Rangers. Instead, we concluded, the statute only authorized Irmo-Chapin to employ persons who already possessed law enforcement authority, *i.e.*, qualified law enforcement officers. In other words, the

³It would appear to us that the term “certified South Carolina police officer” would refer to an officer certified in accordance with §23-23-10(D). *See Op. S.C. Atty. Gen.*, October 11, 1996 (1996 WL 679466).

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employees were required to derive their arrest powers and other law enforcement authority by separate authority and an independent source, such as a State constablenesship.

Likewise, we believe that §55-11-210 conveys no separate law enforcement authority upon GSP to commission police officers. The statute only enables GSP to employ police officers to enforce its rules and regulations. Such officers, however, possess their law enforcement authority by separate authority, *i.e.*, through State constable commissions. These State constables are, of course, subject to the approval and regulatory authority of SLED. Because we are of the opinion that GSP has been granted no commissioning authority in this regard, GSP would thus have no independent authority to commission reserve police officers.

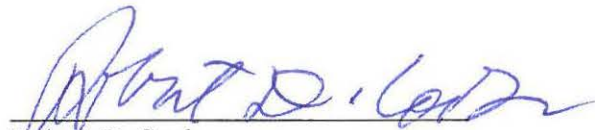
If you have any further questions, please advise.

Very truly yours,



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REVIEWED AND APPROVED BY:



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