



ALAN WILSON
ATTORNEY GENERAL

April 2, 2013

The Honorable Michael A. Pitts
Representative, District 14
327-C Blatt Building
Columbia, SC 29201

Dear Representative Pitts:

We received your request for an opinion of this Office on behalf of a constituent who is a commissioned South Carolina Department of Public Safety ("DPS") Special Constable. By way of background, you attached his letter which states that he retired from the South Carolina Highway Patrol and also presently works at a local school district. The DPS Special Constable asks whether he may carry his weapon onto school property.

As to the authority to carry weapons generally, S.C. Code Ann. §16-23-20 provides that it is unlawful for anyone to carry a pistol about the person, whether concealed or not. Certain exemptions are provided, however, including: "regular, salaried law enforcement officers, and reserve police officers of a state agency, municipality, or county of the State, uncompensated Governor's constables . . . and retired commissioned law enforcement officers employed as private detectives or private investigators." [Emphasis added]. See Ops. S.C. Atty. Gen., January 16, 2007 (2007 WL 419402); May 12, 2006 (2006 WL 1574908). In the January 16, 2007, opinion, we stated that §16-23-20 allows "uncompensated Governor's constables" to carry pistols, and there is no requirement that such a constable have a particular type of authority or that he be on duty. The opinion concluded that the constable referenced in that opinion would be authorized to carry a handgun anywhere in this State. Id. However, with respect to Governor's constables, we note that the Governor is the appointing authority. See §23-1-60(A). The appointments may be revoked by the Governor at her pleasure, and the term of appointment is for the term of the Governor. The statute further provides for reappointment of constables by a successor Governor. See §23-1-60(B).

Significantly, this Office has previously advised that the South Carolina Law Enforcement Division ("SLED") is granted regulatory authority over these commissioned State constables. See Op. S.C. Atty. Gen., January 6, 2012 (2012 WL 440545). SLED is thereby authorized to establish training requirements, to set standards for conduct and prescribe limits on the use of authority, to determine the suitability and fitness of candidates, and to enforce its policies. Id. See Op. S.C. Atty. Gen., January 6, 2012 (2012 WL 440545) [advising that SLED's regulatory authority would certainly include a requirement that a Group III constable perform 120 hours of annual voluntary activity to maintain his/her commission]. Therefore, a person who holds a State constable commission is required to comply with SLED's policies and procedures established for State constables, including the carrying of weapons on school property. Id. This Office will defer to the administrative authority of SLED in this regard. Id. [advising that ". . . providing regulatory authority to SLED fosters uniformity of law enforcement services

and the conduct of State constables, ensures compliance with federal and state laws governing law enforcement conduct, and better serves law enforcement and the public in this area”]; cf. Op. S.C. Atty. Gen., August 3, 2006 (2006 WL 2593075) [concluding that private security guards are licensed by SLED, which is also authorized to promulgate regulations regarding the conduct of private security guards].

DPS Special Constables, on the other hand, are appointed by DPS pursuant to the provisions of §§23-6-200 *et seq.*¹ DPS Special Constables are former DPS law enforcement officers or State constables. See §23-6-200(1). They work without compensation. See §23-6-220(A). Although DPS Special Constables generally have statewide law enforcement authority, see §23-6-210(C), this authority is subject to limitations determined in writing by the DPS Director pursuant to §23-6-210(B). Accordingly, the Director issued DPS Policy 300.46 which regulates DPS Special Constables. Significantly, DPS Policy 300.46 explicitly limits the law enforcement authority of DPS Special Constables to the following: (1) to “engage in law enforcement activities as approved, in advance, by the DPS director and will only exercise their duties under the direct supervision of [DPS] law enforcement officials”; (2) “when encountering an imminent threat to public safety”; or (3) “when encountering a law enforcement officer who is in imminent danger and requires assistance.” The commission of a DPS Special Constable is, therefore, restricted by the Director. However, we believe DPS to be in the best position to make a determination about whether a DPS Special Constable is properly exercising his “law enforcement authority” pursuant to the DPS Policy and State law. This Office will defer to DPS regulatory authority in this regard. See Op. S.C. Atty. Gen., September 8, 2005 (2005 WL 2250210) (“[I]t has been our longstanding policy in the issuance of opinions to defer to the administrative agency charged with the enforcement of a particular area of law”); cf. Op. S.C. Atty. Gen., May 12, 2006 (2006 WL 1574908) [because the constable commission is limited by statute, the officer outside his jurisdiction would only have law enforcement authority granted to private citizens generally]. Inasmuch as DPS Special Constables are commissioned by DPS, and not pursuant to §23-1-60, in our view they are not exempted under §16-23-20.

Notwithstanding §16-23-20, the Legislature has provided in §23-6-240 that “[DPS Special Constables] who have received the required training shall be authorized by the director to carry pistols on and about their persons unless otherwise restricted by the director in writing.” [Emphasis added]. Accordingly, DPS Policy 300.46 allows DPS Special Constables to carry approved handguns on or about their persons, but “subject to any other provision of law” and “in strict compliance with South Carolina law . . .”² Any violation of these directives by a DPS Special Constable may result in termination of his/her commission. See §23-6-240. Of course, DPS, as the lawful regulating authority, may wish to consider expressly prohibiting DPS Special Constables from carrying weapons on school property.

Addressing your question, we note that §16-23-430(A) specifically provides:

[i]t shall be unlawful for any person, except state, county, or municipal law enforcement officers or personnel authorized by school officials, to carry on his

¹See 2000 S.C. Acts. No. 252, §1.

²DPS Policy 300.46 also requires that “[f]irearms must be adequately concealed . . .” when carried by a DPS Special Constable.

person, while on any elementary or secondary school property, a knife, with a blade over two inches long, a blackjack, a metal pipe or pole, firearms, or any other type of weapon, device, or object which may be used to inflict bodily injury or death.

Enacted in 1971, §16-23-430 has been amended at least twice in response to school violence. First, the statute was amended as part of the “Safe Schools Act of 1990” (Act No. 579, §1), and then again in 1993 (Act No. 184, §48), for the very same reason - the problem of weapons on school grounds. The 2009 amendment (Act No. 32, §1) added subsection (B) relating to concealed weapons.³

The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the Legislature in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Co., 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Moreover, as we have emphasized previously, this Office strongly supports the Second Amendment and the citizens’ right to bear arms. See, e.g., Ops. S.C. Atty. Gen., April 2, 2012 (2012 WL 1260182); December 7, 2010 (2010 WL 5578965).

Before addressing whether DPS Special Constables are exempted under §16-23-430(A), we refer to the opinion of this Office dated February 1, 1995 (1995 WL 803315), which addressed whether “Group III” State constables are qualified for the office of sheriff. As to education and experience qualifications, §23-11-110(5)(a) requires, as one alternative, that a sheriff “have at least five years’ experience as a certified law enforcement officer. . .”, as that term is now defined in §23-23-10(E)(1) [defining a “law enforcement officer” as “. . . an appointed officer or employee hired by and regularly on the payroll of the State or any of its political subdivisions, who is granted statutory authority to enforce all or some of the criminal, traffic, and penal laws of the State and who possesses, with respect to those laws, the power to effect arrests for offenses committed or alleged to have been committed”]. Discussing “Group III” constables in general, we explained that these constables were voluntary, or honorary, positions appointed

³This subsection authorizes a person to carry a concealed weapon pursuant to the “Law Abiding Citizens Self-Defense Act of 1996” (the “Act”), see §§23-31-205 *et seq.*, provided they have a valid concealed weapons permit and “the weapon remains inside an attended or locked motor vehicle and is secured in a closed glove compartment, closed console, closed trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle.” Otherwise, we note the Act goes to great lengths to preserve existing State law. The Act makes it quite clear that existing statutory prohibitions regarding the possession of firearms in particular situations are preserved. See §23-31-215(M) [“Nothing contained herein may be construed to alter or affect the provisions of Section ... 16-23-420, 16-23-430 ...” - - prohibiting the possession or carrying of firearms on school property]; cf. Ops. S.C. Atty. Gen., April 12, 2012 (2012 WL 1385562) [deputy coroner carrying a concealed weapon while not engaged in official duties of the office]; April 2, 2012 (2012 WL 1260182) [elected official carrying concealed weapon into city council meetings].

by the Governor. Although “Group III” constables are authorized to carry weapons and must undergo limited training, they could assist local law enforcement officials only if local officials requested approval of assistance by SLED and SLED granted the approval. We further noted that such approval was granted on a “per case” basis, and that an individual so approved must work with a certified law enforcement officer. We thus advised that “it is extremely doubtful” that a “Group III” constable would meet the definition of “law enforcement officer,” because they were voluntary or auxiliary type persons rather than paid, regularly employed officers or employees. We determined that “Group III” constables, while undergoing a 48-hour training course, were not considered “certified” law enforcement officers for purposes of the training statutes, as determined by the Criminal Justice Academy and as authorized by the South Carolina Law Enforcement Training Council. See §§23-23-10 *et seq.* We thus concluded that:

[d]ue to . . . the definition of “law enforcement officer” contained in [§23-23-10(E)(1)] . . . it is my advice that a [“Group III”] constable who has been through only a 48-hour training course (with annual in-service), who does not appear to meet the definition of “law enforcement officer” for purposes of the training statutes, who is apparently not certified according to the provisions of now Article 9, Chapter 6, of Title 23, does not possess the qualifications required by statute to be elected sheriff.

Without question, §16-23-430(A) exempts “state, county, or municipal law enforcement officers” from the prohibition of carrying a weapon on school property. [Emphasis added]. As with “Group III” State constables, however, in our opinion DPS Special Constables do not meet the definition of “law enforcement officer” as defined by State law, prior opinions of this Office, and as intended by the Legislature. DPS Special Constables have law enforcement authority only if such is granted in advance by the Director. If approval is granted, they must work under direct supervision of a DPS law enforcement official. DPS Special Constables are uncompensated rather than paid, regularly employed officers or employees. They are not required to have additional training, although they must complete in-service training on an annual basis as established by the Director. It is our understanding that DPS Special Constables are not considered “certified” through the Criminal Justice Academy. It is likewise doubtful they would be “law enforcement officers” for purposes of the training statutes. In fact, we observe that DPS Policy 300.46 states that DPS will not commission “law enforcement officers who presently are or could be commissioned under other existing state statutes, such as police officers . . .” or employees of a county or municipality that require “law enforcement authority in their job.” We therefore conclude that DPS Special Constables would not come within the meaning of a “law enforcement officer” and they may not carry weapons on school property pursuant to §16-23-430(A).

As previously noted, DPS Special Constables were established by legislation in 2000. Clearly, had the Legislature wished to create an exemption for them as to whether they could carry their weapons on school property, it could easily have done so in amended legislation or in Chapter 6 of Title 23. Thus, until the Legislature says otherwise, it is the opinion of this Office that DPS Special Constables may not carry their weapons on school property. If the Legislature desires to change this situation, it is free to do so.

Also relevant to your question is §16-23-420(A), which prohibits a person from even possessing a firearm on school property without the express permission of those in charge of the premises or property. The statute provides that:

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[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 in §16-23-420(D) that “[subsection (A)] does not apply to a guard, law enforcement officer, or member of the armed forces, or student of military science.” [Emphasis added]. 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. For reasons previously discussed with regard to §16-23-430(A), however, we are of the same opinion that a DPS Special Constable would not come within the meaning of a “law enforcement officer” and thus may not possess weapons on school property pursuant to §16-23-420(D).⁴ Cf. Ops. S.C. Atty. Gen., June 4, 2007 (2007 WL 1934797) [off-duty police officers and reserve officers are exempt under this statute]; February 16, 2007 (2007 WL 655620) [allowing a technical college to offer a program on gunsmithing which would include the presence of guns on school property].

Of course, the Legislature has provided that school officials may otherwise expressly choose to allow the possession of handguns on campus (§16-23-420(A)), or they may authorize personnel to carry handguns on school property (§16-23-430(A)). It is worth noting, however, that there are important liability and safety issues to be considered by school officials in this regard. We therefore suggest that such authorities consult with their attorneys on these matters.

If you have any further questions, please advise.

Very truly yours,



N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

⁴Section 16-23-420(A) contains language similar to §16-23-430(B) regarding persons with valid concealed weapons permits.