



ALAN WILSON  
ATTORNEY GENERAL

November 24, 2015

The Honorable Paul Thurmond, Member  
South Carolina Senate, District No. 41  
P.O. Box 142  
Columbia, SC 29211

Dear Senator Thurmond:

Attorney General Alan Wilson has referred your letter dated September 17, 2015 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

**Issues** (as quoted from your letter):

*I have been contacted by a constituent that would like me to ask you to provide an Attorney General Opinion advising (1) about the legality of certain property taxes that have been imposed and/or that will be imposed by Dorchester County Council ("Council") and by each of three school districts' in Dorchester County to finance School Resource Officers ("SRO" or "SROs") for the purpose of providing police protection at schools in those districts; (2) what are the differences, if any, between the authority and powers of an SRO employed by one of those school districts versus employed by Dorchester County and supervised by the Dorchester County Sheriff's Office; and (3) whether, to what extent and with what effect, an SRO lawfully could be employed by one or all of those school districts but supervised by the Dorchester County Sheriff's Office.*

*In particular, please advise whether those property taxes violate the South Carolina Constitution, S.C. Code Ann. §12-37-220(B)(47) ("Act 388") and/or any other provision of law; to what extent an SRO employed by a school district does or does not have the same powers to detain, arrest, investigate or remove an individual from school property as an SRO employed by Dorchester County and supervised by the Dorchester County Sheriff's Office; and whether, and to what extent, the Dorchester County Sheriff can hire, fire, train and supervise an SRO even though that SRO is an employee of one of the school districts and has his compensation paid by one of those school districts.*

...

*To recap, due to the concerns above, please provide me answers to the following questions described above:*

- 1. Whether Dorchester County's taxation of owner-occupied residences for the purpose of financing SROs providing police protection at schools violates Act 388, and why?*
- 2. If Dorchester County's taxation of owner-occupied residences to finance SROs at schools is legal, under what circumstances and to what extent may the County tax owner-occupied homes for the purpose of furnishing other goods or services to a school district?*
- 3. Whether double taxation by both Dorchester County and a school district for SROs or for any other identical purpose is unlawful because it is double taxation and why?*
- 4. Whether two or more government entities can increase their tax base resulting in annual tax increases by their both taxing property owners for the same purpose or thing?*
- 5. What are the specific differences, if any, between the powers and authority of an*

*SRO employed by a County and supervised by the Sheriff of a County versus of an SRO employed by a school district and supervised by the school district?*  
6. *What are the specific differences, if any, between the powers and authority of an SRO employed by a school district and supervised by the Sheriff of a County versus of an SRO employed by a school district and supervised by the school district?*

**Law/Analysis:**

First, we will presume by referring to a “school resource officer” that you are referring to the statutory definition found in South Carolina Code Section 5-7-12(B) where a School Resource Officer is defined as “a person who is a sworn law enforcement officer pursuant to the requirements of any jurisdiction of this State, who has completed the basic course of instruction for School Resource Officers as provided or recognized by the National Association of School Resource Officers or the South Carolina Criminal Justice Academy, and who is assigned to one or more school districts within this State to have as a primary duty the responsibility to act as a law enforcement officer, advisor, and teacher for that school district.” S.C. Code § 5-7-12(B) (1976 Code, as amended). Please note for purposes of this opinion this Office has not reviewed any property tax bills for residents of Dorchester County or any contracts regarding School Resource Officers. This Office does not make factual determinations in an opinion such as this, but is only reviewing the law. See, e.g., Op. S.C. Atty. Gen., 1996 WL 599391 (September 6, 1996) (citing Op. S.C. Atty. Gen., 1983 WL 182076 (December 12, 1983)).

1. *Whether Dorchester County's taxation of owner-occupied residences for the purpose of financing SROs providing police protection at schools violates Act 388, and why?*

Act No. 388 of 2006 and South Carolina Code Section 12-37-220(B)(47) clearly exempt owner-occupied residential property from all property taxes imposed for “school operating purposes” with the exception of “bond indebtedness pursuant to Section 15 of Article X of the Constitution of this State.” See also Op. S.C. Att’y Gen., 2007 WL 1302772 (April 24, 2007). The answer to your first question depends on whether financing School Resource Officers at schools is a “school operating purpose” in violation of Act No. 388 and South Carolina Code Section 12-37-220(B)(47). In Berkeley County School Dist. v. S.C. Dep’t of Revenue, 383 S.C. 334, 679 S.E.2d 913 (2009), our State Supreme Court debated what was encompassed within the meaning of “school operating purposes.” Quoting from that case, the Court stated:

Relying on a 1979 definition of “operating expenses” the Department [of Revenue] contends that “school operating purposes” encompasses “[t]hose expenses required to keep the business running, e.g. rent, electricity, heat. Expenses incurred in the course of ordinary activities of an entity.” *Black’s Law Dictionary* 984 (5th ed.1979). More recently, however, Black’s Law Dictionary has expanded the term and defined it as “[a]n expense incurred in running a business and producing output.” *Black’s Law Dictionary* 599 (7th ed.1999).

...

In terms of specifics, we find payments for the lease/installmentpurchase agreements should come within the definition of “school operating purposes.” Clearly, a school would not be operational without an infrastructure which necessarily includes school buildings. Thus, the continued operation of a school district is dependent upon the renovation and purchase of school buildings.

Because the lease/installment-purchase payments or requisite "rent payments" effectuate this goal, these payments are essential for "school operating purposes." Significantly, in the business realm, the phrase "operating expenses" has been defined to "include payroll, sales commissions, employee benefits and pension contributions, transportation and travel, **amortization and depreciation, rent, repairs, and taxes, etc.**" (emphasis added). Furthermore, to limit the definition of "school operating purposes" to only expenses incurred for the administration of a school district would be myopic. Logically, a school district cannot operate without all of its component parts, which include school administration expenses, day-to-day expenses, and most importantly the actual facilities which are funded through lease/installmentpurchase payments. Thus, we find the payments for lease/installmentpurchase agreements would be exempt under section 12-37-220(B)(47)(a) and reimbursable under section 11-11-156(A)(1).

Berkeley County School Dist. v. South Carolina Dep't of Revenue, 383 S.C. 334, 345-46, 679 S.E.2d 913, 919 (2009). Based on the Court's interpretation in Berkeley and a plain reading of the statute, if a School Resource Officer is a part of a school, the costs thereof will likely be considered an operating expense of the school. This will especially be the case where the School Resource Officer is an "advisor, and teacher" for the school district. S.C. Code § 5-7-12. If the School Resource Officer's costs are an operating expense of a school, then Dorchester County's taxation of owner-occupied residences to pay for them would be in violation of Act No. 388 of 2006 and South Carolina Code Section 12-37-220(B)(47).

The South Carolina Department of Revenue has issued a few Revenue Rulings regarding the interpretation of what is or is not a "school operating purpose." One such Ruling determined "school" relates to "school districts" and means kindergarten through twelfth grade. S.C. Rev. Rul. 95-22 (November 7, 1995). The Ruling also referred to South Carolina Code Section 59-1-160's definition of a school district. Section 59-1-160 is a part of the "South Carolina School Code" whose purpose is to "provide for a State system of public education and for the establishment, organization, operation, and support of such State system." S.C. Code §§ 59-1-10, 59-1-20. It defines a school district as "...any area or territory comprising a legal entity, whose sole purpose is that of providing free school education, whose boundary lines are a matter of public record, and the area of which constitutes a complete tax unit." S.C. Code § 59-1-160 (1976 Code, as amended).

We believe a court will determine that a School Resource Officer- whether an employee of the county, school district, or sheriff- falls within the meaning of a "school operating purpose" by the very statutory definition of a School Resource Officer. S.C. Code § 5-7-12(B). Since the statute appears clear and unambiguous, this Office will not look further to determine the meaning of the language in the statute. This Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. South Carolina Board of Physical Therapy Exam'rs, 370 S.C. 452, 636 S.E.2d 598 (2006). Moreover, as we have noted in prior opinions of this Office, "the title or caption of an act may be properly considered to aid in the construction of a statute and to show the intent of the Legislature." Op. S.C. Att'y Gen., 2004 WL 2451474 (Oct. 15, 2004) (citing Lindsay v. Southern Farm Bureau Cas. Ins. Co., 258 S.C. 272, 188 S.E.2d 374 (1972)). The title "School Resource Officer" clearly denotes a legislative intent for the officer to serve in the operation of schools. Therefore, we believe a court would determine taxation by a county for a School Resource Officer is unlawful because it evades the prohibition against taxation of primary

residences for school operating purposes. Furthermore, the United States Department of Labor opined on School Resource Officers and their duties by stating:

We also believe that the SROs' primary duty of providing for the safety and security of the students, staff, and property within the school system by planning to prevent safety and security problems and by responding immediately to deal with any disruption or criminal activity, which may include, for example, providing consulting advice to school administrators on plans for safety, emergency preparedness, traffic flow, evacuation, lighting, and video surveillance and providing training to students, faculty, administrators, and parent groups regarding safety-related issues, directly relates to the functional areas of safety and health discussed in 29 C.F.R. § 541.201(b).

Op. Fair Labor Standards Act (FLSA2007-8), U.S. Dep't Labor, 2007 WL 541651 (February 15, 2007).<sup>1</sup> While the terms of employment may vary among School Resource Officers, the duties in the FLSA opinion appear to fit within the meaning of the operations of a school and offer a good standard of what a "school operating purpose" could be. Id.

Moreover, as you are likely aware, it is a well-recognized principle of law that an act which is forbidden to be done directly cannot be accomplished indirectly. Ops. S.C. Att'y Gen., 2000 WL 1803581 (November 13, 2000); 1990 WL 599265 (July 31, 1990) (citing State ex rel. Edwards v. Osborne, 193 S.C. 158, 7 S.E.2d 526 (1940); Lurey v. City of Laurens, 265 S.C. 217, 217 S.E.2d 226 (1975); Westbrook v. Hayes, 253 S.C. 244, 169 S.E.2d 775 (1969)). The State Supreme Court has cautioned the same in Richardson v. Blalock, 118 S.C. 438, 110 S.E. 678 (1922), stating "[t]hat which cannot be done directly cannot be done indirectly." As this Office previously stated, "the purpose of this rule is to prevent circumvention of the law by ruse or artifice." Op. S.C. Att'y Gen., 2003 WL 21471505 (June 10, 2003). Since we believe taxing primary residences for school purposes is prohibited directly, it follows that taxing them indirectly for school purposes is prohibited also.

*2. If Dorchester County's taxation of owner-occupied residences to finance SROs at schools is legal, under what circumstances and to what extent may the County tax owner-occupied homes for the purpose of furnishing other goods or services to a school district?*

Even if a court determines Dorchester County's taxation of owner-occupied residences to finance School Resource Officers at schools is legal, pursuant to Act No. 388 of 2006 and South Carolina Code Section 12-37-220(B)(47), the County may not tax owner-occupied homes to furnish goods or services to a school district as a part of a "school operating purpose." As stated above, the South Carolina Department of Revenue has issued Revenue Rulings regarding what is or is not a "school operating purpose."<sup>2</sup> One such Ruling determined "school" relates to "school districts" and means kindergarten through twelfth grade. S.C. Rev. Rul. 95-22 (November 7, 1995). The Ruling also referred to South Carolina Code Section 59-1-160's definition of a school district. Section 59-1-160 is a part of the "South Carolina School Code" whose purpose is to "provide for a State system of public education and for the establishment,

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<sup>1</sup> Please note that we do not know the background or this particular state's requirements for School Resource Officers.

<sup>2</sup> However, these Revenue Rulings were based on portions of S.C. Code § 12-37-251 that are not used anymore. We presume these rulings would apply today to S.C. Code § 12-37-220.

organization, operation, and support of such State system.” *Id.*; S.C. Code §§ 59-1-10, 59-1-20. It defined a school district as “any area or territory comprising a legal entity, whose sole purpose is that of providing free school education, whose boundary lines are a matter of public record, and the area of which constitutes a complete tax unit.” S.C. Rev. Rul. 95-22 (November 7, 1995); S.C. Code § 59-1-160 (1976 Code, as amended). Revenue Ruling No. 95-23 and 96-6 were consistent with the determinations in Ruling No. 95-22. S.C. Rev. Rul. 95-23 (November 13, 1995); 96-6 (June 12, 1996). See also Op. S.C. Att’y Gen., 2007 WL 4284627 (November 27, 2007). By examining the plain meaning of the words as outlined above in our response to Question 1, any expense that would be part of a “school operating purpose” would be prohibited, including goods or services used for a “school operating purpose.”

Moreover, as we stated above, it is a well-recognized principle of law that an act which is forbidden to be done directly cannot be accomplished indirectly. Ops. S.C. Att’y Gen., 2000 WL 1803581 (November 13, 2000); 1990 WL 599265 (July 31, 1990) (citing State ex rel. Edwards v. Osborne, 193 S.C. 158, 7 S.E.2d 526 (1940); Lurey v. City of Laurens, 265 S.C. 217, 217 S.E.2d 226 (1975); Westbrook v. Hayes, 253 S.C. 244, 169 S.E.2d 775 (1969)). As the State Supreme Court cautioned in Richardson v. Blalock, 118 S.C. 438, 110 S.E. 678 (1922), “[t]hat which cannot be done directly cannot be done indirectly.” As this Office previously stated, “the purpose of this rule is to prevent circumvention of the law by ruse or artifice.” Op. S.C. Att’y Gen., 2003 WL 21471505 (June 10, 2003). Since we believe taxing primary residences for school purposes is prohibited directly, it follows taxing them indirectly for good or services for school purposes is prohibited.

*3. Whether double taxation by both Dorchester County and a school district for SROs or for any other identical purpose is unlawful because it is double taxation and why?*

Before we examine whether charging for the same School Resource Officers by both the school district and the county would constitute double taxation, let us review some applicable South Carolina tax law.<sup>3</sup> The South Carolina Constitution grants the General Assembly authority to “vest the power of assessing and collecting taxes in all of the political subdivisions of the State, including special purpose districts, public service districts, and school districts ....” S.C. Const. art. X, § 6. The South Carolina Constitution outlines that school districts must prepare an annual budget, and if funds are insufficient, the governing body is to levy an additional tax the next year. S.C. Const. art. X, § 7(b). South Carolina Code § 12-43-210 requires uniform assessment throughout the State. See also S.C. Const. art. VIII, § 14; S.C. Const. art. X, § 1 (regarding uniform assessment and taxation). As the South Carolina Supreme Court stated in Watson v. City of Orangeburg, 229 S.C. 367, 375, 93 S.E.2d 20, 24 (1956), “[t]he power of taxation being an attribute of sovereignty vested in the legislature subject to constitutional restrictions, taxes can be assessed and collected only under statutory authority.” It is well established the South Carolina General Assembly has chosen to grant counties the authority to assess and levy taxes pursuant to South Carolina Code § 4-9-30(5)(a), permitting county government the authority:

...  
(5)(a) to assess property and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided and make appropriations for functions and operations of the county,....

<sup>3</sup> Though we note while there are many relevant statutes and cases, we list some of them in this opinion and acknowledge there are many others not mentioned here.

S.C. Code § 4-9-30 (5)(a) (1976 Code, as amended).

While there are numerous statutes and cases regarding taxation and schools, we are not able to address all of them in this opinion. See, e.g., S.C. Code § 59-73-60 (if the electorate votes for such a levy, the auditor shall add it to the tax duplicates and the county treasurer is authorized to collect the additional county taxes for school purposes the same as State and county taxes); § 59-73-10 (electorate must vote to approve any additional tax in any county for school purposes); § 59-73-70 (a levy by the county is a lien on the property subject to default); § 4-9-70 (unless otherwise provided by law, county council sets the school tax millage). We noted in a previous opinion that “[o]ne county administrator stated that forty-six of South Carolina’s school districts report to a ‘higher body (legislative delegation, county council, or county board) to get their budgets approved, or to raise the millage beyond a certain point,’ whereas twenty-three school districts maintain their ability to set their own budgets.” Op. S.C. Att’y Gen., 2014 WL 3414950 (July 3, 2014) (citing Burriss v. Anderson County Bd. Of Educ., 369 S.C. 443, 446, 633 S.E.2d 482, 484 (2006); S.C. Code § 4-9-70)). Thus, even within the same laws, school districts in South Carolina handle funding differently.

Regarding double taxation, this Office has previously opined on the subject. In a 1969 opinion this Office stated:

“To constitute double taxation, objectionable or prohibited, the two or more taxes must be (1) imposed on the same property, (2) by the same state or government (emphasis added), (3) during the same taxing period, and (4) for the same purpose.” Cooley Taxation 4<sup>th</sup> Ed. Vol. One, § 223 at 475. Cooley goes further to say: “There is no double taxation where one tax is for state or county purposed, imposed by the state or county, and the other tax is one imposed by a city. A state license tax and a county license tax is not double taxation. There is not double taxation where there is a tax levied and collected by and for a local school district and also a tax levied and collected for state purposes, although a part of the state taxes so collected are afterwards distributed by the state to school districts.” Cooley on Taxation 4<sup>th</sup> Ed. Vol. One, § 230 at 492.

Op. S.C. Att’y Gen., 1969 WL 15197 (March 25, 1969). In a 1986 opinion, we also stated:

Double or dual taxation results when any kind or class of property is subjected to more than one tax by a particular statute or ordinance. Alderman v. Wells, 85 S.C. 507, 67 S.E.781 (1910); Windfield v. South Carolina Tax Commission, 147 S.C. 116, 144 S.E.846 (1928). Stated another way,

[i]n order to constitute double taxation in the objectionable or prohibited sense the same property must be taxed twice when it should be taxed but once; both taxes must be imposed on the same property or subject matter, for the same purpose, by the same state, government, or taxing authority, within the same jurisdiction or taxing district, during the same taxing period, and they must be the same kind or character of tax. Also the taxes must not be uniform or there must be discrimination, one tax must have been imposed on part only, not all, of the property in the taxing

district; and the tax burden must be one imposed by the state and not one voluntarily assumed by agreement.  
84 C.J.S. Taxation § 39.

Op. S.C. Att’y Gen., 1986 WL 289839 (September 18, 1986). In the 1986 opinion this Office concluded that there was no double taxation where a taxpayer paid both an ad valorem property tax to the county and an income tax to the State, even though some of the proceeds from both taxes went to the same fund. Id. This Office also opined in a 1998 opinion that:

There is no per se prohibition on double taxation. Greystone Catering Co., Inc. v. S.C. Dept. of Revenue & Taxation, [326] S.C. [551], 486 S.E.2d 7 (1997). Double taxation in the prohibited sense can exist only in the subject of both taxes is the same, if both taxes are imposed upon the same property, for the same purpose, by the same state or government, during the same tax period. Atkinson Dredging Company v. Thomas, 266 S.C. 361, 223 S.E.2d 592 (1976).

Op. S.C. Att’y Gen., 1998 WL 115502 (February 6, 1998). Moreover, our State courts have been clear in stating that:

Nonetheless there is a strong presumption against double taxation, and we will not construe a statute as imposing a double tax unless the legislative intention or its necessary implication is clear from the terms of a statute.

Greystone Catering Co. v. S. Carolina Dep't of Revenue & Taxation, 326 S.C. 551, 555-56, 486 S.E.2d 7, 9 (Ct.App. 1997) (quoting Wingfield v. South Carolina Tax Comm'n, 147 S.C. 116, 144 S.E. 846 (1928)).

Thus, having reviewed this information, we are of the opinion that taxing for the same School Resource Officers approaches double taxation such that a court could make that determination. We recognize that generally two different entities can tax for the same thing without constituting double taxation. However, the simple principle is this: where two entities collect the full amount to cover the cost of School Resource Officers, the taxpayers would be paying twice for the same thing. That is the very principle double taxation violates. The same principle would apply to any amount both entities are collecting duplicate taxes for.

*4. Whether two or more government entities can increase their tax base resulting in annual tax increases by their both taxing property owners for the same purpose or thing?*

Please see our response to Question 3 above.

*5. What are the specific differences, if any, between the powers and authority of an SRO employed by a County and supervised by the Sheriff of a County versus of an SRO employed by a school district and supervised by the school district?*

A School Resource Officer should have equivalent statutory authority and powers in regards to arrest power and jurisdiction while acting within the scope of his employment as a School Resource Officer, regardless of his employer. As we mentioned above, a School Resource Officer is defined by statute as “a person who is a sworn law enforcement officer pursuant to the requirements of any jurisdiction of this State, who has completed the basic course of instruction for School Resource Officers as provided or

recognized by the National Association of School Resource Officers or the South Carolina Criminal Justice Academy, and who is assigned to one or more school districts within this State to have as a primary duty the responsibility to act as a law enforcement officer, advisor, and teacher for that school district.” S.C. Code § 5-7-12(B). By virtue of the statutory definition of a School Resource Officer, regardless of who employs them, they must:

- 1) be a sworn law enforcement officer within South Carolina (see, e.g., S.C. Code § 23-13-20 requiring an oath to be a Sheriff’s deputy);
- 2) complete a School Resource Officer’s instruction; and
- 3) be assigned to a school district in South Carolina as a law enforcement officer, advisor, and teacher.

S.C. Code § 5-7-12. For purposes of this opinion, this Office will presume compliance with requirements could be verified through the South Carolina Criminal Justice Academy. Id. A School Resource Officer’s jurisdiction is granted by statute as:

The person assigned as a school resource officer shall have statewide jurisdiction to arrest persons committing crimes in connection with a school activity or school-sponsored event. In all circumstances in which a school resource officer arrests a student for a misdemeanor offense, the officer may issue a courtesy summons to appear to a student involved in the particular incident in connection with a school activity or school-sponsored event. Notwithstanding another provision of law, a student arrested for a misdemeanor offense by a school resource officer must have a bond hearing in magistrates court within twenty-four hours of his arrest. When acting pursuant to this section and outside of the sworn municipality or county of the school resource officer, the officer shall enjoy all authority, rights, privileges, and immunities, including coverage under the workers’ compensation laws that he would have enjoyed if operating in his sworn jurisdiction.

S.C. Code § 5-7-12(A) (emphasis added). Therefore, those duties and powers of a School Resource Officer acting within the scope of his authority set by statute cannot change and will be consistent as statutorily set, regardless of who employs the School Resource Officer. However, this Office believes the statute’s requirement for School Resource Officers to be a sworn law enforcement officer within South Carolina would prevent a school district from directly employing a School Resource Officer. S.C. Code § 5-7-12. Moreover, law enforcement officers have other statutory duties and powers. See, e.g., S.C. Code § 23-13-70 (“deputy sheriffs shall patrol the entire county at least twice a week by sections assigned to each by the sheriff”). The powers and duties of law enforcement officers outlined by statute must be complied with and cannot be altered by agreement and vary based on the type of law enforcement officer.<sup>4</sup>

In regards to a School Resource Officer’s employment contracts and duties, they will vary based on the terms of employment. For instance, a school district could contract with a Sheriff’s department for a School Resource Officer who also serves as a teacher. Or a Sheriff or police chief supervising a School Resource Officer may require the officer to perform other duties outside of the school . For specific questions on differences between power and authority, we would need to read the employment contract

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<sup>4</sup> Please note that while this Office has previously opined concerning the authority of private security guards to protect a school, that issue is not addressed in this opinion.

and identify the employer. See S.C. Code § 23-24-10 (use of official uniforms and weapons by officers on private job), § 23-24-20 (duties of employing agencies), § 23-24-30 (liability of public employer for off-duty acts), etc. However, each state may vary in the employment of School Resource Officers. For example, the United States Department of Labor opined concerning School Resource Officers employed by schools and school districts in one state:

As noted, the SROs' employers [in the state addressed herein] are public educational entities rather than police departments or security companies whose primary operations are law enforcement and security, and as a result, the SROs' activities could not be categorized as production operations for their employers. Therefore, the SROs' primary duty involves the "performance of office or non-manual work directly related to the management or general business operations of the employer." *Id.* § 541.200(a)(2).

Moreover, we believe that the SROs' primary duty "includes the exercise of discretion and independent judgment with respect to matters of significance." 29 C.F.R. § 541.200(a)(3). As described above, the SRO is minimally supervised. The SRO has an annual discretionary budget of \$15,000 to \$20,000 for purchasing safety/security related items. Such duties as providing the extensive recommendations and advice noted above to faculty and staff that are usually implemented satisfy one of the regulatory factors in 29 C.F.R. § 541.202(b) for determining whether an employee exercises discretion and independent judgment with respect to matters of significance, specifically, that the "employee provide[] consultation or expert advice to management." *See Bondy v. City of Dallas*, No. 03-10112, 2003 WL 22316855 (5th Cir. 2003) (making recommendations to management on policies and procedures). In addition, by serving as a liaison/facilitator between the school system and local law enforcement agencies to coordinate the law enforcement efforts of the local jurisdiction relative to the schools, and to develop a communication network between administration, staff, students, and parents within the cluster schools, the SRO "formulate[s] . . . [and] implement[s] management policies or operating practices." *See* 29 C.F.R. § 541.202(b).

Op. Fair Labor Standards Act (FLSA2007-8), U.S. Dep't Labor, 2007 WL 541651 (February 15, 2007).<sup>5</sup> While we do not know all the details of the employment contract and the laws of School Resources Officers in that state, it is clear that the duties and powers of a School Resource Officer can vary greatly depending on the state's laws and the terms of the officer's employment. This Office previously issued an opinion regarding School Resource Officers where the officers were employees for a local police department and worked pursuant to a contract with the school. See Op. S.C. Att'y Gen., 2014 WL 1398597 (January 15, 2014). South Carolina law requires certain contractual provisions for agreements for law enforcement services between law enforcement agencies and could serve as guidance in any other agreements involving law enforcement officers. S.C. Code § 23-20-40.

In regards to your question as to what powers a School Resource Officer would hold, our United States Supreme Court makes the determination as to the power and authority in regards to searches, seizures and

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<sup>5</sup> Please note that we do not know the background or this particular state's requirements for School Resource Officers.

other Constitutional issues in connection with schools. As you may be aware and as the South Carolina Court of Appeals quoted the United States Supreme Court regarding searches in schools:

The Supreme Court concluded that the Fourth Amendment applies to searches conducted by school authorities. [*New Jersey v. T.L.O.*,] 469 U.S. at 333, 105 S.Ct. at 738. Nonetheless, the Court concluded that the warrant requirement “is unsuited to the school environment” because it would “unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools.” *Id.* at 340, 105 S.Ct. at 742. Thus, the Court held that school officials need not obtain a warrant before searching a student so long as the school official has reasonable grounds to suspect that the search will yield evidence of a violation of the law or school rules. 469 U.S. at 340–43, 105 S.Ct. at 742–44. However, the Court was careful to point out that this exception only applied to searches conducted by “school authorities acting alone and on their own authority.[.]” This case does not present the question of the appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies, and we express no opinion on that question.” *T.L.O.*, 469 U.S. at 341, n. 7, 105 S.Ct. at 743, n. 7.

Clearly, the search of Thomas D. was not carried out by school officials. The police were not acting on behalf of or as agents for the school when they searched Thomas D. Instead, the search was conducted by police in furtherance of a law enforcement objective—that is, the removal of Thomas D. from a surrounding detrimental to his welfare and his relocation to the parentally-approved and societally-mandated school environment. While Thomas D. was a student and the search apparently took place on school property, the search was not conducted by a school official.

The State argues the cigarettes were “contraband” and that Thomas D. was prohibited by school policy from possessing cigarettes on school property. If Thomas D. had been searched by a school official on school property based upon a reasonable suspicion of a violation of school rules, the situation might be different. However, the fact remains the warrantless search of Thomas D. was conducted by law enforcement officers who were not connected with the school. Because the police were acting on their own authority and cannot be considered agents of the school, the reasonable suspicion standard set forth in *T.L.O.* is simply inapplicable to the case at bar. Thus, the question becomes whether the warrantless search of Thomas D. violated the Fourth Amendment’s prohibition against unreasonable searches and seizures. We conclude it did not.

In Interest of Thomas B.D., 326 S.C. 614, 618-19, 486 S.E.2d 498, 500 (Ct. App. 1997). We suggest your constituent look to the courts and follow the most recent case law in regards to a School Resource Officer’s power and authority versus Constitutional rights, as the law is subject to change, in addition to any applicable employment agreements and South Carolina Code Section 5-7-12.

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6. *What are the specific differences, if any, between the powers and authority of an SRO employed by a school district and supervised by the Sheriff of a County versus of an SRO employed by a school district and supervised by the school district?*

Please see our response to Question 5 above.

**Conclusion:**

As the need and funding for School Resource Officers changes, the case law and statutes will change too. Thus, the answers to your questions may change in time. However, we hope this legal opinion based on the current law at this time is helpful to you and your constituents. Until a court or the Legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



Anita S. Fair  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General