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The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

April 24, 1997

Robert M. Bell, Esquire  
Aiken County Attorney  
Post Office Drawer I  
Langley, South Carolina 29834

Re: Informal Opinion

Dear Mr. <sup>Bob</sup> Bell:

You indicate that you "have had an inquiry from the County Administrator and the Director of Public Works relative to the right of a Code Enforcement Officer to be issued and to carry a weapon or pistol." You further note that you issued an opinion on the matter, but since this Office has not yet addressed the question, you are requesting an opinion concerning the following question:

[m]ay a Code Enforcement Officer, appointed by County Council, be issued and carry a weapon or pistol during the performance of his duties of office? If so, under what circumstances may he do so?

**Law / Analysis**

S.C. Code Ann. Section 4-9-145 authorizes the appointment of Code Enforcement Officers. Such Section provides:

[t]he governing body of a county may appoint and commission as many code enforcement officers as may be necessary for the proper security, general welfare, and convenience of the county. These officers are vested with all the powers and duties conferred by law upon constables in addition to duties

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imposed upon them by the governing body of the county. However, no code enforcement officer commissioned under this section may perform a custodial arrest. These code enforcement officers shall exercise their powers on all private and public property within the county. The governing body of the county may limit the scope of a code enforcement officer's authority or the geographic area for which he is authorized to exercise the authority granted.

See also, § 56-7-780 [counties and municipalities authorized to adopt by ordinance and use an ordinance summons for the enforcement of county and municipal ordinances.]

Section 16-23-20 enumerates certain exceptions to the general concealable weapons law ("The Law Abiding Citizen's Self-Defense Act of 1996", codified at § 23-31-215 et seq.). Such Section states in pertinent part that

[i]t is unlawful for anyone to carry about the person any pistol, whether concealed or not, except as follows:

- (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.

We have concluded that a Code Enforcement Officer is an "officer" for dual office holding purposes. See, Op. Atty. Gen., April 9, 1997 (Informal Opinion). In addition, we have recognized that because these officers "are granted 'all the powers and duties conferred by law upon constables', the vehicles used by such officers "would qualify as vehicles used 'primarily for law enforcement' or as 'police vehicles.'" Op. Atty. Gen., Op. No. 93-58 (September 13, 1993). Accordingly, we found in that opinion that "it appears that such officers would be authorized to use blue lights on their county vehicles." Id.

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The question here, however, is whether such officers would be considered "regular, salaried law enforcement officers" for purposes of § 16-23-20(1).

In a number of previous opinions, we have concluded that various officers did not meet the definition of "regular, salaried police officers" within the ambit of this Code Section. For example, in Op. Atty. Gen., Op. No. 92-52 (September 11, 1992), we opined that a bailiff did not qualify to carry a pistol within the exception of § 16-23-20(1). There, we stated:

[i]t does not appear that bailiffs should be considered "regular, salaried law enforcement officers." There are no specific exceptions for bailiffs. However, included in the exceptions is the authorization for an individual to apply to the State Law Enforcement Division for a permit to carry a pistol. Based upon a review of prior opinions of this Office, unless there is a specific statute particularly authorizing an individual to carry a pistol or unless an individual falls within one of the exceptions set forth in Section 16-23-20, an individual would have to obtain a permit in order to carry a pistol.

Likewise, in Op. Atty. Gen., Op. No. 77-340 (October 31, 1977), we considered the status of special deputies authorized by Section 23-13-40 of the Code for the service of process in civil and criminal proceedings only. We noted that

[s]uch deputies have no authority to carry weapons and have no general police authority inasmuch as such responsibilities are not necessary in performing such limited duties. Special deputies have no authority to arrest an individual other than that possessed by an ordinary citizen. It has been held that persons under the age of majority may lawfully act as special deputies of the Sheriff though he may not act as an officer. McConnell v. Kennedy, 29 S.C. 180, 7 S.E. 76 (1888) and Prince v. Dickson, 39 S.C. 477, 18 S.E. 33 (1893).

And in an opinion of May 1, 1978, this Office concluded that

... special deputies as provided therein [Section 23-13-40] are expressly appointed, 'for the service of process in civil and criminal proceedings only.' Accordingly, persons so appointed need not qualify as regular law enforcement officers

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... and, indeed, need not even be adults. McConnell v. Kennedy, 29 S.C. 180, 7 S.E. 76 (1888). Since special deputies are appointed only for the service of process, they have no authority to carry weapons and exercise no general police authority. They accordingly have no authority to arrest persons, other than that possessed by ordinary citizens in this state.

Section 23-6-400(D)(1) defines the term "[l]aw enforcement officer" for purposes of the Law Enforcement Officers Act. A "law enforcement officer" is defined 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.

It is my understanding that Code Enforcement Officers are not deemed by the Criminal Justice Academy to be "law enforcement officers" for purposes of the Training Act, but are permitted as a courtesy to attend the Academy and receive certain course instruction.

The term "regular law enforcement officer" or "regular police officer" has been addressed in a variety of contexts in the case law. For example, in 6A C.J.S., Arrest, § 17 "regular police officers" are described as "officers with the regular duties of policemen". Typically, a "regular police officer" is authorized to make an arrest without a warrant. Id. And in Board of Street Commrs. of Hagerstown v. Williams, 96 Md. 232, 53 A. 923, 924 (\_\_\_\_), the term "regular" is deemed to mean constant, fixed and not temporary and thus "regular policemen" are policemen who are to serve until removed for cause.

In Deskins v. West Brownsville Borough, 388 Pa. 547, 550, 551, 131 A.2d 101, 102 (1957), the Supreme Court of Pennsylvania rejected the argument that the term "regular, full-time police officer" as used in a tenure act meant that a police officer must be employed permanently rather than for a two-year period, as was the factual setting in Deskins. The Court stated that

... the Borough argues that Deskins' two-year limited employment contract prevented him from achieving the status of a 'regular' employee. They would have us read the word

'regular' as requiring a permanent or indefinite term of employment. The purposes of the legislation and the policy it serves leads us to reject their contention. We believe that by the phrase 'regular ... police officer' the legislature meant to refer to the nature of the job held and the character of the work performed rather than the length of the service contracted for. ... In the present case the post of police officer has been in existence for over twenty years; thus, it cannot be argued that this position was created to meet unusual conditions or temporary circumstances. Moreover, the appellants concede that Deskins performed all the normal and customary duties of a police officer. Accordingly, we hold that the position to which Deskins was appointed was regular and full-time; hence Deskins is secure in his tenure, and can only be removed in accordance with the procedure set forth in the Act.

131 A.2d at 102.

By comparison, courts have held that a "special policeman" engages to do temporary police duty in a particular place on a special occasion. Fogarty v. York, 60 N.Y.S. 352, 354 (1899). A special policeman is one who is not a member of a permanent and organized police force, but merely engages to do temporary police duty in a particular place on a special occasion. Uhr v. Lambert, 188 S.W. 946, 947 (Tex. 1916).

The complication present here unlike the situations addressed in our previous opinions is that a Code Enforcement Officer possesses "all the powers and duties conferred by law upon constables," even though at the same time no such officer "may perform a custodial arrest." We have recognized that

... a state constable is clearly recognized as a state officer, possessing statewide law enforcement authority as a peace officer. Our Supreme Court has stated that constables perform all the duties of law enforcement officers and in particular "a constable stands on the same footing as a sheriff." State v. Franklin, 80 S.C. 332, 338, 60 S.E. 953, 955 (1908). In Allen v. Fidelity and Depos. Co. of Md., 515 F.Supp. 1185, 1189 (D.S.C. 1980), the Court noted that in 1870 constables with general law enforcement powers existed at the city, local, county and state levels together with county sheriffs and to a

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lesser extent coroners, were the principal providers of law enforcement for the State of South Carolina.

Op. Atty. Gen., January 25, 1996 (Informal Opinion).

I am advised that a number of Code Enforcement Officers throughout the State are issued weapons, particularly where their duties are deemed to require a pistol. A good example, I am told, is an Animal Control Officer who is deemed to need a weapon because of the potential for encountering a rabid animal. I am further informed that counties and municipalities are being advised to provide weapons training for these officers because of the potential for liability. With this advice, I wholeheartedly concur. If these officers are issued weapons because of their job assignments, they should certainly be properly trained in the use of the weapon.

With respect to your question, I cannot conclude that a Code Enforcement Officer does not meet the requirements of § 16-23-20(1), because these officers possess "all the powers and duties conferred by law upon constables" except the power of custodial arrest. Thus, subject to a definitive ruling by our courts, I do not read § 16-23-20 as necessarily precluding a Code Enforcement Officer from exemption from the concealable weapons law. A court could conclude that these officers are "regular, salaried law enforcement officers" where they are on the county or municipal payroll and are performing all general law enforcement duties with the exception of making custodial arrests.

Our Supreme Court has stated that "... the duties of a policeman are varied and one of the incidents of such duty is the arrest of individuals who violate the laws and ordinances of the municipality." Green v. City of Bennettsville, 197 S.C. 313, 321, 15 S.E.2d 334 (1940). Judge Bell, writing for the Court of Appeals in Russell v. City of Cola, 390 S.E.2d 463 (1989) revd. on other grounds, 406 S.E.2d 338 (1991) stated that at common law policemen have a duty to conserve the peace and good order of the community; to take reasonable and lawful measures to detect, report, and prevent the commission of crimes; to bring offenders to justice; and to retain evidence for use in court.

As referenced above, we have recognized that Code Enforcement Officers are law enforcement officers for purposes of using a blue light and for dual office holding purposes. State constables are generally authorized to carry pistols pursuant to Section 16-23-20. Accordingly, I believe that a Code Enforcement Officer could be deemed exempt from the concealable weapons law pursuant to Subsection (1) of this Code Section. Thus, in my view, the question of whether these officers should be issued pistols should be a matter primarily for the employer on a case-by-case basis relative to the

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officer's job duties and functions. The employer should examine the duties of the officer and make a determination of the need for a pistol commensurate with the officer's job responsibilities. Again, however, if the officer is issued a pistol, proper training should accompany such issuance.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General

RDC/an