



ALAN WILSON
ATTORNEY GENERAL

September 25, 2012

The Honorable Chuck Wright
Sheriff, Spartanburg County
8045 Howard Street
Spartanburg, SC 29303

Dear Sheriff Wright:

We received your letter requesting an opinion of this Office regarding the authority of licensed private security guards in this State. You have questioned whether a private security guard has the right to sign an arrest warrant on a suspect that has committed an offense on the property the security guard is contracted to protect. You also question whether a private security guard has authority off the protected property, such as providing security for an arrestee at a medical facility or while booking an arrestee into jail.

Law/Analysis

The authority and regulation of private security guards is provided for in S.C. Code Ann. §§40-18-10 *et seq.* We have previously advised that private security guards are considered law enforcement officers only within the boundaries of the property they or their company have contracted to protect. *See, e.g., Ops. S.C. Atty. Gen.*, March 16, 2011; 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 private security guard licensed by the South Carolina Law Enforcement Division ("SLED").¹ This provision states:

[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 power 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 (1992), the South Carolina Supreme Court explained that:

¹For purposes of this opinion, we assume the private security guards to whom you refer are private security guards licensed by SLED.

[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).

City of Easley, 424 S.E.2d at 492.

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. See, e.g., Ops. S.C. Atty. Gen., March 16, 2011; August 10, 2009; November 9, 1977. We explained in an opinion dated September 8, 1980, that:

[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. . . . [Emphasis added].

Consistent with such, we have advised that a private security guard should not transport to jail an individual he has lawfully placed under arrest on the assigned property. See, e.g., Ops. S.C. Atty. Gen., March 16, 2011; October 25, 1995; December 21, 1988; November 9, 1977; cf. Op. S.C. Atty. Gen., March 16, 2011 [if a law enforcement officer is asked by a private security guard who has arrested an offender to transport that prisoner to jail, that law enforcement officer is under a duty to transport the prisoner to jail]. Significantly, we note 26 S.C. Code Ann. Reg. 73-416 provides that:

[p]rivate security officers exercising law enforcement authority of South Carolina Code Chapter 18, Title 40 must not transport prisoners or pursue suspects off the protected property.

Likewise, in a prior opinion of this Office we advised that 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 have further stated that existing legislation did not raise private security guards “to the level of that of a public law enforcement official.” Ops. S.C. Atty. Gen., February 7, 1980 [referencing former §40-17-130]; February 1, 2010 [private security guard has no jurisdiction to direct traffic on a public roadway regardless of the distance from the original location which they are hired to protect]; see also Ops. S.C. Atty. Gen., April 7, 2008 [“...a county would not be authorized to contract with a private security company for law enforcement purposes even though services...would constitute private security”]; June 8, 1993 [“...it does not appear that a county could contract with a private security firm to serve as guards at a county detention facility”]; April 2, 1980 [“...a municipality is not authorized to contract with a private security agency to provide the personnel of the private agency the power of arrest on public streets and public property”]. In addition, a private security guard has no power to engage in "hot pursuit" of offenders off assigned property. Op. S.C. Atty. Gen., August 4, 1987. We further advised in an opinion dated July 23, 1984, that a private security guard has no authority to provide security for a moving individual. We stated therein that:

an individual licensed as a private security guard has the power and authority of a sheriff to make arrests, but such authority is limited to the property he is hired to guard or protect. Obviously, such guards, while hired to guard and patrol certain property, could provide security for any individuals on such property. However, away from such property, the private security guards would only have the powers of arrest of a private citizen.

Accord Ops. S.C. Atty. Gen., May 23, 1995; December 21, 1988; cf. Op. S.C. Atty. Gen., August 29, 1986 [if a private security guard observes an offense occurring off designated property, he “could make an arrest within the same constraints placed upon any other private citizen”].

As to your question of whether a private security guard has the right to sign a warrant on a suspect that has committed an offense on the property the security guard is contracted to protect, we addressed this issue in an opinion dated August 10, 2009, in which we cited a prior opinion of this Office dated November 16, 1983, recognizing that the authority of a private security guard is "under a duty to go to the magistrate and swear out an arrest warrant." That opinion further referenced an opinion of this Office dated February 26, 1973, stating that “...any person who had knowledge of the facts involved, either directly or upon information imparted to him by others, could sign an affidavit upon which an arrest warrant could be issued.” In the 2009 opinion, we stated as follows:

[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. [Op. S.C. Atty. Gen., November 9, 1977]. That opinion reasons that since 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. Thus, the opinion states, a law enforcement officer transporting a prisoner lawfully arrested by a private security guard would be immune from liability if

he immediately transported the prisoner to jail or to a committing magistrate. The security guard is under a duty to go before a magistrate immediately to swear out a warrant and provide for the release of the prisoner... Clearly, it is the duty of every security guard to protect the life and property to which he is assigned. To enable the private security guard to protect this property, he is empowered to affect arrests as a sheriff by virtue of...(statutory law)... Sheriffs and their deputies are under a duty to patrol the county and to use every means to prevent or detect, arrest and prosecute for offenses committed within their jurisdiction... It must be said that they 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. If a law enforcement officer is asked by a private security guard who has arrested a prisoner, to transport that prisoner to jail, the deputy is under a duty to transport that prisoner to jail...

The law enforcement officer or citizen who arrests a person without a warrant must forthwith take the person to a judge or magistrate so that a warrant of arrest may be procured and the prisons dealt with according to law... Therefore, it is the duty of the security guard, having made arrest without a warrant on his assigned property, to go before the magistrate so that the prisoner may be dealt with according to law. The law enforcement officer called to respond to the scene of an arrest by a private security guard or private citizen for the sole purpose of transporting a prisoner to a committing magistrate or to jail is under no duty to investigate the arrest or make a determination as to whether probable cause existed to make the arrest. The security guard or private citizen would be under a duty to go immediately to the committing magistrate to swear out a warrant and that the prisoner may otherwise be dealt with according to law.

Therefore, in the opinion of this office, a security guard has the right to sign an arrest warrant on a suspect that has committed an offense on the property the guard is contracted to protect. [Emphasis in original].

Id. [citing Op. S.C. Atty. Gen., September 8, 1980]. These opinions remain the opinion of this Office.

You also question the applicability of §22-5-115(A) to private security guards. This provision states that:

[n]otwithstanding any other provision of law, a summary court or municipal judge may issue a summons to appear for trial instead of an arrest warrant, based upon a sworn statement of an affiant who is not a law enforcement officer investigating the case, if the sworn statement establishes probable cause that the alleged crime was committed. The summons must express adequately the charges against the defendant. If the defendant fails to appear before the

court, he may be tried in his absence or a bench warrant may be issued for his arrest. The summons must be served personally upon the defendant.

Subsection (B) adds the following:

(1) An arrest warrant may not be issued for the arrest of a person unless sought by a law enforcement officer acting in their official capacity.

(2) If an arrest warrant is sought by someone other than a law enforcement officer, the court must issue a courtesy summons.

A courtesy summons is issued by a summary court judge based upon the sworn statement of an affiant “who is not a law enforcement officer” or is issued to “nonlaw enforcement personnel.” See Op. S.C. Atty. Gen., May 2, 2012; May 25, 2011; December 16, 2008. We have previously stated that a courtesy summons is to be utilized where an individual is charged with a misdemeanor offense and the affiant is nonlaw enforcement personnel. See Op. S.C. Atty. Gen., August 7, 2008 [“... a courtesy summons must be used for summary level crimes involving victims charging a misdemeanor offense when the affiant is non-law enforcement personnel”]. In an opinion of this Office dated September 25, 2008, we concluded that a school resource officer is a law enforcement officer and would not be considered “nonlaw enforcement personnel” for purposes of §§22-5-110 or 22-5-115 regarding the issuance of a courtesy summons. See Op. Atty. Gen., August 18, 2008 [“...a courtesy summons would be applicable in shoplifting and fraudulent check cases involving misdemeanor offenses where the warrant is signed by nonlaw enforcement personnel...”). Therefore, consistent with such, a courtesy summons is to be utilized where an individual is charged with a misdemeanor offense and the affiant is nonlaw enforcement personnel.

As noted above, §40-18-110 provides that private security guards have no authority to exercise law enforcement authority except on the private property they are hired to protect. While the previously-cited opinions differentiate the powers of arrest depending upon whether the property is public or property the security guard is hired to protect, these opinions recognize that a licensed private security guard has the power of arrest. Indeed, §40-18-110 clearly states that a private security guard “is granted the authority and arrest power given to sheriff’s deputies” on the property he is hired to protect.

It is the opinion of this Office, therefore, that §§22-5-115 and 22-5-110 would not be applicable to private security guards, inasmuch as these guards are recognized as having the law enforcement authority of a deputy sheriff on the property they are hired to protect. City of Easley, 424 S.E.2d at 492. Therefore, they would not be considered as an affiant “who is not a law enforcement officer” for purposes of requiring the issuance of a courtesy summons instead of an arrest warrant. See Op. S.C. Atty. Gen., December 16, 2008.

Conclusion

The authority and regulation of private security guards is provided for in §40-18-110. Pursuant thereto, a security guard possesses the power of arrest upon the property he is employed to guard or

patrol. Accordingly, a private security guard is a "law enforcement officer" on such property. Away from the property, however, a private security guard carries with him on public property no more authority than a private citizen. Likewise, a private security guard should not transport to jail an individual he has lawfully placed under arrest on the assigned property, but should request a law enforcement officer for such purposes. A plethora of legal problems can be envisioned in situations where the arresting private security guard attempts to exercise general police powers off the private property he is contracted to protect.

In addition, a private security guard, having lawfully arrested an individual on property to which he is assigned and empowered to make arrests, is under a duty to go before the magistrate to swear out a warrant so that the individual may be dealt with according to the law. Because a private security guard is recognized as having law enforcement authority of a deputy sheriff on the property he is hired to protect, he is not considered an affiant "who is not a law enforcement officer" for purposes of requiring the issuance of a courtesy summons rather than an arrest warrant.

If you have any further questions, please advise.

Very truly yours,



N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



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