

5315 Luluway

# The State of South Carolina



## Office of the Attorney General

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January 24, 1994

Dennis J. Rhoad, Esquire  
Attorney at Law  
127 1/2 King Street  
Charleston, South Carolina 29401

Dear Mr. Rhoad:

In a letter to this Office you questioned whether pursuant to S.C. Code Section 56-7-80 a municipality may authorize, appoint and empower security personnel employed by a local community association to issue ordinance violation summons on a limited basis. You stated that the community association has employed licensed security personnel in the past to monitor public lands. Pursuant to an agreement the municipality would authorize, appoint and empower security personnel employed by the community association to issue code violation summons for violations of beach ordinances committed in the security personnel's presence.

Section 56-7-80 states in part:

Counties and municipalities are authorized to adopt by ordinance and use an ordinance summons as provided herein for the enforcement of county and municipal ordinances. Upon adoption of the ordinance summons, any county or municipal law enforcement officer or code enforcement officer is authorized to use an ordinance summons.

A prior opinion of this Office dated March 6, 1980 determined that pursuant to S.C. Code Section 5-7-110 a municipality is not authorized to contract with a private security agency for law enforcement purposes. The opinion stated that by such provision the State has delegated certain of its police powers to a municipality and such delegation limits the municipality to the employment or election of police officers. It was further stated:

*Revised 1/24/94*

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The system envisioned by the legislation demands that the municipality stand in the position of employer to that of its officers charged with the responsibility of law enforcement with direct control over each of them...Generally, the State's police power may be delegated by the legislature to a municipality, but the legislative reach of that authority must be strictly construed...It has long been the law in this State that no municipality may by contract part with the authority delegated it by the State to exercise the police power...Here the State has delegated the power of law enforcement to its municipalities and the municipality may not part with that power by contract with a private security agency. (emphasis added).

Thus, the opinion concluded that a municipality could not contract with a private security agency so as to provide law enforcement services. Other opinions dated June 8, 1993, March 1, 1989 and April 2, 1980, copies of which are enclosed, reached similar conclusions.

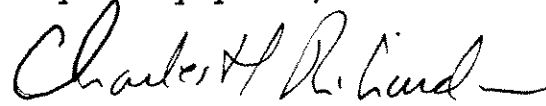
In your letter you distinguished the prior opinion from your situation in that you state that the municipality seeks to make a limited appointment of code enforcement officers under Section 56-7-80, not Section 5-7-110 cited in the opinion. You stated "(i)t is the Town's position that a law enforcement officer under S.C. Code Ann. Section 56-7-80 may include those duly licensed security personnel employed by ...(the community association)...so long as the authorization to issue ordinance summons comes from the Town..."

However, I fail to see the distinction between the situation addressed in your letter and the conclusions set forth in the referenced opinions. Those opinions concluded that a municipality could not contract with a private security agency for law enforcement purposes. While you stated that the Town of Kiawah Island seeks to make an appointment pursuant to Section 56-7-80 and not Section 5-7-110 cited in the opinions, Section 56-7-80, while providing for the use of an ordinance summons by a "code enforcement officer," does not specifically provide separately for the establishment of the position by a municipality. Such may be contrasted with S.C. Code Section 4-9-145 which authorizes the appointment of code enforcement officers by a county. Instead, it appears that such position for a municipality would similarly be authorized pursuant to the authority granted municipalities by Section 5-7-110 to "appoint or elect as many police officers, regular, or special, as may be necessary for the proper law enforcement in such municipality..." Therefore, the conclusions of the prior opinions of this Office set forth previously would remain.

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With kind regards, I am

Very truly yours,

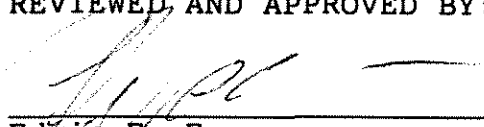


Charles H. Richardson  
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Enclosures

REVIEWED AND APPROVED BY:



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