

The State of South Carolina



Office of the Attorney General

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February 3, 1989

Donald Chadwick, Chief of Police
Campobello Police Department
Campobello, South Carolina 29322

Dear Chief Chadwick:

In a letter to this Office you questioned whether a city police officer, with permission of his department, can contract himself out to a third party as a security officer or to do investigative work, such as divorce surveillance, without being licensed as a private detective or private security guard.

As you are aware, pursuant to Section 23-24-10 of the Code,

(u)niformed law enforcement officers may wear their uniforms and use their weapons and like equipment while performing private jobs in their off duty hours with the permission of the law enforcement agency and governing body by which they are employed.

Therefore, while law enforcement officers are authorized to "moonlight", any such activity must be in compliance with the provisions of Sections 23-24-10 et seq. of the Code.

Sections 40-17-10 et seq. of the Code, the South Carolina Private Detective and Private Security Agencies Act, provide for the licensing and registration by SLED of individuals engaged in the private detective and private security business as defined by that Act. Section 40-17-150 provides exemptions from the provisions of such Act. Included in such is subsection (5) which states:

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(a) person receiving compensation for private employment on an individual, independent contractor basis as a patrolman, guard or watchman who has full-time employment as a peace officer with a state, county or local police department. For such exemption to operate, the peace officer so defined shall (a) be employed in an employer-employee relationship, (b) on an individual contractual basis and (c) not be in the employ of another peace officer. 1/

Therefore, an employed law enforcement officer can be further employed on an individual contractual basis as a patrolman, guard or watchman where there is an employer-employee relationship in such security work. However, such exemption does not authorize the officer to contract with or be employed by a private security company. See: Opinion of the Atty. Gen. dated September 24, 1985 (enclosed). This authorization to perform security work is consistent with the provisions authorizing "moonlighting" cited above.

While such an officer can engage in security work, the officer is not authorized to engage in activity which would be included within the definition of the "private detective business." Pursuant to Section 40-17-20(a) such term is defined as

...engaging in the business of or accepting employment to obtain or furnish information with reference to:

- (1) The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation or character of any persons;
- (2) The location, disposition or recovery of lost or stolen property;
- (3) The cause or responsibility for fires, libels, losses, accidents, damage or injury to persons or property; or
- (4) The securing of evidence to be used before any civil court, board, officer or investigating committee....

1/ The terms "patrolman, guard or watchman" are consistent with the definition of the "private security business" as set forth in Section 40-17-20(b). The "private security business" is distinguishable from the "private detective business." See: Section 40-17-20(a)

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Also included in such provision is an exemption which states:

(p)ivate detective business shall not include persons employed exclusively and regularly by only one employer in connection with the affairs of such employer only and where there exists an employer-employee relationship unless the employer is in the detective business. (emphasis added)

Such exemption would not apply to an individual already employed as a law enforcement officer in this State.

In addition to there not being an exemption to licensing and registration for law enforcement officers to engage in work within the definition of the "private detective business", the prior opinion of this Office dated September 24, 1985 referenced above concluded that a law enforcement officer could not be the owner of a private security company or private detective agency. Also, it was advised that SLED not register a law enforcement officer as a private detective or private security guard. Consistent with such opinion, a regularly employed law enforcement officer in this State could not engage in work within the definition of the private detective business. Presumably, this would include investigative work, such as divorce surveillance, referenced in your letter.

If there is anything further, please advise.

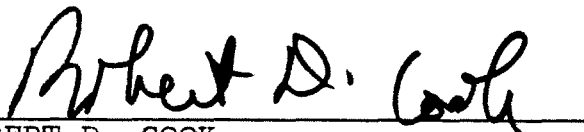
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR:sds
Enclosure

REVIEWED AND APPROVED BY:



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