

The State of South Carolina



Office of the Attorney General

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May 14, 1986

Chief J. P. Strom
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Dear Chief Strom:

Attorney General Medlock referred to me your letter of January 31, 1986 for inquiry and reply.

You present the following question: May a private or premise security guard and/or any private detective who is currently registered by SLED be registered with more than one company concurrently? If such officer or detective were licensed or registered with more than one company at the same time, would this constitute dual officeholding or a conflict of interest?

Accordingly, I have examined the provisions of South Carolina's Detective and Private Security Agencies Act, §§40-17-10, et seq., CODE OF LAWS, 1976, as amended, together with Article XVII, Section 1A of the South Carolina Constitution, wherein it is provided that: "...no person shall hold two offices of honor or profit at the same time."

As I understand the Private Detective and Private Security Guard Statute, to operate as a private detective company or private security guard company, a person or company must receive a license from SLED. If that individual then also works as a private detective or private security guard, he or she must register with SLED. If that person employs others as private detectives or private security guards, then he or she must register those employees. The provisions for licensing and registration are provided in §§40-17-40, 40-17-50, 40-17-60, 40-17-70 and 40-17-80.

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There is no provision in the statute prohibiting a person from being registered with more than one company concurrently.

A possible conflict of interest problem would be a question to be dealt with between employer and employee. For example, I understand some private detective companies have expressed concern that an employee of theirs, also employed by a rival private detective company, could be divulging confidential information from one employer to the other. This would be a matter to be disposed of between the employer and the employee, and apparently not one subject to disposition under the State statute. Of course, if the divulgence of such information amounted to dishonesty or fraud as set forth in §40-17-140(a)(5), action could be taken by your division to suspend or permanently revoke a license granted under the statute.

There remains the question of dual officeholding. For the constitutional provision cited above to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. Private detectives, by definition, are engaged in the business of obtaining or furnishing information regarding the conduct of a person, the location or recovery of property, or the cause or responsibility for fires, or other losses. For further details, see §40-17-20(a). Private detectives do not have the authority to carry weapons, nor are they empowered with the authority to arrest. Therefore, since private detectives do not appear to have been vested by statute with a sovereign power of the State, they would not appear to hold "an office" within the limits of the constitutional prohibition.

Private security guards are granted the power of arrest, similar to a deputy sheriff, limited to the property they are assigned to patrol or guard, by §40-17-130. In addition to that section's granting of a significant power of the State other provisions of the Private Detective and Private Security Agencies Act require licensing and registration as discussed above, prescribed the tenure for such licensing, and described the duties that may be conducted by a private security guard (§40-17-20(b)). Accordingly, it would appear that a private security guard would be an "officer" within the dual officeholding

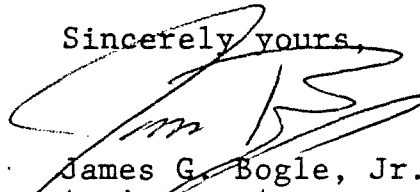
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prohibition of the Constitution, and this Office has so ruled in the past, in an opinion to you dated March 11, 1983, from Assistant Attorney General Larry L. Vanderbilt. Similarly, a police officer has been found to be an officer within the constitutional meaning of the term. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980), as have deputy sheriffs, in opinions of this Office dated February 23, 1979, September 23, 1980, and February 16, 1983.

However, essential to answering your question is the understanding that the private security guard is licensed once, but may register with more than one company, or at least that has been the present practice. The act of registration does not create an additional office, nor does it require an additional license from your division. It would therefore be the opinion of this Office that the registration with a different company, since it is not an additional office requiring an additional license from your division, is not an additional "office" within the prohibition found in the State Constitution. To hold otherwise could place in jeopardy other situations involving law enforcement officers which have been sanctioned by the Legislature, such as the moonlighting provisions found at §23-24-10, and the provisions allowing for cooperation or transfer of law enforcement officers between and among jurisdictions, found, for example, at §23-1-210 of the CODE OF LAWS.

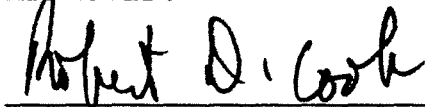
Therefore, it would be the conclusion of this Office that there would be no constitutional prohibition against a private security guard being registered with more than one company concurrently.

Sincerely yours,


James G. Bogle, Jr.
Assistant Attorney General

JGBJr/fc

APPROVED:


Robert D. Cook
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Opinions