

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

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March 1, 1989

Edgar Dyer, Esquire
Attorney at Law
118 Citadel Drive
Conway, South Carolina 29526

Re: Briarcliffe Acres

Dear Mr. Dyer:

Attorney General Medlock has referred your letter of February 6, 1989 to me for inquiry and reply.

In it, you stated that, as town attorney for Briarcliffe Acres, you requested an opinion from this Office as to whether or not the town could provide police officers by contracting with a private security agency. You further stated that any and all officers provided by the private security agency would be approved by the Criminal Justice Academy, and sworn in as police officers by the town.

In a prior opinion of this Office, dated April 2, 1980, a copy of which is enclosed, the question was raised whether or not a local government could contract with a private security agency to provide for police and patrol services on public property. In a letter dated March 6, 1980, involving Arcadia Lakes in Columbia, it was stated that a municipality was not authorized to contract with a private security agency to provide the personnel of the private agency the power of arrest on public streets and public property. A copy of that letter is also enclosed.

More specifically, it stated that law enforcement was an exercise of the state's police power, which could be delegated to a municipality. Section 5-7-1010 of the South Carolina Code of Laws was quoted in the following respects:

Any municipality may appoint or elect as many police officers, regular or special, as may be necessary for the property law enforcement in such municipality and fix their salaries and prescribe their duties.

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Police officers shall be vested with all the powers and duties conferred by law upon constables, in addition to the special duties imposed upon them by the municipality.

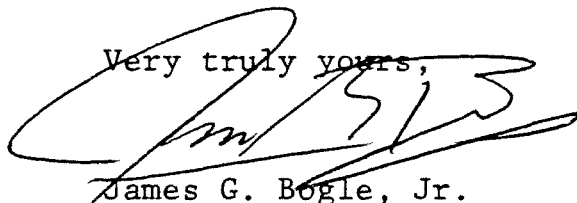
In the March 6, 1980 letter it was concluded that the system envisioned by the above legislation demanded that the municipalities stand in the position of employer to its officers charged with the responsibility of law enforcement, with direct control over each of them. It could not be inferred from the language of the legislation that the delegation of the state's police power be performed by a private entity such as a security company.

This was ratified in the later opinion of April 2, 1980. For the above reasons, it would be my advice that Briarcliffe Acres could not contract with a private security company to provide law enforcement officers for the town. The fact that they would be highly trained, and approved by the Criminal Justice Academy, and sworn in as police officers by the town, would not place the town in the position as employer with direct control over the guards, since they would be employees of the security company, registered under that company's license with the Regulatory Section at SLED.

I am sorry I can't help you with the situation that you have, but it appears that the legislation enacted by the General Assembly would not allow for an arrangement such as the one you have suggested.

If I can be of further assistance, please do not hesitate to contact me.

Very truly yours,



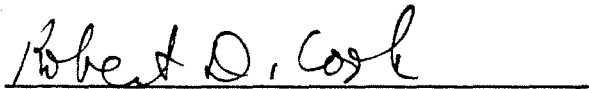
James G. Bogle, Jr.
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REVIEWED AND APPROVED BY:



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