ALAN WILSON
ATTORNEY GENERAL

March 16, 2011

Thomas W. Holland, Sr., Esquire
General Counsel,
Lancaster County Sheriff's Office
P.O. Box 908
1941 Pageland Highway
Lancaster, SC 29721

Dear Mr. Holland:

You have requested an opinion from this office concerning obligations of the Lancaster County Sheriff's Office regarding an arrest on private property by a private security agency. Specifically, you ask the following:

1. Is the Sheriff's Office required to accept and store any evidence a private security officer collects or seizes during the arrest? Does it make a difference dependent on the nature of the evidence? (for example drugs, guns, money, vehicles)

2. If the evidence collected needs further processing, who is responsible? If it is the Sheriff Office's responsibility, can the Sheriff's Office charge the private security agency the cost incurred for the processing of the evidence?

3. If the charge that is made by the private security agency is not a General Sessions charge, can the county bill the private security agency for housing their inmate?

A "security business," as defined in S.C. Code Ann. §40-18-20(b) (Supp. 2010), means:

> . . . the provision of personnel whose duties include watching over, protecting, or defending people or property against intrusion, damage, injury, or loss, and specifically includes, but is not limited to, the following authorities or responsibilities: to allow or refuse access to property or certain areas of property; detect, prevent, or report entry by unauthorized persons; observe for and react to hazards or hazardous situations; observe for and react to violations of law or policy; observe for and react to emergencies; observe for and react to

> thefts or other incidents; apprehend or report intruders or trespassers; and maintain order or discipline.

Section 40-18-20(b) elaborates further:

> (1) "Contract security business" means engaging in the security business by providing private patrol, watchman, guard, security, or bodyguard service for a fee.
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> (2) "Proprietary security business" means employing security officers who are assigned to security duties on the employer's property.

The State Law Enforcement Division (SLED) has the authority to license and regulate private security agencies pursuant to §§40-18-20 et seq. and, among other things, has the responsibility to determine the qualifications of applicants, the investigation of alleged violations of the provisions regulating the security business, and the promulgation of rules and regulations necessary in carrying out the provisions of the statutory scheme. These regulations, for example, provide for certain educational requirements dealing with training and the use of equipment [26 S.C. Code Ann. Reg. 73-419, -420, -421, 422 (Supp. 2010)], reporting arrests to a law enforcement agency [Reg. 73-415], and prohibiting the transportation of prisoners or the pursuit of suspects off of the protected property [Reg. 73-416]. Additionally, Reg. 73-417 requires full cooperation in the prosecution and disposition of cases resulting from activities of security officers, including but not limited to, the furnishing of statements, provision of evidence, bail or bond hearings and court appearances. Security officers are prohibited from hindering, obstructing or failing to cooperate with the investigation or other official law enforcement matters. Reg. 73-418 [Discovered Criminal Activity; Private Security] provides:

> 1. Private security officers are required to immediately secure the scene of a discovered crime on protected property, to immediately notify the law enforcement agency of jurisdiction, and to report suspected criminal activity on the protected property to the primary law enforcement agency of jurisdiction as soon as reasonably possible.
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> 2. Private security officers must receive training by their employer sufficient to ensure adequate knowledge to properly and competently secure and preserve a crime scene.

We stated in an earlier opinion referencing the former "South Carolina Private Detective and Private Security Agencies Act, which was repealed and recodified in Title 40, Chapter 18,[1] that "[i]n 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." Op. Atty. Gen., February 7, 1980. This office has recognized that "it is the duty of every

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[1]See 2000 Act No. 372, §2, effective June 6, 2000.

security guard to protect the life and property to which he is assigned." Ops. Atty. Gen., August 10, 2009; September 8, 1980.

The initial question you pose involves the responsibility of security guards following arrest. Consistent with prior opinions of this office, private security guards are considered law enforcement officers only within the boundaries of the property they or their company have contracted to protect. Ops. Atty. Gen., August 10, 2010; September 29, 2006; January 15, 1985; April 2, 1980. To enable private security guards to protect this property, they are empowered to effect arrests as a sheriff by virtue of §40-18-110, which provides for the law enforcement authority of a security guard licensed by SLED. Such provision states that:

> [a] person who is registered or licensed under this chapter and who is hired or employed to provide security services on specific property is granted the authority and arrest powers given to sheriff's deputies. The security officer may arrest a person violating or charged with violating a criminal statute of this State but possesses the powers of arrest only on the property on which he is employed. [Emphasis added].

In its decision in City of Easley v. Cartee, 309 S.C. 420, 424 S.E.2d 491, 492 (1992), the South Carolina Supreme Court explained that,

> [t]he legislature has granted licensed security guards the authority and power of sheriffs to arrest any person violating the criminal statutes of this State . . . The power is limited only by the requirement that the arrest must be made on property that the security officer is licensed to protect . . . Thus, like the police, licensed security officers perform a law enforcement function and act in an official capacity when making an arrest. Cf. State v. Brant, 278 S.C. 188, 293 S.E.2d 703 (1982)(security guard is a law enforcement officer for purpose of resisting arrest prosecution); Chiles v. Crooks, 708 F.Supp. 127, 131 (D.S.C. 1989)(arrest by security guard on licensed premises is action under color of state law within scope of 42 U.S.C. §1983).

Clearly, §40-18-110 only empowers the licensed private security guard to effect an arrest as a public law enforcement official might. Attached to this authority to arrest is a corresponding duty to take the detained individual to the proper authorities to "be dealt with according to the law." Westbrook v. Hutchinson, 195 S.C. 101, 10 S.E.2d 145 (1940). Accordingly, we have stated that private security guards have a similar duty to deliver such persons to the appropriate authorities as soon as is reasonably possible. Ops. Atty. Gen., August 10, 2009; November 9, 1977. In an opinion dated September 8, 1980, we stated:

> [i]t has been the opinion of this Office that a private security guard, having lawfully arrested a defendant on property to which he is assigned and upon which he is empowered to make arrests, should then deliver the defendant to the proper authorities without leaving the assigned property. . . . [S]ince a private security guard loses certain authority and powers of arrest upon leaving

> property he is assigned to protect, a law enforcement agency is the appropriate agency by which a defendant should be transported from the scene of the arrest to jail. . . .

In a prior opinion of this office, however, we advised the power and authority vested in licensed private security guards that sheriffs have to effect an arrest on property "empowers [security guards] to do no more." We stated that existing legislation did not raise private security guards "to the level of that of a public law enforcement official." Op. Atty. Gen., February 7, 1980 [referencing former §40-17-130].

We further addressed in that opinion whether a security guard had authority to investigate a crime on the property which they are hired or employed to protect. We advised:

> [t]he ostensible purpose of the [Detective and Private Security Agencies 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. . . . 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.

Op. Atty. Gen., February 7, 1980; see Chiles, 708 F.Supp. at 131. We concluded that "[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." See Reg. 417 [requiring cooperation with law enforcement agencies and officers].

Legislation regulating private security guards is a "special statute, relating to the regulation of a profession, and the powers of the State granted to certain licensed members of that profession must viewed strictly, and within the limitations of the statute." Op. Atty. Gen., August 4, 1987 [finding that absent specific authorization granting private security guards the authority to engage in hot pursuit away from the property they are assigned to guard, it would appear they probably do not possess the authority to engage in hot pursuit].

We emphasized in prior opinions of this office that a sheriff is the chief law enforcement officer of a county. See Ops. Atty. Gen., September 10, 2010; April 20, 2006; March 8, 1989. As noted in an opinion dated March 1, 2005, a sheriff's jurisdiction encompasses the entire county. An opinion dated November 6, 1992, stated:

> [t]he general law in this State presently requires a sheriff and his deputies to patrol their county and provide law enforcement services to its citizens. Such is consistent with . . . (his) . . . status as the chief law enforcement officer of a county. [Emphasis added].

Section 23-13-70 (2007) provides:

> [t]he deputy sheriffs shall patrol the entire county . . . to prevent or detect crime or to make an arrest . . . and shall use every means to prevent or detect, arrest and prosecute . . . for the violation of every law which is detrimental to the peace, good order and morals of the community.

A sheriff and his deputies have full law enforcement authority in any area of his county, including an area which is under the protection of a licensed private security guard. Op. Atty. Gen., December 21, 1988. In this opinion, we stated:

> [a] prior opinion of this office dated February 7, 1980, dealt with the authority of a law enforcement officer in an area where a private security guard is patrolling. The opinion stated that
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> > (a)ssuming . . . 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.
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> The opinion noted, of course, that situations may exist where a security guard is hired to protect an area where there may be some expectation of privacy. The opinion stated that in such circumstances
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> > (t)he 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.
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> The opinion further noted that in certain circumstances a security guard may be subject to arrest for obstruction of justice.
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> Another opinion of this Office dated October 2, 1985, stated that "(t)he distinction as to whether property is private or public is irrelevant to the question of the authority of a law enforcement officer to make arrests or investigate crimes generally." Of course, as noted in the 1980 opinion of this Office referenced above, certain requirements, such as warrant requirements, must be met where applicable. The 1985 opinion also recognized that whether certain property is public or private is irrelevant to certain traffic offenses, such as driving under the influence and reckless driving.

It should be noted that Chapter 18 of Title 40 does not address the responsibilities of law enforcement agencies in assisting private security agencies. In the September 8, 1980, opinion, however, we advised:

> [i]t must be said that [private security guards, and sheriffs and deputies] are under a duty to assist each other as well as citizens of the county in the detection, arrest, and prosecution of criminal offenses. Therefore, a deputy sheriff is under a duty to assist a private security guard or private citizen in bringing the criminal offender to justice.

This Office is unaware of any reason why such assistance by the sheriff's office or its deputies would be inappropriate in the circumstances you describe. In fact, we encourage such cooperation. Private security guards are licensed in this State in an effort to assist law enforcement authorities in their duties, but their duty is limited to arrest and assistance to law enforcement. Private security guards do not replace the responsibility of the sheriff's department. It is the duty of the sheriff's office and its deputies to provide law enforcement services to its citizens on public and private property. Consistent with legal authority and prior opinions of this office charging the sheriff's office and its deputies with the duty to detect and prosecute crime within the jurisdiction, it is the opinion of this office there is a corresponding duty to accept and to store evidence of a crime seized by security guards at the time of arrest. This is the best approach to assure the duties of both law enforcement and private security agencies are effectively carried out.

In addressing your second question, we note the opinion of this office dated August 7, 2000, concerning whether the sheriff's office must offer services of his drug-sniffing dogs to a school district free-of-charge. We then advised that:

> [o]ur Supreme Court has consistently recognized that costs and fees "are in the nature of penalties and the statutes granting them have always been strictly construed." State et al. v. Wilder, 198 S.C. 390, 394, 18 S.E.2d 324 (1941). In other words, "statutes providing for fees are to be strictly construed against allowing a fee by implication with respect to both the fixing of the fee and the officer entitled thereto." 67 C.J.S. Officers, § 224. Governing the fees and costs of public officers generally, South Carolina Code of Laws Section 8-21-10 states, "The several officers named in . . . Article 1 of Chapter 19 of Title 23, shall be entitled to receive and recover the fees and costs prescribed by this chapter. . . and Article 1 of Chapter 19 of Title 23, and none other, for the services herein enumerated." Moreover, §8-21-30 of the Code requires that if a Sheriff "improperly" charges a fee, he may be liable for "ten times the amount so improperly charged. . . ."

S.C. Code Ann. §23-19-10 (2007) states the general schedule of fees that a sheriff's office may charge for the performance of some of their duties. The statute begins: "Except as otherwise expressly provided by general law, the fees and commissions of sheriffs are as follows . . ." (Emphasis added). The statute presents a detailed list of the circumstances in which the sheriff is allowed to charge a fee,

including for the service of civil process, commission on monies collected, and for claim and delivery actions. The statute ends: "The provisions of this section do not apply to criminal processes or cases," which has been interpreted by this Office to further restrict the sheriff from charging fees in criminal processes. See Ops. Atty. Gen., August 7, 2000; Jan 27, 2000. Only a few additional statutes permit the sheriff to collect fees for other particular services. See, *e.g.*, §12-59-110 (2000) [compensation for serving warrants and taking possession of forfeited property, §15-17-540 (2005)[fee for summoning freeholders of property], §38-57-260 (2002)[fee for levy on debtor's property].

Thus, given the rule that fee statutes must be strictly construed against the charging of fees not expressly authorized, the specific prohibition in §8-21-10 against the charging of fees not enumerated in the statutes, and the absence of any express authority to charge a fee for the costs incurred for processing evidence, it is the opinion of this Office that a sheriff who has the resources to provide such a service to a private security agency must do so free of charge in a criminal case.

Furthermore, simply as a matter of public policy, the sheriff of a county cannot receive remuneration for the performance of a duty imposed on him by law. In Op. Atty. Gen., April 11, 1985, we advised that a sheriff's office is not authorized to enter into a contract to provide law enforcement with a housing subdivision whereby the subdivision would receive additional law enforcement protection and services for a fee. We stated:

> [t]he general law in this State presently requires a sheriff and his deputies to patrol their county and provide law enforcement services to its citizens. [Citations omitted]. As a matter of public policy, a political subdivision, such as a county, is prohibited from entering into a contract by which it receives remuneration from a citizen for the performance of a public duty which is imposed on it by law, either expressly or by implication. McQuillin, Municipal Corporations, Section 29.08 p. 234.

Consistent with this opinion is the following proposition of law:

> [t]he general rule with reference to peace officers is well settled that a promise of reward or additional compensation to a public officer for services rendered in the performance of his duty cannot be enforced. Both public policy and sound morals forbid that such an officer should be permitted to demand or receive for the performance of a purely legal duty any fee or reward other than that established by law as compensation for the services rendered, including the arrest of criminals, protection of property and the recovery of stolen property. 70 Am.Jur. 2d, Sheriffs, Police and Constables, §71.
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> The foregoing basic common law and public policy principles have been codified by the General Assembly in specific statutory enactments. For example, Section 16-9-250 makes it a misdemeanor for any sheriff or other peace officer in South Carolina ". . . to make any charge for the arrest, detention, conveying or delivering of any person charged with the commission

> of crime in this State, except the mileage and necessary expenses as now provided by law." A public employee is proscribed from receiving additional compensation to that provided by law for the performance of duties by Section 16-9-230. Moreover, a provision of the Ethics, Government Accountability and Campaign Reform Act of 1991, Section 8-13-720, requires that no person ". . . may offer or pay to a public official [etc.] . . . and no public official [etc.] . . . may solicit or receive money in addition to that received by the public official [etc.] in his official capacity for advice or assistance given in the course of his employment as a public official [etc.]. . . ."

Op. Atty. Gen., April 7, 2008 [addressing whether a special tax district could enter into a contract with a sheriff's department to provide "police protection" to the tax district in addition to the regular sheriff's department patrols and law enforcement activities].

Under the particular circumstances presented in your letter, it is our opinion that although no statute mandates the sheriff's office process evidence of a crime, the service certainly falls under general law enforcement responsibilities of the sheriff's office. Op. Atty. Gen., August 7, 2000; see also Op. Atty. Gen., January 27, 2000 [a sheriff may not charge a criminal defendant a fee for serving subpoenas in the proceedings against him]. Because the sheriff's office has a statutory duty to "use every means to prevent or detect, arrest and prosecute . . . for the violation of every law which is detrimental to the peace, good order and morals of the community," it may not charge a fee to the private security agency for doing so.[2]

Before addressing your third question concerning financial responsibility for a defendant arrested by private security guards, certain State statutory provisions are relevant. Section 24-5-10 (2007) states that generally,

> [t]he sheriff shall have custody of the jail in his county and, if he appoint a jailer to keep it, the sheriff shall be liable for such jailer and the sheriff or jailer shall receive and safely keep in prison any person delivered or committed to either of them, according to law. [Emphasis added].

In an opinion dated November 3, 2006, this office advised that we were "unaware of any statutes directly commenting on a county jail's responsibility to house defendants arrested for offenses within the jurisdiction of a municipal court." However, we acknowledged a prior opinion of this office dated June 5,

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[2]Note that in a prior opinion of this Office dated February 10, 1983, it was stated that a municipality's ability to contract to provide law enforcement protection was limited to contracts with areas outside the corporate limits. By comparison, while a county and county officials are not as a general matter obligated to perform services within the corporate limits of a city, the Legislature has provided by statute for municipal residents to contract for county services in certain situations. Section 4-9-40 (1986) of the "Home Rule Act" authorizes a county to "perform any of its functions, furnish any of its services within the corporate limits of any municipality, situated within the county, by contract with any individual, corporation or municipal governing body, subject always to the General law and the Constitution of this State regarding such matters." [Emphasis added].

1991, that dealt with the issue regarding whether when county jails are overcrowded, may they refuse prisoners from cities, weekenders or family court litigants. The opinion, referencing §24-5-10, stated:

> I am unaware of any State statutory provisions authorizing county jails to refuse admission of prisoners. As referenced, the county jail is given the responsibility pursuant to Section 24-5-10 to receive persons delivered to the jail.

As to the question of financial responsibility regarding prisoners incarcerated, prior opinions of this office have dealt with the subject of municipal prisoners housed in county jails. In an opinion dated March 6, 1990, we noted that one former Code provision, §14-25-100, which has since been repealed, stated that if a defendant arrested by a municipal law enforcement officer was committed to jail ". . . it shall be done at the expense of the city or town." This language was previously interpreted by the State Supreme Court in Greenville v. Pridmore, 162 S.C. 52, 160 S.E. 144 (1931) as requiring a county jailer to receive defendants accused of violating municipal ordinances into a county jail, but requiring municipal authorities to pay any expenses for their care and confinement. The 1990 opinion noted that an opinion of this office dated December 18, 1979, had commented that, in accordance with such ruling, a county must accept prisoners who were sentenced for violating municipal ordinances, but the municipality must pay the costs of incarceration.

In an opinion of this office dated January 6, 2004, referencing other opinions of this office, we stated that:

> . . . a municipality is responsible for the care and maintenance of prisoners arrested and/or convicted of state or municipal violations within the jurisdiction of a municipal court if these prisoners are lodged in a county jail. However, . . . a county is responsible for the care and maintenance of prisoners charged with state law violations within the jurisdiction of the court of general sessions. . . . (The opinion further noted that) . . . [w]ithin these guidelines, this office has, however, stressed the importance of resolving the question of fees for housing prisoners by means of a contract between the city and county. . . [Emphasis added].

The opinion particularly noted that, "[i]n most jurisdictions, the matter of a county jail's responsibility to accept prisoners from a municipality and which entity is financially responsible for their care has been resolved by contract." An opinion of this office dated August 22, 2001, indicated that as to the question of whether a county or municipality would be responsible for the non-emergency care of persons charged with a municipal court offense who are housed in a county detention facility, ". . . there is authority which would indicate that the municipality would be responsible for the costs of incarceration of a person charged with a municipal court offense."

While a municipality may be ultimately responsible for the costs of care of a prisoner in a county facility, as explained in the opinion of January 6, 2004, referenced previously:

> . . . we have been careful to distinguish between financial responsibility for the housing of prisoners on the one hand and a jailer's obligation to the court and under statute to accept prisoners pursuant to judicial order on the other. In an opinion of this office dated January 9, 1992, while we advised that "matters relating to financial responsibility be resolved by contract . . .", we also recognized therein that there is apparently "an obligation on the part of the county to accept a prisoner pursuant to Section 24-5-10 . . ." Thus, the issue of financial responsibility for housing municipal prisoners in a county jail must not be confused with the jail's general obligation to accept a prisoner ordered to a county facility by a municipal court.

These opinions remain in effect and are the opinions of this office. While the Legislature could resolve this issue one way or another, we are aware of no statute doing so with the exception of §24-3-30 (2007 & Supp. 2010), which provides, in pertinent part, that "[a] county or municipality through mutual agreement or contract, may arrange with another county or municipality or a local regional correctional facility for the detention of its prisoners." See also Op. Atty. Gen., December 10, 2002 [stating it is well established that the Legislature is presumptively aware of opinions of the Attorney General and, absent changes in the law following the issuance of an opinion, the Legislature is deemed to have acquiesced in the Attorney General's interpretation].

As to your specific question regarding whether the sheriff's office may bill the private security agency for housing an inmate if the charge is not a "General Sessions" offense, consistent with the prior opinions noted above and in the opinion of this office, the county is responsible for the care and maintenance of defendants charged with state law violations outside the jurisdiction of a municipal court. We construe the referenced language from prior opinions as not limited to any particular jurisdictional level General Sessions offense and, therefore, should apply equally to all the criminal courts of this State's unified judicial system in the jurisdiction.

Very truly yours,

N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

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