

The State of South Carolina

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September 6, 1990

Walton J. McLeod, III, General Counsel
South Carolina Department of Health
and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Dear Mr. McLeod:

In a letter to this Office you raised questions regarding the necessity of DHEC Drug Control Bureau inspectors and special agents holding State Constable commissions and whether these individuals are subject to the training and certification requirements of Sections 23-23-10 et seq. of the Code as well as the training policies and requirements established by SLED for State Constables.

In your first question you asked

Is the holding of a State Constable's Commission required (or appropriate) for enforcement personnel of DHEC's Bureau of Drug Control to perform comprehensive law enforcement duties which may or may not be directly related to their duties in enforcing the provisions of the S.C. Controlled Substances Act Section 44-53-480(b), S.C. Code?

For example: providing assistance to other enforcement agencies, addressing and effectively dealing with issues of mutual interest such as states of emergency, natural disasters, state and federal task force operations and other situations requiring concerted efforts and co-operation?

Would a state constable commission provide support and reinforcement to existing statutory

powers in 44-53-480(b) thereby providing additional legal protection to Drug Control officers (and the DHEC) in the performance of law enforcement duties?

Pursuant to Section 44-53-480(b) of the Code

The Department of Health and Environmental Control shall be primarily responsible for making accountability audits of the supply and inventory of controlled substances in the possession of pharmacists, doctors, hospitals, health care facilities and other practitioners as well as in the possession of any individuals or institutions authorized to have possession of such substances and shall also be primarily responsible for such other duties in respect to controlled substances as shall be specifically delegated to the Department of Health and Environmental Control by the General Assembly. Drug inspectors and special agents of the Department of Health and Environmental control as provided for in § 44-53-490, while in the performance of their duties as prescribed herein, shall have:

- (1) Statewide police powers;
- (2) Authority to carry firearms;
- (3) Authority to execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses;
- (4) Authority to make investigations to determine whether there has been unlawful dispensing of controlled substances or the removal of such substances from regulated establishments or practitioners into illicit traffic;
- (5) Authority to seize property; and
- (6) Authority to make arrests without warrants for offenses committed in their presence.

Section 44-53-490 of the Code authorizes DHEC to appoint individuals with pharmacy degrees as drug inspectors who are required to

... inspect all practitioners and registrants who manufacture, dispense, or distribute controlled substances....

DHEC is also authorized to employ other individuals to be agents and assistant inspectors "... to aid in the enforcement of those duties delegated to the Department by this article."

As set forth drug inspectors and special agents have statutorily been granted certain law enforcement authority including statewide police powers, authority to execute and serve arrest and search warrants, authority to make investigations relating to controlled substances, and authority to arrest without a warrant for offenses committed in their presence. Prior opinions of this Office have recognized the law enforcement authority of drug inspectors. See: Opinions dated February 14, 1983; January 21, 1983; March 8, 1979. An opinion dated October 26, 1976 indicated that the DHEC Bureau of Narcotics and Drug Control is a "law enforcement agency" within the framework of Section 17-13-40 of the Code which relates to expungement. Section 44-53-480(b) specifies however that DHEC drug inspectors and special agents possess the designated authority "while in the performance of their duties as prescribed herein." Therefore such authority appears to be restricted to duties relating to controlled substances set forth in Section 44-53-480. Also, as referenced, Section 44-53-490 sets forth duties restricted to controlled substances by the language "enforcement of the duties delegated to the Department by this article."

Therefore, it is clear that the DHEC drug inspectors and special agents possess law enforcement authority pursuant to Section 44-53-480. As to the question of whether a State Constable's commission is required or appropriate to perform "comprehensive law enforcement duties" which may or may not be directly related to duties regarding controlled substances, it appears that such a commission would be necessary to perform additional duties beyond those relating to controlled substances. Of course, any decision as to whether such expanded authority is desirable is a policy decision for DHEC to make. Also, such an appointment is within the Governor's discretion.

Section 23-1-60 of the Code authorizes the appointment of constables by the Governor "to assist in the detection of crime and the enforcement of any criminal laws of this State." A prior opinion of this Office dated May 14, 1980 which referenced the decision of the State Supreme Court in State v. Luster, 178 S.C. 199, 182 S.E.2d 427 (1935) noted that constables have the authority of regularly commissioned peace officers which includes the power of arrest. Therefore, a Constable's commission would potentially broaden the authority of drug inspectors and agents appointed by DHEC beyond those duties dealing with controlled substances. I would note that there would not be any dual office holding problems in light of the provisions of Article XVII, Section 1A and Article VI, Section 3 of the State Constitution which amended the Constitution to indicate that the position of constable is no longer considered an office for dual officeholding purposes. See: Op. Atty. Gen. dated May 2, 1989.

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You also asked whether DHEC drug control inspectors and agents are subject to the law enforcement training provisions set forth in Sections 23-23-10 et seq. of the Code. You also questioned whether these individuals must be certified by the Law Enforcement Training Council in order to carry out their law enforcement duties.

Section 23-23-10(A) states that

(i)n order to insure the public safety and general welfare of the people of this State, and to promote equity for all segments of society, a program of training for law enforcement officers and other persons employed in the criminal justice system in this State is hereby proclaimed and this article must be interpreted so as to achieve these purposes principally through the establishment of minimum standards in law enforcement selection and training.

The term "law enforcement officer" is defined by subsection (D) as

... an appointed officer or employee hired by and regularly on the payroll of the State or any of its political subdivisions, who is granted statutory authority to enforce all or some of the criminal, traffic, and penal laws of the State and who possesses, with respect to those laws, the power to effect arrests for offenses committed or alleged to have been committed.

Pursuant to Section 23-23-40

(n)o law enforcement officer employed or appointed on or after July 1, 1989, by any public law enforcement agency in this State is authorized to enforce the laws or ordinances of this State or any political subdivision thereof unless he has been certified as qualified by the council, except that any public law enforcement agency in this State may appoint or employ as a law enforcement officer, a person who is not certified if, within one year after the date of employment or appointment, the person secures certification from the council; provided, that if any public law enforcement agency employs or appoints as a law enforcement officer a person who is not certified, the person shall not perform any of

the duties of a law enforcement officer involving the control or direction of members of the public or exercising the power of arrest until he has successfully completed a firearms qualification program approved by the council; and provided, further, that within three working days of employment the council must be notified by a public law enforcement agency that a person has been employed by that agency as a law enforcement officer, and within three working days of the notice the firearms qualification program as approved by the council must be provided to the newly hired personnel. If the firearms qualification program approved by the council is not available within three working days after receipt of the notice, then the public law enforcement agency making the request for the firearms qualification program may employ the person to perform any of the duties of a law enforcement officer, including those involving the control and direction of members of the public and exercising the powers of arrest. Should any such person fail to secure certification within one year from his date of employment, he may not perform any of the duties of a law enforcement officer involving control or direction of members of the public or exercising the power of arrest until he has been certified. He is not eligible for employment or appointment by any other agency in South Carolina as a law enforcement officer nor is he eligible for any compensation by any law enforcement agency for services performed as an officer.

Exceptions to such requirement are also set out. Inasmuch as DHEC drug control inspectors and agents are granted law enforcement powers, including the authority to make arrests, they would be subject to the training requirements set forth in Section 23-23-10 et seq. where applicable. Certification when required by the referenced provisions would be necessary for these individuals to carry out their law enforcement duties.

You next asked what drug control employees who became law enforcement officers prior to January 1, 1972 must do to be grandfathered in pursuant to Section 23-23-40 of the Code. You asked whether they must comply with SLED policies dealing with training and be certified or recertified under Sections 23-23-10 et seq.

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Before its amendment in 1989, Section 23-23-40 of the Code provided for mandatory training of law enforcement officers appointed "on or after January 1, 1972." Therefore, individuals who become law enforcement officers within the definition cited above before such date were "grandfathered in". See: Opin. of the Atty. Gen. dated March 25, 1983. Section 23-23-50(c) prior to its amendment set forth the requirements to be met by law enforcement officers serving prior to December 31, 1971. Such provision stated

Law enforcement officers already serving under permanent appointments prior to December 31, 1971, shall not be required to meet any requirements set out in subsection (B), items (1), (2), or (3) (supra) of § 23-23-50 as a condition of tenure or continued employment

Items (1) and (2) of subsection (B) provided for mandatory educational and physical fitness requirements for law enforcement officers. Item (3) of such provision required successful completion of law enforcement training. Therefore, officers serving prior to December 31, 1971 were not required to meet such requirements.

Presently, however, such provision refers to required training for any law enforcement officer "appointed on or after July 1, 1989." Section 23-23-50(C) of the Code further provides

a certificate as a law enforcement officer issued by council will either expire three years from the date of issuance or upon discontinuance of employment by the officer with the employing entity or agency. The certification of any law enforcement officer issued by the council that is current on July 1, 1989 will expire in the year 1992 on the last day of the month during which it was issued, or upon discontinuance of employment with the employing entity or agency. Prior to the expiration of the certificate, the certificate may be renewed upon application presented to the counsel....

Referencing the above, any individual who became a law enforcement officer prior to January 1, 1972 was grandfathered in and did not have to meet the initial training requirements established by Section 23-23-40. However these individuals would be subject to the requirements for recertification as established by the Law Enforcement Training Council pursuant to Section 23-23-50(c). Clarification as to requirements for certification or recertification should be directed to the Training Council.

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You also asked whether individuals who were "grandfathered in" must comply with SLED policies dealing with training and be certified or recertified under Sections 23-23-10 et seq. Again, questions dealing with certification or recertification should be directed to the Training Council. As to questions regarding compliance with SLED training policies, such should be directed to that agency. However, I would note that Section 23-1-60 of the Code in providing for the position of State Constable states further


(a)ll persons appointed under the provisions of this section shall be required to furnish evidence that they are acknowledgeable as to the duties and responsibilities of a law-enforcement officer or shall be required to take such training in this field as may be prescribed by the Chief of the South Carolina Law Enforcement Division.

Therefore any DHEC drug control enforcement officers who hold state constable commissions would be required to comply with training policies for Constables as mandated by SLED.

In your final question you asked whether DHEC drug control enforcement officers who hold state constable commissions must comply with policies established by SLED as set forth in the April 17, 1990 letter from SLED. As stated above, the Chief of SLED is authorized to prescribe training required for Constables. Again DHEC drug control inspectors and agents who hold Constable commissions could be required to meet training requirements established by SLED. Questions regarding what training is necessary should be directed to SLED.

With best wishes, I am

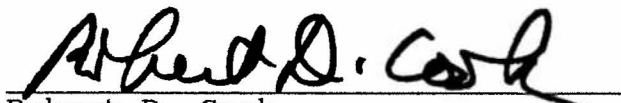
Very truly yours,



Charles H. Richardson
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CHR/an

REVIEWED AND APPROVED BY:



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