

The State of South Carolina



Office of the Attorney General

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June 2, 1993

Thomas D. Pye, Assistant Director
Cayce Department of Public Safety
P. O. Box 2004
Cayce, South Carolina 29171

Dear Mr. Pye:

In a letter to this Office you stated:

We have officers working for a chain store in the City of Columbia, who are certified officers for the City of Cayce. These officers enforce shoplifting, public drunk and disorderly conduct laws for this business. Upon approaching a violator or suspected violator they identify themselves as an off duty police officer working for Kroger food store. If questioned they display their City of Cayce badge and identify themselves as a police officer with the City of Cayce.

You questioned the authority of these officers to serve in such capacity. You further questioned whether these officers could work as an employee of Kroger utilizing the title "loss prevention/security" and not display a badge or identify themselves as a police officer.

Enclosed are copies of several prior opinions of this Office which I believe are responsive to your questions. The September 24, 1985 opinion referencing other prior opinions stated that law enforcement officers should not be registered as a private security guard pursuant to this State's Private Detective and Private Security Agencies Act, S.C. Code Sections 40-17-10 et seq. However the opinion did indicate that law enforcement officers may engage in private off-duty jobs or "moonlight" consistent with S.C. Code Sections 23-24-10 et seq.

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The February 3, 1989 opinion, while also referencing the "moonlighting" provisions of Sections 23-24-10 et seq. and the prohibition against officers contracting with or being employed by a private security company, commented that pursuant to Section 40-17-150 (5), a law enforcement officer can be employed on an individual contractual basis as a patrolman, guard or watchman where there is an employer-employee relationship in such security work. The provision states that the Detective and Security Agencies Act does not apply to

(a) person receiving compensation for private employment on an individual, independent contractor basis as a patrolman, guard or watchman who has full-time employment as a peace officer with a state, county or local police department. For such exemption to operate, the peace officer so defined shall (a) be employed in an employer-employee relationship, (b) on an individual contractual basis and (c) not be in the employ of another peace officer.

Additionally, pursuant to subsection (6) of Section 40-17-150 the Detective and Security Agencies Act does not apply to

Persons in an employer-employee relationship utilized solely as nonuniformed, unarmed fire watchmen, gatekeepers or security personnel in connection with an employer's business and persons or corporations employing these personnel; provided the employer is not a private detective or security agency.

State Law Enforcement Division Regulation 73-40 (25) states

Personnel in an employer/employee relationship utilized solely as nonuniformed, unarmed fire watchmen or gatekeeper in connection with employer's business shall not wear or display badges or security patches.

Therefore, a law enforcement officer may engage in off-duty work consistent with the moonlighting provisions of Sections 23-24-10 et seq. and Section 40-17-150. As a result, it appears that the officers referenced in your letter may engage in off-duty work for a food store consistent with such statutes. However, for the reasons stated below, inasmuch as the particular store is outside the jurisdictional limits of the City of Cayce, the officers may not function as Cayce police officers.

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The enclosed opinion of this Office dated March 20, 1985 referenced the arrest authority of law enforcement officers. For instance, pursuant to S.C. Code Section 17-13-40, a city police officer has no authority to arrest outside the city limits unless he is in pursuit and then he may arrest within a three mile radius of the corporate boundaries. As to officers acting outside their regular jurisdictions, the opinion cited several cases which validated arrests on the basis that such officers, as private citizens, possessed the power of arrest. The opinion citing an earlier January 28, 1985 opinion stated:

(c)ourts have held that a police officer acting "under color" of office, but outside his jurisdiction may not make an arrest; in other words, he must be acting as a citizen. A police officer is generally acting under color of his office by "... actually holding himself out as a police officer, either by wearing his uniform or in some other manner openly advertising his official position in order to observe the unlawful activity involved"

The March, 1985 opinion concluded

As to your particular question as to whether the law enforcement officers moonlighting outside their jurisdictions should be considered as acting as private citizens without any specific law enforcement authority, it appears that unless such officers' law enforcement authority had been expanded pursuant to one of the previously referenced agreements, such officers in moonlighting outside their regular jurisdictions would be acting as private citizens. As such, they would only have that law enforcement authority previously recognized granted to other private citizens.

In your letter you referenced that the law enforcement officers you cited typically wear their uniforms while moonlighting outside their regular jurisdictions. As stated above, a law enforcement officer is generally considered to be acting "under color of his office" by holding himself out as a police officer, such as when the officer wears his regular uniform. However, as stated in the previous opinion of this Office cited above, courts have generally held that a law enforcement officer acting outside his regular jurisdiction may not make an

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arrest as a law enforcement officer but instead must act as a private citizen.

It was stated therefore that inasmuch as officers in moonlighting outside their regular jurisdictions possess only that law enforcement authority given to private citizens generally, if the officers wear their regular uniforms in such circumstances, their actions would not be sustainable as those of a private citizen since they would be acting "under color of authority."

As to the situation addressed in your letter, consistent with the earlier opinions, an officer could work outside their regular jurisdiction. Such would be consistent with Section 40-17-150 which authorizes employment as a patrolman, guard or watchman. However, as stated in the 1985 opinion, as to any law enforcement authority, the officer while working outside his jurisdiction only has that authority given to private citizens generally. See: S.C. Code Sections 17-13-10 and 17-13-20.¹ Therefore, the officer while working at the Kroger outside his jurisdiction, should not identify himself as a Cayce police officer or display his badge.

¹Section 17-13-10 provides

Upon (a) view of a felony committed, (b) certain information that a felony has been committed or (c) view of a larceny committed, any person may arrest the felon or thief and take him to a judge or magistrate, to be dealt with according to law.

Section 17-13-20 states

Any citizen may arrest any person in the nighttime by such efficient means as the darkness and the probability of escape render necessary, even if the life of such person should be thereby taken, when such person (a) has committed a felony, (b) has entered a dwelling house with evil intent, (c) has broken or is breaking into an outhouse with a view to plunder, (d) has in his possession stolen property or (e) being under circumstances which raise just suspicion of his design to steal or to commit some felony, flees when he is hailed.

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As to your question regarding an officer working for Kroger in such circumstances with the title "loss prevention/security" but who does not display a badge or identify himself as a Cayce police officer, consistent with the earlier opinions, the individual should not identify himself as "security." Again, law enforcement officers may "moonlight" in association with their duties as law enforcement officers in their regular jurisdiction. However, consistent with the opinion that they could not be registered as a security guard, the officer should not identify himself as "security." Such interpretation would be especially made in this instance where the officer in working outside his regular jurisdiction may act only as a private citizen. It appears that the term "loss prevention" is innocuous and therefore I can presently see no reason why such term could not be used. Again, however, they should not display a badge or identify themselves in any manner as a police officer.

If there are any questions, please advise.

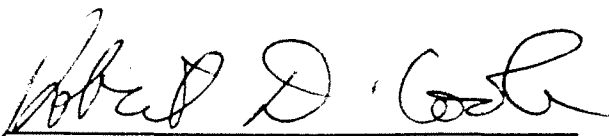
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/an
Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions