

June 4, 2007

The Honorable Kristopher R. Crawford  
Member, House of Representatives  
327-D Blatt Building  
Columbia, South Carolina 29211

Dear Representative Crawford:

In a letter to this office you questioned whether off-duty police officers and reserve officers are allowed to carry concealed weapons on school property. You particularly referenced the provisions of S.C. Code Ann. § 16-23-420(A) which states

[i]t is unlawful for a person to possess a firearm of any kind on any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, other post-secondary institution, or in any publicly-owned building, without the express permission of the authorities in charge of the premises or property.

It is specifically provided, however, by Section (D) that “[t]his section does not apply to a guard, law enforcement officer, or member of the armed forces, or student of military science.” Therefore, law enforcement officers are not prohibited from possessing a firearm on the premises of or on property owned, operated or controlled by a school.

While it is obvious that a police officer would be considered a law enforcement officer, a reserve officer would also come within the definition of a “law enforcement officer”. The term “reserve police officer” is defined by S.C. Code Ann. § 23-28-10 as “...persons given part-time police powers without being regularly assigned to full-time law enforcement duties.” Therefore, reserve police officers are generally considered “law enforcement officers” even though they serve in a limited capacity. See: Op. Atty. Gen. dated February 16, 1995. See also: S.C. Code Ann. § 23-28-70(A) (“Reserves shall serve and function as law enforcement officers only on specific orders and directions of the chief or sheriff.”); § 23-28-100 (“Reserves shall wear uniforms which will identify them as law enforcement officers.”).

As noted, you specifically questioned whether the term “law enforcement officer” as used in subsection (D) in exempting such officers from the prohibition against carrying concealed weapons on school property encompasses off-duty officers and reserve officers. As to the authority of a law enforcement officer and a reserve officer to carry weapons generally, S.C. Code Ann. § 16-23-20 states that

[i]t 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 state agency, 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.

Therefore, such provision specifically authorizes law enforcement officers and reserve police officers to carry a weapon whether concealed or not. 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”....

Therefore, law enforcement officers and reserve police officers are authorized to carry a handgun, whether concealed or not, anywhere in this State and there is no requirement that such officers be on duty. See: Ops. Atty. Gen. dated January 16, 2007 and May 12, 2006.

As to any impact of this State’s concealed weapons law, S.C. Code Ann. §§ 23-31-205 et seq. generally provide for the carrying of concealed weapons by individuals in this State and include the general requirement for a permit in order to carry such weapons. However, Section 23-31-217 states that “[n]othing in this article shall affect the provisions of Section 16-23-20.” As referenced above, by Section 16-23-20 law enforcement officers and reserve police officers are authorized to carry a handgun, whether concealed or not. A prior opinion of this office dated March 8, 2000 concluded that the restrictions of Sections 23-31-205 et seq. “...do not apply to those carrying a weapon in a manner allowed by Section 16-23-20.” Therefore, the restrictions of this State’s concealed weapons law are inapplicable to law enforcement officers and reserve police officers.

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Consistent with the above, in the opinion of this office, off-duty police officers and reserve officers are allowed to carry weapons on school property. The prohibitions of Section 16-23-420(A) are inapplicable to such officers.

With kind regards, I am,

Very truly yours,

Henry McMaster  
Attorney General

By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Assistant Deputy Attorney General