

Reg. 4795

The State of South Carolina



Office of the Attorney General

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February 1, 1995

Sherman M. Bingham, Director
Department of Public Safety
The Citadel
171 Moultrie Street
Charleston, South Carolina 29409

Re: Informal Opinion

Dear Chief Bingham:

As Director of Public Safety at the Citadel, you have asked for clarification as to the authority of the officers in your Department to carry weapons during off-duty hours as well as their territorial jurisdiction to enforce the laws of South Carolina. As I understand it, your officers are commissioned as state constables pursuant to Section 23-1-60 of the Code of Laws of South Carolina (1976 as amended). I further understand that your officers have been fully trained and qualified as law enforcement officers at the Criminal Justice Academy. You have asked that we clarify earlier advice to you, see, Op. Atty. Gen. December 21, 1994, wherein the authority of security officers to carry weapons during off-duty hours, as well as their authority to arrest statewide, was questioned. You wish to know how the statutes relating to the carrying of weapons and the law enforcement authority of state constables apply to campus security officers at the Citadel, who are commissioned as state constables.

With respect to the authority to carry weapons, Sections 16-23-20 of the Code (Cum. Supp.) provides that it is unlawful for anyone to carry any pistol about the person, whether concealed or not. However, certain exemptions are made including:

- (1) Regular, salaried law enforcement officers of a municipality, 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

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in this State, deputy enforcement officers of the Natural Resources Enforcement Division of the Department of Natural Resources within their territorial jurisdictions, and reserve police officers while serving and functioning as law enforcement officers as authorized by Section 23-28-10 et seq. (emphasis added).

I have located a previous opinion of this Office, dated May 30, 1978, which interprets Section 16-23-20, as to the authority of an uncompensated state constable to carry a pistol off-duty. That opinion states:

As noted in a previous Opinion of this Office, 1972 Opinion Attorney General No. 3261, p. 58 (interpreting the 1962 Code section which is similar to the present section regarding this matter), there is no requirement that the officer be on duty. Similarly, the statute does not require the officer to be in uniform. The reference in the statute to "when they are carrying out official duties while in this State," regards only "law-enforcement officers of the Federal Government or other states." See Section 16-23-20. While a previous opinion of this office may seem to render a different interpretation of that reference (1971) Opinion Attorney General No. 3143, p. 115) the effect of that opinion and this opinion is identical.

The statute also allows "uncompensated Governor's constables" to carry pistols. Again, there is no requirement that such a constable have a particular type of authority, or that he be on duty.

I advise that this Opinion correctly states the law in South Carolina as it applies to your particular situation. Your officers possess the authority to carry a weapon off-duty.

Respecting your question regarding the territorial jurisdiction of your officers, I further advise that a previous opinion, dated May 6, 1976, provides the answer. The Opinion notes that, generally speaking, campus security departments are staffed by special State constables without additional compensation who are appointed by the Governor. The opinion further notes that such "constables have state-wide jurisdiction ..." unless otherwise restricted. The particular constable's commission at issue in the May 6, 1976 Opinion was, in fact, restricted by its terms to the jurisdiction of the Medical University and other State property. As I understand it, there are other constables' commissions

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which are expressly restricted to particularly property¹ and, if so restricted, the constable has the same authority to arrest as a private citizen if the arrest is made outside of the territory to which the commission is limited. See, Op. Atty. Gen. August 29, 1986.

However, if a constable's commission is unrestricted, either by specific statute or by the terms of issuance, the legal authority to make an arrest, extends statewide. I am advised that the commissions of your officers are, in fact, unrestricted. Thus, their legal authority would be statewide in nature.

In discussing the regulation of state constables with the appropriate officials at SLED, I am advised that SLED is quite willing to discuss with a particular agency its policies and procedures governing state constables as such policies and procedures may apply to that agency. Since SLED has regulatory authority in this area, I believe it is advisable and would urge you to telephone Captain Joseph A. Holley who is Special Agent in Charge, Regulatory Services. Captain Holley has indicated to me he is more than happy to discuss the situation of your Department with you. His telephone number is (803) 896-7015.

If I can be of further assistance to you, or if a formal opinion is necessary, please advise.

Very truly yours,



Robert D. Cook
Deputy Attorney General

RDC/an

cc: Captain Joseph A. Holly
South Carolina Law Enforcement Division
P. O. Box 21398
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¹ Section 59-116-10 et seq. provides for and regulates authority of certain campus security officers. Subsection 30 (2) limits the jurisdiction of such officers to "the real property owned by their respective institutions as defined in item (1) of Section 59-116-10. However, § 59-116-10 et seq. is expressly made applicable only to "a state chartered two or four-year private educational institution of higher learning located in this State," and thus, would not cover the Citadel, a state-supported institution. (emphasis added).