

1980 S.C. Op. Atty. Gen. 47 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-20, 1980 WL 81904

Office of the Attorney General

State of South Carolina

Opinion No. 80-20

February 7, 1980

**\*1 SUBJECT: Law enforcement, security guards, Authority, weapons, sirens and flashing lights; Investigators, security guards, authority, weapons, sirens and flashing lights; Highway, signs, blue lights, sirens, security guards have not authority; Weapons, security guards; Law enforcement, interference by private security guards;**

(1) In most circumstances, a private security guard must defer to a duly sworn deputy or police officer who, on official business, seeks admission to a housing complex and, in any event, must defer to that deputy or police officer in the face of legal process. A security guard who stops an officer who legally has grounds for admittance may, in certain circumstances, be subject to arrest for interference.

(2) A security guard with a contract for law enforcement services on certain property does not have the authority to investigate a crime on that private property, but may only affect arrests thereon.

(3) A private security guard, properly licensed may carry firearms in an open, fully disclosed manner while on duty and in uniform and while going to and from work.

(4) A private security guard may not operate a vehicle equipped with a siren and flashing blue or red lights.

TO: Frank Powell  
Sheriff of Richland County

QUESTIONS:

1. Does a private security guard have the authority to refuse a duly sworn deputy or police officer admittance to a housing complex whether the deputy is on a call or is patrolling throughout the complex? If the security guard stops the officer is the security guard subject to arrest for interference?

2. Who has authority to investigate a crime on private property if a security guard has a contract for law enforcement services on the property?

3. Does a private security guard have authority to bear arms or other deadly weapons on any public highways or streets, restaurants, or any other place other than on the property for which he is hired as a private security guard?

4. Can a private security guard operate a vehicle equipped with a siren and flashing lights?

STATUTES AND CASES:

South Carolina Code of Laws (1976), §§16-23-20; 40-17-10; 40-17-20(b); 40-17-30; 40-17-130; 40-17-120(c); 56-5-170 and 56-5-4700.

[Regulations R 73-40\(16\)\(17\) and \(20\).](#)

DISCUSSION:

1. Essential to answering all of your questions is an understanding of the purpose of the South Carolina Private Detective and Private Security Agencies Act (see Sections 40–17–10, *et seq.* of the South Carolina Code of Laws (1976). The private security business, as defined by that Act, is ‘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.’ Section 40–17–20(b) [Emphasis added]. In enacting the Detective and Private Security Agencies Act, the Legislature was attempting to regulate an industry which is now perceived by some to be necessary if the criminal laws of this State are to be enforced. Regulation of this industry is left to the South Carolina Law Enforcement Division which is charged with the responsibility of, among other things, the determination of qualifications for applicants, the investigation of alleged violations in the provisions of this Act, and the promulgation of all rules and regulations necessary in carrying out the provisions of the Act. Section 40–17–30. The authority vested in the private security guard enabling him to further the ends established by this legislation is the authority and power which Sheriffs have to affect an arrest on that property which he is hired or employed to protect. Section 40–17–130.

\*2 The last Section cited above merely empowers the private security guard to effect an arrest as a public law enforcement official might. It empowers him to do no more. The South Carolina Detective and Private Security Agency Act does not raise the private security guard to the level of that of a public law enforcement official.

Turning to the initial question it will be assumed that inherent in your question is the proposition that the hypothetical law enforcement officer is engaged in his official capacity. Assuming then 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. Please note, however, that situations can be envisioned wherein a security guard may be employed to protect an area wherein his employer or the owner thereof may have some expectation of privacy. In this situation, of course, the 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.

As to whether a security guard who has stopped an officer in the lawful execution of his duties might be subject to arrest for interference, such would depend on the circumstances of the given case. Since too many variables might exist from case to case, a specific response is not advisable. Please note that circumstances might be envisioned wherein a security guard, acting with criminal intent, might be subject to arrest for obstruction of justice.

2. As was stated above, the Detective and Private Security Agencies Act empowers the private security guard to affect arrests as a public law enforcement officer might. As stated before, the South Carolina Law Enforcement Division is charged with the responsibility of promulgating rules and regulations to further the purposes of this legislation. Note that the regulations promulgated by SLED provide for certain educational requirements dealing only in arrest and arrest procedure, no further knowledge of law enforcement expertise is required (with the exception of weapons training) R 73–40(20). The legislation does not provide for any investigatory authority on the part of security guards; and there is no apparent intention to give security guards these powers. The ostensible purpose of the Act was to provide security guards with the powers of arrest in assistance to local law enforcement who are charged with the responsibility of conducting criminal investigations. See R 73–40(16). Therefore, it can be said that private security guards are neither educated in the techniques of criminal investigation nor are they authorized by statute to conduct any such investigations, and therefore must defer to the appropriate law enforcement agency.

\*3 3. Section 40–17–120(c) provides that the South Carolina Law Enforcement Division may license certain persons engaged in the private security business to carry firearms, and carry them in an open, fully disclosed manner while on duty and in uniform and while going to and from work. Unless these persons engaged in the private security business have secured additional permits to carry weapons concealed or not, these individuals may not carry their weapons in any other manner except as provided by law. See Section 40–17–120(c) and Section 16–23–20.

4. Section 56-5-4700 provides that every authorized emergency vehicle shall be equipped with a siren and, depending upon the vehicle, alternately flashing red or blue lights. 'Authorized emergency vehicles', as defined by Section 56-5-170, are: Fire department vehicle, police vehicles, ambulances and rescue squad vehicles which are publicly owned, other emergency vehicles designated by the department or Chief of Police of a municipality, and public and private vehicles while transporting individuals actually engaged in emergency activities because of the membership of one or more occupants of a fire department, police department or rescue squad are 'authorized emergency vehicles'.

The language above clearly excludes a security vehicle from the definition of those vehicles which are permitted to display flashing red or blue lights or to use a siren. See R 73-17. The legislation provides that any vehicle, publicly or privately owned, engaged in the discharge of the function of a fire, police or rescue agency shall be deemed authorized emergency vehicles. The statute does not prescribe that a vehicle engaged in a function of indirect benefit to a fire, police or rescue agency be classified as an 'authorized emergency vehicle.' That a private security agency performs a limited function as that of a police agency does not raise its status to that of a police agency. Therefore, no such vehicle operated by a private security agency satisfies the definition of a 'authorized emergency vehicle,' and therefore, they may not employ the use of blue lights. Please note that by regulation such agencies must maintain a separate identity from law enforcement vehicles, but may use a flashing amber light. R 73-7 and R 73-17.

CONCLUSION:

1. In most circumstances, a private security guard must defer to a duly sworn deputy or police officer who, on official business, seeks admission to a housing complex and in any event must defer to that deputy or police officer in the face of legal process. A security guard who stops an officer who legally has grounds for admittance may, in certain circumstances, be subject to arrest for interference.
2. A security guard with a contract for law enforcement services on certain property does not have the authority to investigate a crime on that private property, but may only effect arrests thereon. Of course, nothing would prohibit them from providing any assistance requested by law enforcement.
- \*4 3. A private security guard, properly licensed may carry firearms in an open, fully disclosed manner while on duty and in uniform and while going to and from work.
4. A private security guard may not operate a vehicle equipped with a siren and flashing blue or red lights.

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