

5011/5695



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 15, 1995

Informal Opinion

Captain Roger W. Gregory
Union County Sheriff's Office
P. O. Box 971
Union, South Carolina 29379

Dear Captain Gregory:

You note that you are "having problems at the Wal-Mart parking lot concerning young people parking after hours."

They are throwing their trash, cans, etc. on the lot and the tenants of the shopping center are having to have it cleaned daily. The Sheriff's Office here in Union County receive calls each night to run them off. We tell them to leave and after we leave, they return.

Section 23-1-15 deals with parking lots under police jurisdiction. The way I understood this section, it only deals with traffic law enforcement. Signs are posted at all entrances to lot which state, "Property under Sheriff's Office Jurisdiction."

S. C. Code Ann. Section 23-1-15 provides:

[a]ny real property which is used as a parking lot and is open to use by the public for motor vehicle traffic shall be within the police jurisdiction with regard to the unlawful operation of motor vehicles in such parking lot.

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Such parking lots shall be posted with appropriate signs to inform the public that the area is subject to police jurisdiction with regard to unlawful operation of motor vehicles. The extension of police jurisdiction to such areas shall not be effective until the signs are posted.

In any such area the law enforcement agency concerned shall have the authority to enforce all laws or ordinances relating to the unlawful operation of motor vehicles which such agency has with regard to public streets and highways immediately adjoining or connecting to the parking area. (emphasis added).

In Op. Atty. Gen. 88-90 (December 21, 1988), this Office discussed the authority of a deputy sheriff to enforce the law and make arrests upon private property. We noted, quoting 6A C.J.S. Arrest § 52 at p.123, that

(g)enerally, a lawful arrest may be made any where, even on private property or in a home. This rule is applicable both where the arrest is under a warrant, and where there is an arrest without warrant in case of hot pursuit....

We also noted that Section 23-13-60 of the Code provides

(t)he deputy sheriffs may for any suspected freshly committed crime, whether upon view or upon prompt information or complaint, arrest without warrant and, in pursuit of the criminal or suspected criminal, enter houses or break and enter them, whether in their own county or in an adjoining county.

Further, we recognized that § 17-13-30 of the Code authorizes sheriffs and their deputies to

... arrest without warrant any and all persons who, within their view, violate any of the criminal laws of this State if such arrest be made at the time of such violation or immediately thereafter.

Thus, we noted that this Office in an opinion dated August 7, 1974 determined that pursuant to such arrest authority, the fact than an offense occurs on private property is immaterial. See also § 16-25-70 (law enforcement officer may arrest upon probable cause

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for criminal domestic violence a person at his residence or elsewhere); § 23-13-70 (deputy sheriffs shall patrol the entire county to detect crime or make arrest); Op. Atty. Gen. No. 88-90 supra (sheriff is chief law enforcement officer of county and deputy has full law enforcement authority in any area of his county, including an area under the protection of a properly licensed private security guard.); Op. Atty. Gen. October 2, 1985 ("[t]he distinction as to whether property is private or public is irrelevant to the question of the authority of a law enforcement officer to make arrests or investigate crimes generally.")

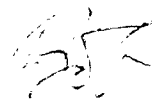
Consistent with these authorities is Op. Atty. Gen. No. 92-45 (August 14, 1992) wherein we concluded that § 23-1-15 did not preclude law enforcement officers as enforcing the relevant fire lane requirements at a shopping mall which had not been posted pursuant to that Section of the Code. We noted therein that § 23-1-15 had no effect "on a traffic offense in which the commission on public property is not an element, such that certain traffic offenses (e.g. DUI) may be committed and are enforceable on private property regardless of whether the property is posted." In short, § 23-1-15's posting requirements only affect those traffic offenses where the operation of a motor vehicle on a public highway is a required element of the offense.

Accordingly, since the mall in question has been posted, this entitles law enforcement officers to enforce all traffic offenses where the operation of a motor vehicle on a public highway is a required element of the offense. With respect to all other offenses, including ordinances or statutes related to littering, etc., the fact that such offense occurs on private property, whether or not posted pursuant to § 23-1-15, is irrelevant. A deputy sheriff has full authority to enforce these laws on this property.

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

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/ph