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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 18, 1995

The Honorable Johnny Mack Brown
Sheriff, Greenville County
4 McGee Street
Greenville, South Carolina 29601

Re: Informal Opinion

Dear Sheriff Brown:

You have asked our opinion regarding the question of whether a local insurance company would be permitted to hire off-duty deputy sheriffs to serve arrest warrants for fraudulent checks.

Law/Analysis

The sheriff is the chief law enforcement officer of the county. Op. Atty. Gen., May 8, 1989. As such, both he and his deputies possess a number of statutory, see e.g., S.C. Code Ann. Section 23-13-10 et seq., as well as common law duties and responsibilities. Among these is the duty to serve legal process, including arrest warrants. Section 23-15-40 provides:

> [t]he sheriff or his regular deputy, on the delivery thereof to him, shall serve, execute and return every process, rule, order or notice issued by any court of record in this State or by other competent authority.

A magistrate's court, although not a court of record, is deemed by this Office to be "other competent authority." Op. Atty. Gen., December 18, 1990.

Service of an arrest warrant is an important duty imposed upon the Sheriff and his deputies which is ministerial in nature. As stated by our Supreme Court in Rogers v. Marlboro County, 32 S.C. 555, 558, 11 S.E. 383 (1890),

> [w]hen a warrant is placed in his [sheriff's] hands by proper authority, his duty is to execute it or attempt to do so. It is no part of his duty to inquire whether the prosecution is well founded, either in law or fact, and it would be impertinent in him to do so ....
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> The sheriff is a ministerial officer. He is neither judge nor lawyer. It is not his duty to supervise or correct judicial proceedings; but being an officer of court, ministerial in character, he cannot impugn its authority nor inquire into the regularity of its proceedings. His duty is to obey. This principle applies alike to him, whether the execution issues from a court of general or limited jurisdiction.

As the duties of a county sheriff's department are public in nature, we have previously concluded that a county may not contract with a subdivision so as to receive additional law enforcement protection and services. Op. Atty. Gen., April 11, 1985. In reaching that conclusion, we reasoned:

> [t]he general law in this State presently requires a sheriff and his deputies to patrol their county and provide law enforcement services to its citizens. See: Section 23-13-50 et seq., 1976 Code of Laws. As a matter of public policy, a political subdivision, such as a county, is prohibited from entering into a contract by which it receives remuneration from a citizen for the performance of a public duty which is imposed on it by law, either expressly or by implication. McQuillin, Municipal Corporations, Section 29.08 p. 234. As stated by our Supreme Court in Green v. City of Rock Hill, 149 S.C. 234, 147 S.E. 346, 360 (1929), "[a]s a general rule, [a governmental body] ... may not contract with ... the public to discharge a purely public duty owed to the public generally." The rationale of the rule, noted the Court, "is grounded upon the theory that such a contract would restrict the discretion of the ... [governmental body] ...; that is, embarrass or control it in the exercise

> of governmental functions, which cannot be surrendered or abrogated." 147 S.E. at 360.

Consistent therewith is the following proposition of law:

> [t]he general rule with reference to peace officers is well settled that a promise of reward or additional compensation to a public officer for services rendered in the performance of his duty cannot be enforced. Both public policy and sound morals forbid that such an officer should be permitted to demand or receive for the performance of a purely legal duty any fee or reward other than that established by law as compensation for the services rendered, including the arrest of criminals, protection of property and the recovery of stolen property.

70 Am.Jur. 2d, Sheriffs, Police and Constables, § 71.

The foregoing basic common law and public policy principles have been codified by the General Assembly in specific statutory enactments. For example, Section 16-9-250 makes it a misdemeanor for any sheriff or other peace officer in South Carolina "... to make any charge for the arrest, detention, conveying or delivering of any person charged with the commission of crime in this State, except the mileage and necessary expenses as now provided by law." A public employee is proscribed from receiving additional compensation to that provided by law for the performance of duties by Section 16-9-230. Moreover, a provision of the Ethics, Government Accountability and Campaign Reform Act of 1991, Section 8-13-720, requires that no person "... may offer or pay to a public official [etc.] ... and no public official [etc.] ... may solicit or receive money in addition to that received by the public official [etc.] in his official capacity for advice or assistance given in the course of his employment as a public official [etc.] ...."

Certain exceptions to the general rule that a public entity or public official may not contract or receive remuneration to provide the services required by law are also provided in specific statutory provisions. One example is that the Sheriff may contract with a municipality within the county for the provision of law enforcement services. As was concluded in an Opinion, dated May 17, 1978, "[t]here are currently no state statutes which would prevent the Greenville County Sheriff's Department from offering Contract Law Enforcement services to municipalities within Greenville County." Another notable exception is found in Section 4-9-30(5). As we noted in an opinion of June 13, 1985, a county is authorized to create a special tax district for police protection in a specific area

of a county, pursuant thereto. Article VIII, Section 13 of the South Carolina Constitution and Section 6-1-20 of the Code authorizes the tax district to contract with the county for the provision of services like law enforcement. Id. The contract may not, however, unreasonably limit the Sheriff's duty, and discretion to carry out his statutory mandate to patrol the entire county. See, Section 23-12-70.

For our purposes, the most significant statutory exception to the general rule prohibiting additional compensation is the so-called "moonlighting" statute, found at Section 23-24-10 et seq. Section 23-24-10 provides that

> [u]niformed law enforcement officers, as defined in Section 23-23-10 (d) (1) may wear their uniforms and use their weapons and like equipment while performing private jobs in their off duty hours with the permission of the law enforcement agency and governing body by which they are employed.

The General Assembly's purpose in enacting this provision by Act No. 529 of 1978 is set forth in Section 1 of the Act:

> [t]he General Assembly finds that the mere presence of uniformed police officers performing private jobs during their off duty hours adds substantially to the security of the public in the State and thus extends the benefits of additional police protection at no additional public expense.

Section 23-24-30 adds that "[o]ff-duty work performed by law enforcement officers shall not be considered as work done within the scope of his employment"; thus the employing entity of the officer is not liable "... for acts performed by off-duty law enforcement officers as permitted by this chapter." See also, Op. Atty. Gen., July 11, 1977 [municipality not liable for acts of off-duty police officer].

Clearly, the moonlighting statute permits a peace officer to receive additional remuneration to carry out law enforcement duties off-duty which he may also be required to perform by law. As we stated in Op. Atty. Gen., No. 93-35, p. 83, 84 (June 2, 1993), "... a law enforcement officer may engage in off-duty work consistent with the moonlighting provisions of Section 23-24-10 et seq. and Section 40-17-150."[1] As long

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[1] Section 40-17-10 et seq. provides for the licensure and regulation of private (continued...)

as law enforcement officers are moonlighting within their jurisdiction, they possess complete law enforcement authority while working off-duty pursuant to Section 23-24-10 et seq. With respect to deputy sheriffs, this jurisdiction includes the entire county. See Op. Atty. Gen., March 20, 1985. [Charleston County Police Department has jurisdiction for Charleston County; deputy sheriff has jurisdiction in the county in which he serves].

The March 20, 1985 opinion, referenced above, also enumerated the conditions a peace officer must meet to be authorized to work off-duty for a private employer. Citing a previous opinion of February 17, 1984, we stated therein that, "... such off-duty work is permitted, assuming the officer met the following requirements:

1. a determination by the agency head of the agency that employs the law enforcement officer that such employment would not have any adverse effects on the agency, officer or profession, and that such employment would be in the public interest;

2. permission of the law enforcement agency that employs the officer;

3. permission of the governing body by which they are employed if the official uniforms, weapons and like

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[1](...continued)
detectives and private security guards. Pursuant to Section 40-17-150 (5), there is an exception from the requirements of the Act for

> [a] person receiving compensation for private employment on an individual, independent contractor basis as a patrolmen, guard or watchman who has full-time employment as a peace officer with a state, county or local police department. For such exception 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.

Referencing this Act, we have previously concluded that a law enforcement officer cannot contract himself out off-duty to a third party to do surveillance work or the work of a private detective. Op. Atty. Gen. , February 3, 1989.

equipment is to be utilized by the uniformed officer while off-duty;

4. notice is given by the officer to the law enforcement agency of the place of employment, of the hours to be worked and the type of employment."

Crucial to resolve your question is the effect of Section 23-24-10 et seq. upon Section 16-9-250 which prohibits a sheriff or peace officer from "making any charge for the arrest, detention, conveying or delivering of any person charged with the commission of crime ..." Here, various principles of statutory construction are pertinent to this inquiry.

All rules of statutory construction are subservient to the one that legislative intent must prevail. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). In addition, courts will presume that the Legislature is familiar with prior legislation dealing with the same subject when it passed the law involved. Bell v. South Carolina State Highway Dept., 204 S.C. 462, 30 S.E.2d 65 (1944). Also, in construing a statute, it must be presumed the General Assembly intended to accomplish something with each statute and not to engage in futile action. Purvis v. State Farm Mut. Auto Ins. Co., 304 S.C. 283, 403 S.E.2d 662 (1991). Of great importance is the rule that statutes must be read together and reconciled if possible to give meaning to each. Powell v. Red Carpet Lounge, 280 S.C. 142, 311 S.E.2d 719 (1984).

In the above-referenced opinion of this Office, dated February 10, 1983, we addressed the question of whether the community of Snee Farm, located within the corporate limits of Mt. Pleasant, could contract with Mt. Pleasant for the use of off-duty city police officers to augment regular law enforcement patrols in that community. It was our conclusion that the town of Mt. Pleasant could not contract with Snee Farm for these services. A number of statutes, including Section 16-9-230 (prohibiting a public employee from receiving compensation in addition to that provided by law for performance of his or her duties), Section 16-9-250 referenced above, as well as various provisions of the previous Ethics Act, including Section 8-13-430, the predecessor to current Section 8-13-720 were cited as support for this conclusion.

However, the Opinion also recognized that the enactment of the moonlighting statute, Section 23-24-10 etc., would have to be considered in determining whether individual Mt. Pleasant police officers could contract with off-duty officers for Snee Farm. We stated:

> [o]n the other hand, this Office is aware of the fact that many uniformed police officers throughout the State moonlight on their off-duty time working as private security guards for various clubs, department stores, private parties and other businesses and functions. It is the opinion of this Office that, given the language of Act 529, such duty is legitimate. However, in accordance with your request, I feel obligated to call to your attention the fact that Act 520 does not contain language exempting officers from the provisions of Titles 8 and 16. Moonlighting by uniformed police officers is therefore a legitimate activity, although not specifically described as such in the statute.
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> Accordingly, while the community of Snee Farm may not contract with the city of Mt. Pleasant to provide such law enforcement officers and equipment, there would appear to be no prohibition against the individual officers moonlighting, wearing their uniforms and their firearms, but without their automobiles and other heavy equipment, for the residential community of Snee Farm.

Section 16-9-250 and Sections 23-24-10 et seq. may be reconciled in the following way. Section 16-9-250 is applicable to those situations where an officer did not meet the criteria for moonlighting outlined above. However, where a deputy has met the qualifications enumerated, permitting him to moonlight, he could legitimately work for a private company off-duty and, within his jurisdiction (the county), would have full law enforcement authority, including the authority to serve arrest warrants throughout the county. It is also important to note in this analysis that nowhere in the moonlighting statute is there a limitation upon the authority of an officer working off-duty within his jurisdiction. Nowhere is it mentioned that deputies may not serve warrants off-duty. We find, in other words, no exception in this statute to the effect that an officer cannot serve arrest warrants within his jurisdiction.

Finally, as to the applicability of Section 8-13-720, or any other provision of the Ethics Act, this Office possesses no jurisdiction to interpret that Act. I would, therefore, respectfully refer you to the State Ethics Commission for clarification regarding the applicability of the Ethics Act to this situation.

This letter is an informal opinion only. It has been written by a designated Assistant 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 remain

Very truly yours,

Robert D. Cook
Assistant Attorney General

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