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OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

December 6, 1996

The Honorable Donald H. Holland
Chairman, Senate Judiciary Committee
Post Office Box 142
Columbia, South Carolina 29202

Re: Informal Opinion

Dear Senator Holland:

You seek an opinion as to whether "a private detective may lawfully carry a concealable weapon." You further provide the following information:

> [a]s you may be aware, prior to the passage of the Law Abiding Citizens Self-Defense Act of 1996, private detectives were prohibited from carrying concealed weapons pursuant to Section 40-17-120 (D) as well as pursuant to SLED regulations governing private detectives. Section 40-17-120 authorized only persons engaged in the private security business to carry firearms.
>
> In considering and adopting amendments to the Law Abiding Citizens Self-Defense Act, the legislature envisioned that there might be questions pertaining to a private detective's right to carry a concealable weapon while on duty since Section 40-17-120 (D) simply stated that "permits for carrying firearms must not be issued to persons registered as private detectives." Thus, Section 40-17-120 (D) was revised as follows in order to alleviate any confusion:
>
> > [p]ermits for carrying firearms must not be issued pursuant <u>to this section</u> to persons registered as private detectives. <u>Nothing in this</u>

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> section prohibits a private detective from carrying a concealable weapon pursuant to and in compliance with Article 4, Chapter 31, Title 23.

The intent of the amendment was (1) to leave the permit criteria provided in Title 40 unchanged and (2) to not deny a private detective the same access to a concealable weapon permit under Title 23 as any other citizen would have. As you may be aware, Title 23 authorizes the carrying of a concealable weapon at any time or place unless the place is one prohibited by the act. While I feel that Section 40-17-120 (D) is clear on its face, some questions have arisen with the advent of the new law.

LAW \ ANALYSIS

A number of principles of statutory construction are relevant to your question. First and foremost, in interpreting a statute, the primary purpose is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The statute's words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). It is presumed that the Legislature is familiar with prior legislation when it passed the pertinent legislative enactment. Bell v. S.C. State Hwy. Dept., 204 S.C. 462, 30 S.E.2d 65 (1944). Likewise, it will be presumed that the General Assembly did not intend to do a futile thing. Gaffney v. Mallory, 186 S.C. 337, 195 S.E. 840 (1938). Where terms of a statute are positive and unambiguous, exceptions not made by the Legislature cannot be read in by implication. Vernon v. Harleysville Mut. Cas. Ins. Co., 244 S.C. 152, 135 S.E.2d 841 (1964).

R-534 enacts the "Law Abiding Citizens Self-Defense Act of 1996." Such Act adds new Article 4 to Chapter 31 of Title 23 of the Code. The new statute requires that if an individual meets certain criteria, a concealable weapons permit must be issued. The Act further designates certain areas, such as courthouses, churches, law enforcement facilities and other locations as off-limits to the carrying of a concealable weapon even if an individual possesses a valid CWP. Section 21-23-215 (M). Section 8 of the Act also protects the right of the employer to prohibit concealable weapons upon him premises and the right of the property owner to prohibit "the carrying of a concealable weapon" upon his property.

Section 10 of the Act amends Section 40-17-120 of the Code, which is part of the statute regulating private detectives and private security businesses.

As you indicate, Section 40-17-120 had authorized SLED to issue permits to a person engaged in the private security business or registered in accordance with Section 40-17-180 (private security guard) a permit to carry a pistol, revolver or other firearm. However, Subsection (D) of Section 40-17-120 provides that "[p]ermits for carrying firearms must not be issued to persons registered as private detectives." In other words, pursuant to the statute previously, SLED was authorized to issue a permit to carry a handgun to security guards, but no such permit could be issued to a private detective.

As stated, Section 40-17-120 was amended by the new concealable weapons law. Section 10 amend Section 40-17-120 to provide as follows:

> Section 40-17-120 (A) Except as provided in subsection (D), the division may grant to a person licensed or registered in accordance with this chapter a permit to carry a pistol, revolver, or other firearm. Application for the permit must be made on forms provided by the division, and the fee is twenty dollars a year. The permit is for one year and application for renewal must be on a form furnished by the division. The permit is not transferable.
>
> (B) No person may be issued until he has presented to the division proof that he is proficient in the use of firearms and has received a minimum of four hours' classroom instruction.
>
> (C) A person engaged in the private security business or registered in accordance with Section 40-17-80 and issued a permit in accordance with this section may carry a firearm in an open and fully-exposed manner only while on duty, in uniform, and going to and from work. However, the division in its discretion may issue an additional written permit to the person to carry the firearm about his person, concealed or not, even though he is not in uniform nor on duty if the division determines that the additional permit will enable the permittee to better perform his assigned duties. No additional permit may be issued to a permittee to be effective in a place where alcoholic beverages, beer or wine are sold or consumed.

> (D) Permits for carrying firearms must not be issued pursuant to this section to persons registered as private detectives. Nothing in this section prohibits a private detective from carrying a concealable weapon pursuant to and in compliance with Article 4, Chapter 31, Title 23.
>
> (E) A person licensed or registered in accordance with this chapter may, in addition to the permit issued pursuant to subsections (A) through (C) of this section, apply for a permit pursuant to Article 4, Chapter 31, Title 23.

Thus, the issue here is what the General Assembly intended to accomplish by Subsection (D) of the new statute with respect to the authority of private detectives to carry a concealable weapon. As noted, licensed private detectives previously possessed no authority whatever to carry a concealed weapon, even in their personal capacity. The amended version, however, provides that such permits must not be issued "pursuant to this section", meaning Section 40-17-120. The statute further specifies that a private detective is not prohibited by Section 40-17-120 from "carrying a concealable weapon pursuant to and in compliance with Article 4, Chapter 31, Title 23", or the Law Abiding Citizens Self-Defense Act of 1996. Nothing in the new Act would therefore prohibit a private detective from carrying a concealable weapon at any time so long as the exceptions in the act were complied with.

Other provisions in the Act support this interpretation. For example, Section 23-31-215 (M) lists a number of statutes that the new Act deems not to "alter or affect". Section 40-17-120 is not listed, however, indicating the new statute sought to change existing law. Again, nothing in the new statute places any time limitation upon or designates any particular time that a person possessing a concealable weapons permit may not carry a concealable weapon.

Clearly, the change by the General Assembly to the language that permits for carrying firearms "pursuant to this section" must not be issued, is significant. That language, coupled with the next sentence stating that nothing therein prohibits a private detective "from carrying a concealable weapon" pursuant to the new law clearly indicates the legislature's intent to authorize private detectives now to possess the same rights and privileges as any other citizens.

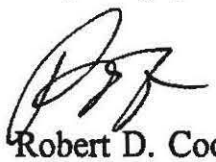
It has been suggested, however, that Subsection (D) now only permits a private detective to carry a concealable weapon when he or she is not acting in the capacity of a private detective. However, such an interpretation would not give full implementation

to the language that a private detective is not prohibited from "carrying a concealable weapon pursuant to and in compliance with Article 4, Chapter 31, Title 23." In view of the fact that the new law provides for no limits which would suggest that a private detective may only carry a weapon when he or she is not acting as a private detective, I cannot imply such a limitation. As our Court has stated, "[t]o depart from the meaning expressed by the words [of a statute] is to alter the statute, to legislate and not to interpret." Creech v. S.C. Pub. Ser. Auth.. 200 S.C. 127, 146-7, 20 S.E.2d 645 (1942). Accordingly, it is my opinion that a private detective may carry a concealable weapon upon meeting the requirements of the new Law Abiding Citizens Self-Defense Act of 1996. Upon receipt of a CWP pursuant to such qualification under the new law, there would be no distinction between a detective carrying his concealable weapon under the authority of such permit in his capacity as a detective or as a private citizen. Thus, under the new law, a private detective may now be issued a CWP to the same extent as any other citizen, and may carry such concealable weapon to the same extent as any other person.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/ph