

The State of South Carolina



Opinion 85-2 of 25

Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

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January 15, 1985

J. P. Strom, Chief
S. C. Law Enforcement Division
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RE: Testing of Illegal Drugs and Other Types of Evidence;
Opinion No. 1230

Dear Chief Strom:

Attorney General Medlock has forwarded your letter of September 6, 1984 to me for inquiry and reply. Specifically, you requested an opinion regarding the legality of the S. C. Law Enforcement Division examining evidence for the Department of Energy. Attached to your letter was a request from William J. Desmond, Chief, Security Operations Branch, Safeguards and Security Division, at the Savannah River Plant. Briefly stated, the Security Department at the Savannah River Plant has changed from an in-house agency to a private contractor, Wackenhut Services, Incorporated. Through the contractual arrangement, Wackenhut private security guards are now providing law enforcement and other services at the Savannah River Plant, in addition to those Federal agents who may still be operating there. The Department of Energy, and SRP, have no facilities to test illegal drugs or other types of evidence. DOE is therefore seeking the assistance of SLED in testing evidence seized, including controlled substances.

At present, your Division operates a laboratory which provides for the testing of controlled substances and certain other types of evidence seized by law enforcement agencies throughout the State, at the State, county, and

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local level. In addition, your facility conducts analysis in coordination with Federal agencies, such as the F.B.I. For example, the duties of SLED with regard to controlled substances may be found at Section 44-53-120 of the CODE OF LAWS OF SOUTH CAROLINA (1976), and a further description of SLED's enforcement powers with regard thereto is found at Section 44-53-480. It would therefore appear that if the Wackenhut security guards, through their contract with the Department of Energy, constitute law enforcement officers under legal definitions of South Carolina law, your Division could then analyze evidence and controlled substances seized by those law enforcement officers in the course of their duties. It is the opinion of this Office that the Department of Energy and Wackenhut satisfy that test, and that your laboratory and other such facilities as are available, may conduct the appropriate analysis.

Chapter 7 of Title 23 of the CODE OF LAWS OF SOUTH CAROLINA provides for special state constables with jurisdiction over those lands operated by the United States Government in Aiken, Allendale and Barnwell counties, presently known as the Savannah River Plant. At Section 23-7-10 of that chapter, the Governor has the authority to appoint and commission as special state constables "such persons, including employees of a contractor of [the Department of Energy]" to serve in a law enforcement capacity at the plant. This language would appear to include those individuals now employed by the Department of Energy, through the contractual arrangement with Wackenhut Services, Incorporated.

As an alternative theory, or perhaps in addition thereto, Wackenhut personnel who are properly registered under South Carolina's Detective and Private Security Agency Act, Sections 40-17-10, et seq., CODE OF LAWS OF SOUTH CAROLINA (1976), as amended, possess the authority and power which sheriffs have to make arrests of any person violating or charged with violating any of the criminal statutes of this State. The only limitation is that those powers of arrest are confined to the property private security guards are contracted to guard. Section 40-17-130.

It would therefore appear, under either of the theories advanced above, that the Wackenhut personnel possess law enforcement authority, sufficient to allow your Division to conduct analysis of evidence, including controlled substances, confiscated by them in the course of their

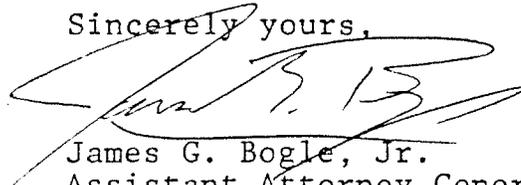
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law enforcement duties.

Finally, a question was raised by Chief Desmond concerning a letter of transmittal to accompany evidence when it is transported to your Division for analysis or other examination. This Office would concur with your opinion that a letter of transmittal from the Department of Energy would have to accompany each request for analysis, in lieu of a blanket form letter to cover all such requests. Such a letter would serve two purposes. First, it would reinforce the legal authority of the Department of Energy as a law enforcement agency, through its private contractor, to request analysis from your Division. Second, it would further reinforce the required chain of custody regarding such evidence.

In conclusion, it is the opinion of this Office that your Division has the authority to conduct analysis of evidence, including controlled substances, seized by Wackenhut security personnel in the employ of the Department of Energy at the Savannah River Plant. A letter of transmittal from the Department of Energy should accompany each request for analysis.

Sincerely yours,



James G. Bogle, Jr.
Assistant Attorney General

JGBJr/fc

APPROVED:



Robert D. Cook
Executive Assistant for
Opinions