

1984 S.C. Op. Atty. Gen. 330 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-136, 1984 WL 159942

Office of the Attorney General

State of South Carolina  
Opinion No. 84-136  
November 30, 1984

\*1 Joe H. Brunson  
Chief of Police  
City of Sumter Police Department  
Law Enforcement Center  
Sumter, South Carolina 29150

Dear Chief Brunson:

In a letter of this Office you questioned whether reserve police officers may be compensated for working activities such as ball games, fairs, etc. As you are familiar, in a previous opinion of this Office dated February 24, 1984, a copy of which is enclosed, it was specifically stated that reserve police officers as defined by [Section 23-28-10 et seq., Code of Laws of South Carolina, 1976](#), as amended, ‘. . . may not receive compensation for their services.’

The referenced opinion arguably should be construed as being concerned only with the question of whether reserve police officers can be paid while performing their duties pursuant to Section 23-28-70. Such statute states:

‘(r)eserves shall serve and function as law enforcement officers only on specific orders and directions of the chief. To maintain status, reserves shall maintain a minimum logged service time of twenty hours per month or sixty hours per quarter. Each reserve shall be in proximate contact, by radio or otherwise, with the full-time officer to whom he is assigned.’

Your question, however, concerns the question of compensation of reserve police officers while working activities which, according to my telephone conversation with you, are beyond the regular duties of reserves. Basically you are describing activities similar to those of regular law enforcement officers who ‘moonlight.’ Such activities of regular officers, of course, are permitted by [Section 23-24-10 et seq., Code of Laws of South Carolina, 1976](#), as amended. It appears, however, that such provisions are inapplicable to reserve police officers. Furthermore, I am unaware of any separate authority for reserve police officers to ‘moonlight’ in off-duty jobs.

Also, as referenced above, pursuant to Section 23-28-70 reserves ‘. . . function as law enforcement officers only on specific orders and directions of the chief.’ Therefore, if the individuals referenced in your letter working ball games or fairs are not working pursuant to specific orders as described, they are not functioning as reserve police officers.<sup>1</sup> Similarly, they would not have any of the law enforcement authority of a reserve police officer and, furthermore, would not be authorized to carry a weapon unless authorized pursuant to some authority separate from their serving as reserve police officers.<sup>2</sup>

In addition, the argument may be made that the individuals referenced in your letter may come within the provisions of this State's Private Detective and Private Security Agencies Act, namely, [Sections 40-17-10 et seq., Code of Laws of South Carolina, 1976](#), as amended. Pursuant to Section 40-17-40, individuals engaged in the private security business in an individual, self-employed capacity must be licensed by SLED. Section 40-17-20(b) defines ‘private security business’ as:

\*2 ‘. . . engaging in the business as or accepting employment as a private patrol, watchman or guard service for consideration on a private contractual basis and not as an employee. Private security business shall not include persons employed exclusively and regularly by only one employer in connection with the affairs of such employer only and where there exists an employer-employee relationship unless the employer is in the private security business.’<sup>3</sup>

This letter is not intended to necessarily indicate that the individuals referenced in your letter must be licensed. However, I am merely pointing out that individuals within the definition of individuals engaging in the 'private security business' must be licensed.

Referencing the above, in answer to your question, if the individuals working certain activities are functioning as reserve police officers, pursuant to the referenced previous opinion of this Office, compensation is not authorized. However, if they are not working such activities 'on specific orders and directions of the chief', they are not functioning as reserve police officers and, therefore, the question of compensation as reserve police officers appears to be moot.

If there are any questions, please advise.

Sincerely,

Charles H. Richardson  
Assistant Attorney General

#### Footnotes

- 1 Of course, if such individuals are carrying out their duties as reserves at such functions, pursuant to the opinion of this Office, compensation is not authorized.
- 2 [Section 16-23-20, Code of Laws of South Carolina](#), 1976, as amended, states:  
'(I)t shall be unlawful for anyone to carry about the person, whether concealed or not, any pistol, except as follows:  
(1) Regular, salaried law enforcement officers of a municipality, county, of the State, uncompensated Governor's constables, law enforcement officers of the federal government or other states when they are carrying out official duties while in this State, deputy wildlife conservation officers within their territorial jurisdictions, and reserve police officers while serving and functioning as law enforcement officers as authorized by [§ 23-28-10](#) et seq.'
- 3 Pursuant to Section 40-17-150(5), the provisions of the private security agency act do not apply to 'a person receiving compensation for private employment on an individual, independent contractor basis as a patrolman, guard, or watchman who has full-time employment as a peace officer with a state, county or local police department.'  
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