



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

August 8, 1996

Lieutenant D. C. Beaty  
Horry County Sheriff's Office  
P. O. Box 380  
Conway, South Carolina 29526

Re: Informal Opinion

Dear Lieutenant Beaty:

You note that you have been "directed by the Sheriff to resolve a question that we have regarding statute numbers 16-23-20 and 16-23-465 (S.C. Code as amended)." You further state:

[d]ue to a recent incident that occurred in Horry County, we are asking if an off duty law enforcement officer, outside of his/her jurisdiction, may carry a pistol into a business which sells alcoholic beverages; and that the said officer is at that business merely to engage in social activities, not related to law enforcement, and consuming alcoholic beverages.

In addition, you indicate:

16-23-20(1) clearly grants peace officers the right to carry a pistol "when they are carrying out their official duties while in this State," 1971-72 (Ops.) Atty. Gen., No. 3261 page 58 states that a city police officer may carry a pistol outside his jurisdiction, however, does not distinguish whether the officer must be "carrying out their official duties". This issue is further clouded by 16-23-465 which does not address the question of law enforcement officers.

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Section 16-23-20 provides in pertinent part as follows:

It shall be unlawful for anyone to carry about the person any pistol, whether concealed or not, except as follows:

- (1) Regular, salaried law enforcement officers and reserve police officers of a municipality or 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 in this State, and deputy enforcement officers of the Natural Resources Enforcement Division of the Department of Natural Resources.

As you indicate, previous opinions of this Office are definitive in interpreting this provision as not limited to the carrying of a pistol by a law enforcement officer while on duty. In an opinion dated May 30, 1978, we opined:

[a]s 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 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.

And in Op. No. 3261, we stated:

[s]ince the statute does not limit the exception quoted to the territorial jurisdiction of the officer involved, nor to the times in which he is actually on duty, no such limitations can be inferred. It follows that a city policeman may lawfully carry

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his pistol on his person anywhere in the State. (emphasis added).

P.S. The phrase "when they are carrying out official duties" in lines 5-6 of Section 16-129.1 applies to "peace officers of the Federal Government or other states."

Thus, it is clear from these opinions that the fact that the officer is outside his jurisdiction does not change the fact that Section 16-23-20 authorizes him to carry a pistol "anywhere in the State."

You also inquire whether Section 16-23-465 changes this reading. It is my conclusion that it does not. Section 16-23-465 provides as follows:

[i]n addition to the penalties provided by Section 16-11-330 and 16-23-460 and by Article 1 of Chapter 23 of Title 16, a person convicted of unlawfully carrying a pistol or firearm onto the premises of a business which sells alcoholic liquor, beer, or wine for consumption on the premises is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than three years, or both.

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. Bankers Trust of S.C. v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Statutes in pari materia have to be construed together and reconciled, if possible, so as to render both operative. Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). While Section 16-23-465 was first enacted after Section 16-23-20, implied repeals are not favored. A repeal of a statute by implication is to be resorted to only in event of irreconcilable conflict between provisions of two statutes, and if the statutes can be construed so that both can stand, the Supreme Court will so construe them. In Interest of Shaw, 274 S.C. 534, 265 S.E.2d 522 (1980).

Here, both Sections 16-23-20(1) and 16-23-465 are reenacted virtually intact and side by side in the new concealed weapons law which will take effect soon. See, Act No. 534 of 1996. Had the General Assembly wished to place any limitation upon law enforcement officers as to where they could or could not carry their weapon, it could easily have done so in the new legislation. Moreover, any other reading of the two Acts could undermine law enforcement officers who are on duty carrying their weapons into an establishment which sells alcoholic beverages for consumption on the premises. Thus,

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until the General Assembly says otherwise, it is my opinion that law enforcement officers may carry their weapon whether on or off duty including onto premises licensed to sell alcoholic beverages for consumption thereupon. If the Legislature desires to change this situation, of course, it is free to do so.

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/an