

The State of South Carolina



Office of the Attorney General

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April 1, 1991

The Honorable Allen F. Sloan
Sheriff, Richland County
Post Office Box 143
Columbia, South Carolina 29202

Dear Sheriff Sloan:

You advise that prior to January 1990 the security officers of the Richland County Sheriff's Department were issued state constable commissions but are now commissioned by you with limited duty and arrest powers on the property to which they are assigned. You have asked whether security officers employed by and on the payroll of the Richland County Sheriff's Department are eligible to exclude \$5.00 per duty day from their South Carolina Personal Income Tax return for subsistence allowance, pursuant to South Carolina Code Ann. Sections 23-1-30 and 23-1-40 (1976, as amended). It is our opinion that security officers appointed by virtue of South Carolina Code Ann. Section 4-9-145 (Supp. 1990) are eligible.

Section 23-1-30 provides as follows:

Of the amounts appropriated by acts of the General Assembly for police officials and all commissioned law-enforcement officers, the sum of five dollars a day for each regular work day shall be designated as a statutory subsistence allowances. (Emphasis added).

Section 23-1-40 further provides:

Of the amount appropriated as salaries for municipal law-enforcement officers and county law-enforcement officers the sum of five dollars per day for each such officer is hereby designated as subsistence for each day of active duty. (Emphasis added).

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South Carolina Code Ann. Section 4-9-145 (1990 Supp.)
provides

The governing body of a county may appoint and commission as many enforcement officers as may be necessary for the proper security, general welfare, and convenience of the county. These officers are vested with all the powers and duties conferred by law upon constables in addition to duties imposed upon them by the governing body of the county...

This office has previously opined the \$5.00 subsistence exclusion applies to law enforcement officers and that a probation officer is considered a law enforcement officer. We have also determined that security personnel employed in local detention facilities have the status of peace officers while performing their official duties. S.C. Atty. Gen. Ops. dated March 19, 1986, October 15, 1986; June 3, 1983; March 24, 1983. We have found that security personnel and jail employees fall within the definition of law enforcement officer as it relates to required law enforcement training as these officers possess, by statute, authority to enforce some of the criminal laws of the State and the power to arrest for violations of those laws. Id. We have also stated that a litter control officer appointed pursuant to South Carolina Code Ann. Section 4-9-145 would be required to comply with law enforcement training requirements. S.C. Atty. Gen. Op. dated December 10, 1990.

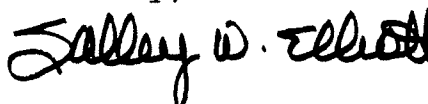
A security officer of the Richland County Detention Center appointed pursuant to Section 4-9-145 is vested with the powers and duties conferred upon constables and is a law enforcement officer. See South Carolina Code Ann. Section 23-23-10(D)(1)(For purposes of defining those required to participate in training, a law enforcement officer "means 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

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to have been committed."); State v. Luster, 178 S.C. 199, 182 S.E. 427 (1935). (One having a constable commission is vested with all powers of a peace officer of the State). See also Powell v. Board of Com'rs of Police I. and A. Fund, 210 S.C. 136, 41 S.E.2d 780 (1947) (An appointed deputy sheriff who served as a deputy of Drayton Mills was a peace officer for purposes of Police Insurance and Annuity Fund). Therefore, security officers appointed by you by authority of Section 4-9-145 are eligible to exclude \$5.00 per duty day from their South Carolina Personal Income Tax return for subsistence allowance pursuant to Sections 23-1-30 and 23-1-40.

If you have any questions, please advise.

Sincerely,



Salley W. Elliott
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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