

The State of South Carolina



Office of the Attorney General

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December 21, 1988

The Honorable Frank Powell
Sheriff, Richland County
1400 Huger Street
Post Office Box 143
Columbia, South Carolina 29201

Dear Sheriff Powell:

In a letter to this Office you requested clarification on when your officers can enter a private apartment complex in performance of their duties and whether there is any type of expectation of privacy rights which would prohibit a deputy from entering private property where a security guard refused to allow entry.

The licensing authority and source of authority for private security guards is set forth in this State's Detective and Private Security Agencies Act, Sections 40-17-10 et seq. of the Code, and the regulations relating thereto. Pursuant to Section 40-17-130

(a)ny person covered by the provisions of §40-17-90 or properly registered or licensed under this chapter who is hired or employed to patrol, guard or render a similar service on certain property shall be granted the authority and power which sheriffs have to make arrest of persons violating or charged with violating any of the criminal statutes of this State, but shall have such powers of arrest only on the aforementioned property. (emphasis added)

In State v. Brant, 278 S.C. 188 at 190, 293 S.E.2d 703 (1982) the State Supreme Court held that pursuant to such provision "(s)ecurity guards licensed by SLED ... are granted powers identical to those of a sheriff on the property he is hired to protect." In prior opinions, this office has stated that private security guards, inasmuch as they have the power of arrest of sheriffs, are allowed

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to make arrests for traffic violations, but only on property they are hired to patrol or guard. See: 1976-77 Op. Atty. Gen., #77-234, page 175. Also, we have indicated that private security guards must deliver persons whom they have arrested on the particular premises to the proper authorities without leaving the assigned property. 1976-77 Op. Atty. Gen. #11357, page 284. Furthermore, this office has held that there appears to be no authority for private security guards to provide security for a moving individual. Instead, a licensed private security guard has only the arrest powers of a private citizen away from the property he is assigned to guard. 1984 Op. Atty. Gen. #84-80, page 199.

As stated in 6A C.J.S. Arrest, Section 52 at page 123

(g)enerally, a lawful arrest may be made any where, even on private property or in a home. This rule is applicable both where the arrest is under a warrant, and where there is an arrest without warrant in case of hot pursuit....

Of course, the Fourth Amendment makes warrantless entries into an individual's home presumptively unreasonable. Mincey v. Arizona, 437 U.S. 385 (1978). Therefore, in most instances a warrant is necessary to enter an individual's home. Of course, exigent circumstances may justify an exception to the requirement for a warrant. Coolidge v. New Hampshire, 403 U.S. 443 (1971). Also, consent which is fully and voluntarily given may also authorize entry. Bumper v. North Carolina, 391 U.S. 543 (1968).

Consistent with such are the provisions of Section 23-13-60 of the Code which state

(t)he deputy sheriffs may for any suspected freshly committed crime, whether upon view or upon prompt information or complaint, arrest without warrant and, in pursuit of the criminal or suspected criminal, enter houses or break and enter them, whether in their own county or in an adjoining county.

Such is in addition to the authority granted sheriffs and their deputies pursuant to Section 17-13-30 of the Code to

... arrest without warrant any and all persons who, within their view, violate any of the criminal laws of this State if such arrest be made at the time of such violation of law or immediately thereafter.

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Referencing such provision, this Office in an opinion dated August 7, 1974 determined that pursuant to such arrest authority, whether an offense occurs on private property is immaterial. Also, a law enforcement officer has express authority to act in certain specific situations, such as domestic abuse. Pursuant to Section 16-25-70 of the Code

(a) law enforcement officer may arrest, with or without a warrant, a person at his place of residence or elsewhere if the officer has probable cause to believe that the person is committing or has freshly committed any misdemeanor or felony under the ... (criminal domestic violence provisions) ... even if the act did not take place in the presence of the officer....

In effecting a warrantless arrest under this section, a law enforcement officer may enter the residence of the person to be arrested in order to effect the arrest where the officer has probable cause to believe that the action is reasonably necessary to prevent physical harm or danger to any family or household member.

Such is consistent with the mandate of Section 20-4-100 of the Code that "(t)he primary duty of a law enforcement officer when responding to a domestic abuse incident is to enforce the laws allegedly violated and to protect the abused person...."

Pursuant to Section 23-13-70 of the Code

(t)he deputy sheriffs shall patrol the entire county ... to prevent or detect crime or to make an arrest ... and shall use every means to prevent or detect, arrest and prosecute ... for the violation of every law which is detrimental to the peace, good order and morals of the community. (emphasis added)

Consistent with such grant of countywide authority are the opinions of this Office in opinions dated August 3, 1987 and June 22, 1987 which have recognized the sheriff to be the chief law enforcement officer of his county. See also: Trammell v. Fidelity and Casualty Co., 45 F.Supp. 366 (D.S.C. 1942); Graham v. Creel, 289 S.C. 165, 354 S.E.2d 717 (1986); 70 Am.Jur.2d Sheriffs, Police and Constables, Section 46 p. 261. Additionally, in 80 C.J.S. Sheriffs and

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Constables, Section 36 at page 205 it is stated that

(s)ince the sheriff is a county officer, his authority extends over the entire county, and includes all ... (political subdivisions) ... within his county.

A prior opinion of this office dated February 7, 1980 dealt with the authority of a law enforcement officer in an area where a private security guard is patrolling. The opinion stated that

(a)ssuming ... that the officer is acting both in his official capacity and in a manner consistent with the proper enforcement of the laws he is by oath sworn to uphold, he may then patrol the streets of a private housing development without interference from a private citizen, be he security guard or not.

The opinion noted, of course, that situations may exist where a security guard is hired to protect an area where there may be some expectation of privacy. The opinion stated that in such circumstances

(t)he law enforcement officer would be bound by the law of search and seizure and be compelled to secure a warrant prior to admittance. However, in the face of lawful process, the guard would have no power or authority to interfere.

The opinion further noted that in certain circumstances a security guard may be subject to arrest for obstruction of justice.

Another opinion of this Office dated October 2, 1985 stated that "(t)he distinction as to whether property is private or public is irrelevant to the question of the authority of a law enforcement officer to make arrests or investigate crimes generally." Of course, as noted in the 1980 opinion of this Office referenced above, certain requirements, such as warrant requirements, must be met where applicable. The 1985 opinion also recognized that whether certain property is public or private is irrelevant to certain traffic offenses, such as driving under the influence and reckless driving. See also: Opinion dated January 18, 1988.

Referencing the above, it is clear that a sheriff and his deputies who, pursuant to Section 23-13-50 of the Code, are authorized to perform any and all duties of the sheriff, have jurisdiction throughout their respective counties. While a properly licensed

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private security guard is granted powers identical to those of a sheriff in the property he is hired to protect, I am unaware of any authority granting him exclusive jurisdiction on such property. As a result, this Office hereby reaffirms its opinion dated February 7, 1980 which authorizes a law enforcement officer to carry out his duties in any area within his jurisdiction, including a private housing development without interference from anyone, including a private security guard. Therefore, a sheriff and his deputies would have full law enforcement authority in any area of his county, including an area which is under the protection of a properly licensed private security guard.

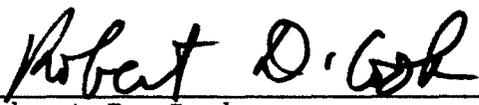
If there is anything further, please advise.

Sincerely,


Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions