

The State of South Carolina



Office of the Attorney General

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July 7, 1986

J. P. Strom, Chief
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RE: Transferability of Licenses - Opinion No. 2280

Dear Chief Strom:

Attorney General Medlock has referred your letter of June 3, 1986 to me for inquiry and reply. I had met with your agent, Lt. Pat Murphy, regarding the questions you presented on May 30, 1986.

You inquired concerning the transferability of licenses or registrations issued by SLED under the Private Detective and Private Security Agencies Act, Sections 40-17-10, et seq., and appropriate regulations.

More specifically, you raised three typical situations of concern:

1. Change of company operator.
2. Change of company name.
3. Sale of company.

Generally, private detectives and private security agencies are regulated under the statute and regulations referenced above. At Section 40-17-30 you are delegated certain powers by the Legislature, including the power to determine the qualifications for licenses and registrations, and at subsection (3), the authority to promulgate rules and regulations in furtherance of the Act.

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Section 40-17-40 requires private detectives or private security businesses, engaged in an individual self-employed capacity, to be licensed by SLED. The application shall be verified, and last for one year. In addition, at subsection (b), it is provided that employees of private detectives or private security businesses shall present a verified application to register with SLED. Upon registration, SLED is to notify the employer, and such registration shall last one year. The employer is required to notify SLED within five days of the termination of an employee.

Section 40-17-50 sets requirements for a license holder to carry on as a private detective or private security business, and Section 40-17-70 sets fees and the requirement that an investigation may be conducted by SLED, after which, if SLED is satisfied, a license may be granted to a private detective or private security business.

Registration is further defined and covered in Section 40-17-80(a), wherein it is provided that immediately upon hiring an individual, a licensee shall apply to SLED to register that employee. After the application has been received by SLED, the employee may work for twenty days without weapons authority nor power of arrest, pending SLED's issuance of the registration. And finally, pertinent to your inquiry, Section 40-17-90 provides for temporary employees. An employer may hire temporary employees, for a period not to exceed ten days, who may not carry firearms. This is to be done only in anticipation of a special event requiring extra employees, and their names and other information are to be sent to SLED not later than three days prior to the occurrence of the special event.

Regulation 73-40(3) provides as follows:

License or registration when issued by SLED
shall not be transferable.

The general common law rule is that a license is a personal item, and not transferable, unless where authorized by statute in specific instances, such as where a partner transfers a license to another partner, or a licensee dies. See 51 Am.Jur.2d, Licenses and Permits, Section 3, and cases cited therein; see also 26A C.J.S. Detectives. This Office

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has held in prior opinions that certain licenses, including ones issued by SLED, relate only to the persons who initially obtained them, and are not transferable. For example, it was held that a retail pistol dealer's license issued by SLED was not transferable. Similarly, in an opinion dated March 12, 1976 to the Director of the Alcoholic Beverage Control Commission, it was held that a retail beer and wine permit issued pursuant to an individual would terminate upon that individual's death, and would not be transferable.

Finally, it was held in opinion dated September 21, 1973 that a license for a shrimp boat would not be transferable. Of note is the fact that in that instance the statute was silent regarding transferability, and it was necessary to look to the intent of the Legislature. McGlohon v. Harlan, 254 S.C. 207, 174 S.E.2d 753 (1970). While the Private Detective and Private Security Agencies Act is silent regarding transferability of licenses, Regulation 73-40(3), promulgated thereunder, is quite specific: licenses are not transferable.

Finally, I would call your attention to a fairly recent case, Burns International Security Services Incorporated v. The Department of Transportation, 671 P.2d 446 (Haw. 1983). In that case, a private security guard license issued to a corporation was held personal to it, and not transferable to a reorganized corporation without consent of the appropriate licensing board. The common law rule was cited, and, similar to the opinions above, it was noted that there was no specific provision in the private security guard statute of Hawaii prohibiting such transfers. More specifically, the Court held:

To allow the transfer of licenses would be a derogation of the common law on non-transferability of licenses and statutes which are in derogation of the common law must be strictly construed... Where it does not there was legislative purpose in superseding the common law, the common law will be followed [cited cases omitted]. Here, without express intent that the Legislature had forsaken the common-law rule of non-transferability of licenses, we decline to so hold.

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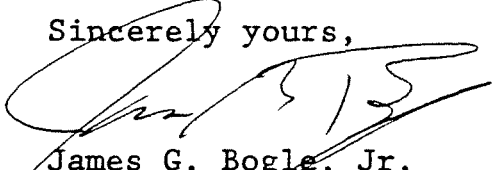
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Given the above, I would now turn to the three specific instances you presented. I am informed by Lt. Murphy that when an application is made for a company license, the applicant, or company operator, is investigated by SLED. The license then is personal to him or her, and would therefore under the above opinions and other authority not be transferable. Similarly, when there is a change of a company name, there may be no efficient way to determine that company operators and ownership remain the same. Often changes in company names are done as a result of financial difficulty, and in any event, such a change requires new registrations for the employees, and usually changes in uniforms. Accordingly, I would advise against allowing transferability of licenses when there is a change in company name. Finally, a sale of a company implies new ownership and, more than likely, a new company operator. The investigation requirements contained in the statute would in most every case apply, and for that reason I would also advise against allowing transferability of a license.

In conclusion then, it would be the opinion of this Office that the specific regulation promulgated under the Private Detective and Private Security Agencies Act, Regulation 73-40(3) prohibits the transferability of a license under each of the three situations you presented.

If further information is needed, please do not hesitate to contact me.

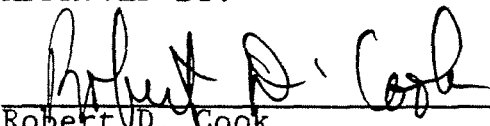
Sincerely yours,



James G. Bogle, Jr.
Assistant Attorney General

JGBJr/fc
cc: Lt. Pat Murphy, Director
Regulatory Section
SLED

APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions