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HENRY MCMASTER  
ATTORNEY GENERAL

May 12, 2006

Major Mark A. Keel  
South Carolina Law Enforcement Division  
P. O. Box 21398  
Columbia, South Carolina 29221-1398

Dear Major Keel:

In a letter to this office you raised questions regarding the law enforcement authority and the authority to carry handguns of various university and college law enforcement officers in this State. You particularly referenced the annual Palmetto Classic football game which is held at Williams-Brice Stadium and questioned whether Benedict College police officers have the authority to carry their handguns in that venue and whether these officers retain their law enforcement powers during this event.

S.C. Code Ann. §§ 59-116-10 et seq. provide for the establishment of campus security departments. Section 59-116-20 states that

The board of trustees of each college or university may establish a safety and security department and appoint and employ campus police officers to carry out the functions of the department...The officers must be commissioned as constables pursuant to Section 23-1-60 and take the oath of office prescribed by law and the state Constitution for those officers. The jurisdiction of such a constable is limited to the campus grounds and streets and roads through and contiguous to them. (emphasis added).

Pursuant to Section 59-116-10 (2) "college or university" for purposes of Section 59-116-20 is defined as "...a state chartered two or four year private educational institution of higher learning in this State." (emphasis added). The term "campus" is defined by Section 59-116-10(1) as "...the grounds and buildings owned and occupied by a college or university for education purposes and streets and roads through and contiguous to the grounds."

*Request Letter*

By Section 59-116-30,

(A) Campus police officers are peace officers. While in the performance of the duties of their employment, they have all the powers of municipal and county police officers to make arrests for both felonies and misdemeanors and possess all of the common law and statutory powers, privileges, and immunities of police officers. Campus police officers shall:

(1) preserve the peace, maintain order, and prevent unlawful use of force or violence or other unlawful conduct on the campuses of their respective institutions and protect all persons and property located there from injury, harm, and damage;

(2) enforce and assist the officials of their respective institutions in the enforcement of the laws of the State and county and municipal ordinances, and the lawful regulations of the institution, and assist and cooperate with other law enforcement agencies and officers. Campus police officers shall exercise powers granted in this chapter only upon the real property owned by their respective institutions as defined in item (1) of Section 59-116-10. (emphasis added).

(B) Campus police officers may arrest persons outside the territory described in subsection (A) when the person arrested has committed a criminal offense within that territory, and the arrest is made during the person's immediate and continuous flight from that territory.

(C) Safety and security departments created and operated by the boards of trustees of institutions under this chapter for the purposes of this chapter are campus police departments and the sworn campus police officers of the department are campus police officers.

Pursuant to Section 59-116-40,

At the time of their employment campus police officers authorized to exercise the powers granted in Section 59-116-30 must:

(1) be not less than twenty-one years of age;

(2) have completed successfully the training requirements of the South Carolina Criminal Justice Academy or which may be prescribed for campus police by the South Carolina Law Enforcement Training Council;

(3) be commissioned as a constable as provided for in Section 59-116-20;

(4) possess additional qualifications prescribed by the governing board of the institution by whom they are employed. (emphasis added).

As set forth above, individuals appointed as campus police officers pursuant to Section 59-116-20 are commissioned as constables pursuant to S.C. Code Ann. § 23-1-60. It is also specified that their jurisdiction "...is limited to the campus grounds and streets and roads through and contiguous to them." Also, Section 59-116-30(2) states that these officers "...shall exercise powers granted in this chapter only upon the real property owned by their respective institutions as defined in item (1) of Section 59-116-10." By such later provision, the term "campus" is defined as "...the grounds and buildings owned and occupied by a college or university for education purposes and streets and roads through and contiguous to the grounds."

Section 23-1-60 provides for the appointment by the Governor of "...such additional deputies, constables, security guards and detectives as he may deem necessary to assist in the detection of crime and the enforcement of any criminal laws of this State..." An opinion dated January 25, 1996 stated that "...a state constable is clearly regarded as a state officer possessing state-wide law enforcement authority as a peace officer." As determined by the State Supreme Court in Richardson v. Town of Mount Pleasant, 350 S.C. 291 at 296, 566 S.E.2d 523 at 526 (2002),

State constables appointed by the governor have state-wide jurisdiction...Some law enforcement officers are required or authorized to obtain state constable commissions. Generally, the jurisdiction of these law enforcement officers is circumscribed by statute. (emphasis added).

The Court noted that these "several different types of constable's officers" were in marked contrast to municipal police officers who "need not obtain commissions from the governor to execute the power and duties of a state constable." 350 S.C. at 297. At that point, the Court referenced Section 59-116-20 which authorizes private colleges and universities to establish police departments and its provision that the jurisdiction pursuant to such appointment "is limited to the campus grounds and streets and roads through and contiguous to them." Additionally, pursuant to subsection (B) of Section 59-116-30, "[c]ampus police officers may arrest persons outside the territory described in subsection (A) when the person arrested has committed a criminal offense within that territory, and the arrest is made during the person's immediate and continuous flight from that territory."

In Richardson, comparison was made to S.C. Code Ann. §§ 50-3-310 and 50-3-340 which authorize the commissioning of officers for the Department of Natural Resources. Section 50-3-310 states that

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[t]he director shall appoint the enforcement officers of the Natural Resources Enforcement Division, subject to their receiving a commission from the Governor....

Section 50-3-340 states that

[t]he enforcement officers, when acting in their official capacity, shall have statewide authority for the enforcement of all laws relating to wildlife, marine, and natural resources.

The Court recognized the distinction between campus police officers and their limited territorial jurisdiction and Natural Resource officers with their specific grant of statewide authority.

An opinion of this office dated February 8, 1995 stated that

...state constables "have state-wide jurisdiction ..." unless otherwise restricted. A state constable's jurisdiction can be restricted either by statute, see, e.g., § 59-116-10 et seq. [campus security officers at private colleges], or upon issuance of the commission itself. If restricted, the constable possesses only such jurisdiction as is specifically provided. (emphasis added).

That opinion noted that as to any law enforcement officer working outside his jurisdiction, he would only have the law enforcement authority given to private citizens generally. For instance, an opinion of this office dated August 29, 1986 noted that S.C. Code Ann. § 17-13-10 allows a private citizen to arrest a felon or thief upon view of a felony committed, certain information that a felony has been committed, or view of a larceny committed. Furthermore, S.C. Code Ann. § 17-30-20 allows any citizen to make an arrest of any person in the nighttime where the latter has committed a felony, has entered a dwelling house without express or limited permission, has broken or is breaking into an outhouse with a view to plunder, has in his possession stolen property, or is under circumstances which raise just suspicion of his design to steal or commit some other felony, and flees when he is hailed.

Consistent with the above, in my opinion, law enforcement officers appointed pursuant to Sections 59-116-20 et seq., while commissioned as state constables pursuant to Section 23-1-60, would nevertheless have their territorial jurisdiction limited to "the campus grounds and streets and roads through and contiguous to them." Such determination of limited law enforcement jurisdiction would also apply to Benedict College officers inasmuch as I am unaware of any separate statutory provisions granting these particular officers law enforcement powers. In my opinion, the law enforcement authority of these Benedict officers would not extend to Williams-Brice Stadium. At that stadium these officers would only have the law enforcement authority granted to private citizens generally.

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As to the authority of law enforcement officers appointed pursuant to Sections 59-116-20 et seq., including Benedict College officers, to carry a weapon, S.C. Code Ann. § 16-23-20 authorizes uncompensated state constables to carry a pistol off-duty. Such provision states:

It is unlawful for anyone to carry about the person any handgun, whether concealed or not, except as follows, unless otherwise specifically prohibited by law:

(1) regular, salaried law enforcement officers and reserve police officers of a municipality or 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 enforcement officers of the Natural Resources Enforcement Division of the Department of Natural Resources, and retired commissioned law enforcement officers employed as private detectives or private investigators; (emphasis added).

S.C. Code Ann. § 16-23-60 states that the “[p]rovisions of this article must not be construed to grant any additional police powers not authorized by law, and do not in any manner affect the powers of constables commissioned by the Governor.”

As indicated above, officers at private colleges and universities are granted law enforcement authority as a state constable pursuant to Section 23-1-60. A prior opinion of this office dated February 1, 1995 noted that pursuant to the authority granted by Section 16-23-20 to carry a weapon,

...there is no requirement that the officer be on duty. Similarly, the statute does not require the officer to be in uniform. The reference in the statute to “when they are carrying out official duties while in this State,” regards only “law-enforcement officers of the Federal government or other states”...The statute...allows “uncompensated Governor’s constables” to carry pistols. Again, there is no requirement that such a constable have a particular type of authority, or that he be on duty.

Consistent with such, in my opinion, Benedict College officers, having a commission pursuant to Section 59-116-20 as a state constable, would be authorized to carry a handgun anywhere in this State, including Williams-Brice stadium. However, as set forth by Section 16-23-60, “[p]rovisions of this article must not be construed to grant any additional police powers not authorized by law, and do not in any manner affect the powers of constables commissioned by the Governor.” Therefore, such authorization to carry a handgun anywhere in the State does not grant any additional law enforcement authority to these officers.

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Referencing the fact that Section 59-116-10 defines "college or university" as a private educational institution, you also questioned whether state-operated institutions that have their own police departments, such as the University of South Carolina and Clemson University, derive their law enforcement authority solely from Section 23-1-60. As noted, such provision authorizes the appointment of state constables.

Prior opinions of this office have referenced the fact that certain law enforcement officers of the various public colleges and universities in this State derive their law enforcement authority from a constable's commission. The previously referenced opinion of this office dated February 1, 1995 dealt with the authority of officers of the Citadel Department of Public Safety to carry weapons during off-duty hours as well as their territorial jurisdiction to enforce State laws. That opinion noted that these officers were commissioned as state constables pursuant to Section 23-1-60. As to their territorial jurisdiction, the opinion referenced another opinion of this office dated May 6, 1976 which commented that

...campus security departments are staffed by special State constables without additional compensation who are appointed by the Governor...[S]uch constables have state-wide jurisdiction ...unless otherwise restricted.

As to law enforcement officers at the Citadel, it was noted that the commissions were unrestricted. Noting such, the opinion stated "...if a constable's commission is unrestricted, either by specific statute or by the terms of issuance, the legal authority to make an arrest extends statewide...."

An opinion of this office dated May 6, 1976 stated that, generally, campus security departments throughout the State are staffed by special State constables without additional compensation who are appointed by the Governor. The school addressed in that opinion was the Medical University of South Carolina and it was noted that the commission addressed in that opinion was a constable's commission restricted by its terms to the jurisdiction of the Medical University. The opinion noted that based upon the wording of the commission, that officer's authority was limited to streets running through and bordering immediately the Medical University property. See also: Op. Atty. Gen. dated February 8, 1995 ("the particular constable's jurisdiction was, in fact, restricted by its terms to the jurisdiction of the Medical University and other state property.").

However, I was informed by Ms. Diana White with your agency that currently the constable commissions provided to law enforcement officers with the various public colleges and universities in this State are unrestricted with state-wide jurisdiction. Therefore, if that is the case, these officers with these various public colleges and universities in this State have state-wide law enforcement authority. Therefore, as to any law enforcement officer of a public college or university in this State who derives his or her law enforcement authority through a constable's commission, the territorial jurisdiction of his or her authority would be dependent upon whether their constable's commission was restricted or unrestricted with regard to their law enforcement authority.

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The only exception that I can find regarding a public university in this State is as to the Clemson University police department. S.C. Code Ann. § 59-119-310 et seq. authorizes the establishment of a municipal corporation "known as Clemson University". Pursuant to Section 59-119-320, the board of trustees "...shall make such rules for the maintenance of order and provide such punishments, within the jurisdiction above defined, by fine or imprisonment, as will keep the territory within their jurisdiction free from nuisances and enforce the police regulations of the State." Section 59-119-340 authorizes the appointment by the Board of Trustees of Clemson University of "...one or more special constables who shall exercise all the power of a State constable or of a municipal policeman to enforce obedience to the ordinances of the Board and to the laws of the State." An opinion of this office dated September 28, 2000 referenced that pursuant to the authority granted officers by Section 59-119-340, the Clemson police department "...would be akin to a municipal police department." Reference was made to S.C. Code Ann. § 5-7-110 which states that

...[p]olice officers shall be vested with all the powers and duties conferred by law upon constables, in addition to the special duties imposed upon them by the municipality. Any such police officers shall exercise their powers on all private and public property within the corporate limits of the municipality and on all the property owned or controlled by the municipality wheresoever situated....

Several prior opinions of this office cited statements by particular Clemson University police officers that their law enforcement authority was derived solely from a State constable's commission. See, e.g., Op. Atty. Gen. dated October 15, 2003; February 26, 2001; January 25, 1999. I was also informed by Ms. White that currently, constable commissions are provided to Clemson University police officers. According to Ms. White, the individuals with these commissions are given state-wide law enforcement authority. Therefore, it appears that as to Clemson University law enforcement officers, their law enforcement authority would be dependent upon whether they are granted a constable's commission with state-wide authority or are considered municipal police officers appointed pursuant to Section 59-119-340. If they are municipal police officers without a separate constable's commission, they would have law enforcement authority similar to other municipal police officers in this State "...on all private and public property within the corporate limits of the municipality and on all the property owned or controlled by the municipality wheresoever situated."

If there are any questions regarding the above conclusions, please advise.

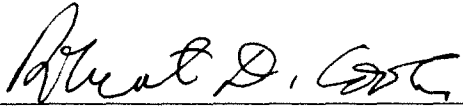
Sincerely,



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REVIEWED AND APPROVED BY:



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