



ALAN WILSON
ATTORNEY GENERAL

November 5, 2013

Mark Keel, Chief
State Law Enforcement Division
Post Office Box 21398
Columbia, South Carolina 29221

Dear Chief Keel,

You seek an opinion of this Office concerning the delegation of SLED's authority to enforce the laws and regulations concerning alcoholic beverages under Title 61 of the S.C. Code to local law enforcement officers. By way of background, you provide the following information:

[A]gents from municipal and county agencies were appointed as constables throughout the state by the Governor at the request of former SLED Director Reggie Lloyd for alcohol enforcement in 2009. Chief Keel has since recalled all credentials and the authority to enforcement administrative provisions under Title 61 with the exception of agents from the Beaufort County Sheriff's Department and the Clemson City Police Department.

We were recently contacted by the South Carolina Department of Revenue concerning several issues that have arisen in pending cases involving the enforcement of violations of the S.C. Code of Laws, 1976 Title 61. Specifically, an attorney representing Pantry Incorporated has filed a motion to dismiss cases involving administrative violations issued by the Beaufort County Sheriff's Department. The attorney argued that the Beaufort County Sheriff's Department cannot write administrative violations of Title 61 and that administrative violations can only be written by SLED.

With this information in mind, you specifically ask the following questions:

- 1) Can SLED delegate its authority under Title 61 to other law enforcement officers in this state?
- 2) If so, can those officers write administrative enforcement violations?
- 3) Can SLED delegate its authority under Title 61 to duly authorized state constables?
- 4) If so, can constables initiate administrative enforcement actions?

5) Can a summons or violation report not specifically prescribed by SLED be used in the enforcement of administrative violations under Title 61?

Law/Analysis

As you indicate in your letter, the statutory provisions regulating alcoholic beverages are found in Title 61 of the South Carolina Code. Pursuant to S.C. Code § 61-2-80, the Department of Revenue ("DOR") is "the sole and exclusive authority empowered to regulate the operation of all locations authorized to sell beer, wine, or alcoholic liquors" SLED is given the power to enforce, while DOR is given the power to administer, the provisions of Title 61. See S.C. Code 61-2-20 ("The functions, duties, and powers set forth in this title are vested in the department and the division. The department must administer the provisions of this title, and the division must enforce the provisions of this title.")¹ Furthermore, DOR and SLED "must employ personnel necessary to administer and enforce the laws and regulations governing alcoholic liquors, beer, and wine...." § 61-2-30; see also § 61-6-60 ("[SLED] may employ inspectors or agents necessary for the proper administration and enforcement of the provisions of the ABC Act....").

Of course, criminal violations of Title 61 may generally be enforced by any law enforcement officer. See § 61-6-4490 ("Judicial and law enforcement officers of political subdivisions of this State must enforce these provisions within their respective jurisdictions"); § 61-6-4510 ("Municipal police officers have the power of constables to enforce the provisions of this article ... in cases arising within the municipal limits"). Such criminal violations are typically enforced through the issuance of a uniform traffic ticket.²

However, pursuant to § 23-3-15 SLED is given exclusive regulatory enforcement authority in this State over alcoholic beverages:

(A) In addition to those authorities and responsibilities set forth in this chapter, the South Carolina Law Enforcement Division shall have specific and exclusive jurisdiction and authority statewide, on behalf of the State, in matters including but not limited to the following functions and activities:

....

(7) law enforcement, regulation enforcement, and inspections under Title 61;

¹ See § 61-2-10(A) (1), (3) ("As used in Title 61 ... (1) 'Department' means the South Carolina Department of Revenue.... [and] (3) 'Division' means the South Carolina Law Enforcement Division").

² See § 56-7-10 (Supp. 2013) (providing that a uniform traffic ticket, and no other ticket, must be used for all traffic offenses and certain other enumerated offenses, including several provisions of Title 61, and that ticket may also be used "in an arrest for a misdemeanor offense within the jurisdiction of magistrates court that has been freshly committed or is committed in the presence of a law enforcement officer"); § 56-7-15(A) (Supp. 2013) ("The uniform traffic ticket, established pursuant to the provisions of Section 56-7-10, may be used by all law enforcement officers to arrest a person for an offense that has been freshly committed or is committed in the presence of a law enforcement officer if the punishment is within the jurisdiction of magistrates court and municipal court").

....

(B) No other state agency or department having personnel who are commissioned law enforcement officers may engage in any of the activities herein set forth without the express permission of the Chief of the South Carolina Law Enforcement Division. Any state agencies or departments having commissioned law enforcement personnel shall assist the South Carolina Law Enforcement Division at any time the Chief of SLED requests assistance in carrying out the statutory duties of the division.

(C) The South Carolina Law Enforcement Division is responsible for the enforcement of all criminal laws, misdemeanors, and felonies, and civil laws, the violation of which may result in a fine or other penalty being assessed against the violator, which laws are now enforced by law enforcement personnel employed by and under the jurisdiction of the Alcoholic Beverage Control Commission. These civil and criminal laws also include regulations and ordinances pertinent thereto. The duties, functions, and powers of these law enforcement personnel are devolved upon the South Carolina Law Enforcement Division and the law enforcement personnel of this agency on the effective date of this section shall perform their duties and functions under the auspices of the division and shall become a part of the South Carolina Law Enforcement Division in the manner provided by law.

§ 23-3-15 (emphasis added).

Although it is clear from the plain language of subsection (A) § 23-3-15 that SLED has exclusive authority to enforce the laws and regulations concerning alcoholic beverages and to conduct inspections for such purposes, subsection (B) of § 23-3-15 provides that commissioned law enforcement officers from other agencies or departments may engage in such activities with the express permission of the Chief of SLED. Such activities necessarily include "law enforcement, regulation enforcement, and inspections under Title 61." § 23-3-15(A)(7). Furthermore, subsection (B) states law enforcement officers from other agencies or departments must assist SLED "at any time the Chief of SLED requests assistance in carrying out the statutory duties of the division." In light of the express delegation power given the Chief of SLED pursuant to § 23-3-15(B), we believe local law enforcement officers may, with the express permission of the Chief or in response to a request from the Chief for assistance, enforce the laws and regulations pertaining to alcoholic beverages.

We see no reason why the above conclusion would in any manner be altered by the fact that a local law enforcement officer is also appointed as a state constable³ for the purpose of assisting SLED with the enforcement of laws and regulations concerning alcoholic beverages. Pursuant to § 23-1-60(A), "[t]he Governor may, at his discretion, appoint additional ... constables ... as he deems necessary to assist in the detection of *crime* and the enforcement of the *criminal laws* of this State..." § 23-1-60(A)

³ We note that no dual office holding issue is raised by the fact that a local law enforcement officer also holds a commission as a state constable as state constables are expressly exempt from the dual office holding prohibition of Article XVII, § 1A of the S.C. Constitution.

(emphasis added). Although § 23-1-60(A) generally limits the power of constables to criminal matters, the same limitation generally applies to all law enforcement officers commissioned by a sheriff or municipal police chief.⁴ As we see it, the appointment of a local law enforcement officer as a state constable for purposes of assisting SLED with alcohol enforcement simply serves the purpose of formalizing the delegation of SLED's authority pursuant to § 23-3-15, thus providing proof to any that such a delegation of authority from the Chief of SLED has in fact occurred. Accordingly, our opinion that the Chief of SLED may authorize local law enforcement officers to assist with the enforcement of laws and regulations pertaining to alcohol is unaltered by the fact that any such local law enforcement officer is also commissioned as a state constable for such purposes.

As for your questions concerning local law enforcement officers issuing administrative citations for violations of the laws and regulations pertaining to alcoholic beverages, a little background as to the manner in which such administrative violations are usually enforced is instructive. The manner in which SLED and DOR work together in the regulation of alcoholic beverages using their respective enforcement and administrative authority under Title 61 has been explained by one authority as follows:

[W]hen the Department learns that a licensee has violated the terms of its license or the laws governing the license, the Department has the power to take administrative action against the licensee. Whether the Department discovers these violations through its own oversight activities or is informed of the violations from another source,⁵ the Department is the governmental entity charged with imposing *administrative* sanctions and penalties (*i.e.*, as opposed to *criminal* penalties) upon alcoholic beverage licensees....

....

....SLED's enforcement of Title 61 lies primarily in the exercise of its investigatory powers over persons and businesses licensed to manufacture, distribute, or sell alcoholic beverages. SLED ... investigates the activities and operations of those licensed persons and businesses to determine whether they are complying with the laws governing their licenses.

....

⁴ See generally § 5-7-110 ("Any municipality may appoint or elect as many police officers ... as may be necessary for the proper law enforcement in such municipality Police officers shall be vested with all the powers and duties conferred by law upon constables"); § 17-13-30 ("The sheriffs and deputy sheriffs of this State may arrest without warrant any and all persons who, within their view, violate any of the criminal laws of this State"); § 23-13-60 ("The deputy sheriffs may for any suspected freshly committed crime"); § 23-23-10(E)(1) (" 'law enforcement officer' means 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").

⁵ Here, the authors note that "[m]ost notably, the Department learns of license violations from SLED, which is responsible for investigating violations of alcoholic beverage licenses." John D. Geathers & Justin R. Werner, The Regulation of Alcoholic Beverages in South Carolina 31, n.61 (S.C. Bar 2007).

....SLED can inform the Department about a violation it has discovered, so the Department may begin administrative enforcement proceedings against the licensee in violation

John D. Geathers & Justin R. Werner, The Regulation of Alcoholic Beverages in South Carolina 31; 33-34; 36 (S.C. Bar 2007).

Although there is no statutory provision mandating the use of a standard administrative citation form for violations of the laws and regulations pertaining to alcoholic beverages, it is our understanding that SLED has created its own standard "Violation Report" as part of its duty to report administrative violations it discovers to DOR. Upon the receipt of such a "Violation Report," DOR has the discretionary authority to bring an administrative action against the licensee.

Assuming a local law enforcement officer is authorized by the Chief of SLED to assist with the enforcement of the laws and regulations concerning alcoholic beverages pursuant to § 23-3-15(B), it logically follows that such law enforcement officer would have the authority to issue citations for administrative violations in the same manner as a SLED agent or officer. We do not believe the validity of any such administrative citation is necessarily dependent on the form used as no standard administrative citation form is mandated by statute and the mere purpose of such citations is to inform DOR of alleged violations so that it may, in its discretion, commence administrative enforcement proceedings against the licensee. However, SLED is statutorily designated as the agency with exclusive authority in this State over the enforcement of the laws and regulations concerning alcoholic beverages and has prescribed its own "Violation Report" to be used for such administrative citations; thus, out of an abundance of caution, we would advise any local law enforcement agency or officer authorized by the Chief of SLED to engage in or assist with such matters to issue administrative citations on the "Violation Report" prescribed by SLED.

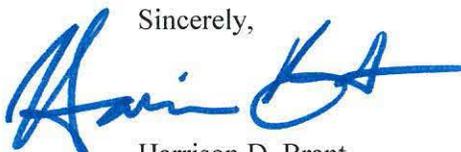
Conclusion

It is our opinion that the Chief of SLED has the statutory authority to delegate SLED's power to enforce State laws and regulations concerning alcoholic beverages and to conduct inspections for such purposes under Title 61 to local law enforcement officers irrespective of whether such officers are also appointed as state constables for such purposes. Although subsection (A) of § 23-3-15 states SLED has "specific and exclusive jurisdiction and authority statewide" over "law enforcement, regulation enforcement, and inspections under Title 61," subsection (B) of § 23-3-15 provides that commissioned law enforcement officers from other agencies or departments may engage in such activities with the express permission of the Chief of SLED and must assist SLED in carrying out such duties when requested by the Chief of SLED. In light of the express delegation power given the Chief of SLED pursuant to § 23-3-15(B), we believe local law enforcement officers may, with the express permission of the Chief of SLED, enforce the laws and regulations concerning alcoholic beverages under Title 61. It matters not whether any such local law enforcement officer is also appointed as a state constable for the purpose of assisting SLED with its authority under Title 61; the issuance of a state constable's commission for the express purpose of assisting SLED with such matters merely serves the purpose of formalizing the delegation of SLED's authority pursuant to § 23-3-15(B).

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Assuming such a delegation of SLED's authority under Title 61 to local law enforcement officers has occurred, it is also our opinion any such local law enforcement officer may issue an administrative citation to licensees for violations of the laws or regulations pertaining to alcoholic beverages. With that being said, we do not believe the validity of such administrative citations is necessarily affected by the form used by the issuing officer; such administrative citations are merely used to report alleged violations to DOR which, upon receiving the report, has the discretionary authority to decide whether to commence administrative enforcement proceedings against the licensee. However, SLED is designated as the agency with the exclusive authority over the enforcement of the laws and regulations pertaining to alcoholic beverages and has prescribed its own "Violation Report" to be used for reporting administrative violations to DOR. Thus, out of an abundance of caution we would advise any local law enforcement agency or officer expressly authorized by the Chief of SLED to engage in or assist with the enforcement of the laws and regulations pertaining to alcoholic beverages to issue administrative citations on the "Violation Report" prescribed by SLED.

Sincerely,



Harrison D. Brant
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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