95-5524

The State of South Carolina

Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211-1549
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

February 16, 1995

Henry Ray Wengrow, Esquire
Associate General Counsel
South Carolina Department of Public Safety
5410 Broad River Road
Columbia, South Carolina 29210-4026

Re: Informal Opinion

Dear Mr. Wengrow:

By your letter of January 17, 1995, to Attorney General Condon, you have requested the opinion of this Office as to whether reserve police officers may now be compensated for "moonlighting" for private third party employers under the authority of S.C. Code Ann. § 23-24-10 et seq. (1993 Cum. Supp., as amended by Act No. 411 of 1994).

Background

This Office has previously addressed the issue of compensation of reserve police officers on several occasions. By an opinion dated February 24, 1984, this Office examined the statutes relative to reserve police officers and concluded that there was no authority to provide compensation to these officers. By an opinion dated November 30, 1984, this Office concluded that there was no authority for reserve policy officers to "moonlight" and be compensated therefor.

In 1994, the General Assembly amended the "moonlighting" statute, § 23-24-10, by Act No. 411. That Code section now provides:

> Uniformed law enforcement officers, as defined in Section 23-6-400(D)(1), and reserve police officers, as defined

> in Section 23-28-10(A), 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.

This Office concluded in an opinion dated October 14, 1994, that the amendment did not authorize reserve police officers to be compensated by their police departments for services rendered as reserve police officers. That opinion did not address the issue of compensating reserve police officers who might "moonlight."

Discussion

"Moonlighting" is defined as an employee working a job "during hours different than those he" ordinarily works in regular employment, Bealmer v. Texaco, Incorporated, 427 F.2d 885 (9th Cir. 1970) 885, 886, fn. 1, or as "the performance of off-duty employment related to a regular on-duty job ... ." City of Louisville v. Brown, 707 S.W.2d 346, 348 (Ky. Ct. App. 1986). The latter decision recognizes that "[M]oonlighting ... is a common occurrence among police officers at all levels of police employment." Id.

The General Assembly adopted Act No. 529 of 1978, finding "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." § 1 of Act No. 529 of 1978. The act, as codified at § 23-24-10 et seq., provided that law enforcement officers could "wear their uniforms and use their weapons and like equipment while performing private jobs in their off duty hours" with appropriate permission; other provisions not relevant herein were also enacted. In 1990, § 23-24-10 was amended by adding a reference to § 23-23-10(d)(1) to clarify the definition of "law enforcement officer."[1]

The 1994 amendment added "reserve police officers, as defined in Section 23-28-10(A)" to those law enforcement officials who were authorized to wear their uniforms and use their weapons and like equipment while "moonlighting." It is acknowledged that police officers who are regular, compensated employees receive compensation for "moonlighting." Since reserve police officers seem to have been given the same status as regular law enforcement officers by their inclusion in § 23-24-10, the question remains whether these officers may likewise be compensated for "moonlighting."

---

[1] Section 23-23-10 was repealed in 1993 by Act No. 181; the relevant reference would now be § 23-6-400(D)(1).

Section 23-24-20 refers to the "proposed employment." The phrase "performing private jobs" appears in §§ 23-24-40, 23-24-50, and 23-24-10. "Place of employment" and "type of employment" are phrases found in § 23-24-50. Such terms seem to connote compensated services, as "employment" generally refers to a "job or services or business for another," Gerald v. American Casualty Co. of Reading, Pa., 249 F.Supp. 355, 357 (M.D.N.C. 1966), or services performed for wages or compensation under a contract of hire, Perma-Stone Oklahoma City Co. v. Oklahoma Employment Security Comm'n, 278 P.2d 543 (Okla. 1954). Your request letter indicates that police officers covered by § 23-24-10 et seq. prior to the 1994 amendment commonly "moonlighted" and were paid by the third party employer either directly or by payment to the law enforcement agency which then paid the officer.

Considering all of the foregoing, it appears that the intent of the 1994 amendment was to place reserve police officers in the same status as other law enforcement officers with respect to "moonlighting" or employment at private, off-duty jobs. Compensation appears to be a part of the scheme of "moonlighting" and thus would be permitted for reserve police officers who would "moonlight" pursuant to § 23-24-10 et seq.[2] In reaching this conclusion, it is observed that an anomalous result is reached, in that service as a reserve police officer is not compensated, while performing "moonlighting" services may be compensated. The absence of legislative amendment as to the issue of compensation of reserve police officers per se, subsequent to the opinion of this Office dated February 24, 1984, strongly suggests that the views expressed therein were consistent with legislative intent. Scheff v Township of Maple Shade, 149 N.J. Super. 448, 374 A.2d 43 (1977). Such determination as to compensation of these officers is a matter of policy to be decided by the General Assembly, however.

Conclusion

Based on the amendments to § 23-24-10 made by Act No. 441 of 1994, it is the informal opinion of the undersigned attorney that reserve police officers may "moonlight" at private, off-duty jobs in accordance with § 23-24-10 et seq. and be compensated for those services.

---

[2] Because statutory amendments compel a conclusion contrary to that reached in Op. Att'y Gen. dated November 30, 1984, today's opinion is viewed as superseding that opinion to the extent today's opinion is inconsistent with that opinion.

With kindest regards, I am

Sincerely,

Patricia D Petway

Patricia D. Petway
Assistant Attorney General

PDP/an