

# The State of South Carolina



## Office of the Attorney General

**T. TRAVIS MEDLOCK**  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE 803-734-3970

April 30, 1987

The Honorable John S. Willis  
Chief of Police  
Town of Clover  
Post Office Box 181  
Clover, South Carolina 29710

Dear Chief Willis:

In a letter to this Office you raised several questions pertaining to the arrest authority of private security guards. In your first question you asked whether a private security guard can use a uniform traffic ticket to arrest a defendant on the property the guard is hired to protect.

Section 56-7-10 of the Code states "(t)here will be a uniform traffic ticket used by all law enforcement officers in arrests for traffic offenses..." Pursuant to Section 40-17-130 of the Code a private security guard, who is licensed or registered under this State's Private Detective and Private Security Agencies Act, Sections 40-17-10 et seq. of the Code,

... who is hired or employed to patrol, guard, or render a similar service on certain property shall be granted the authority and power which sheriffs have to make arrest of any persons violating or charged with violating any of the criminal statutes of this State, but shall have such powers of arrest only on the aforementioned property.

In State v. Brant, 278 S.C. 188 at 190, 293 S.E.2d 703 (1982) the State Supreme Court recognized that pursuant to such provision a security guard is granted authority identical to that of a sheriff on the property he is hired to protect. The arrest authority of such security guards has also been recognized in several prior opinions of this Office. See: Opinions of the Attorney General dated August 29, 1986; May 14, 1986; November

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9, 1977. In Brant, the Supreme Court in construing Section 40-17-130 determined that a security guard was a law enforcement officer within the provisions of Section 16-9-310 of the Code, the statutory provision dealing with the offense of resisting arrest. In such provision, a "law enforcement officer" is defined as "... any duly appointed or commissioned law enforcement officer of the State, a county or municipality." 278 S.C. at 190. In construing a private security guard to be a "law enforcement officer" as used in Section 16-9-310 the Court referenced that, generally, in determining the meaning of one particular statute, it is proper to consider other statutory provisions relating to the same subject matter. See also: Southern Ry. Co. v. S. C. State Hwy. Dept., 237 S.C. 75, 115 S.E.2d 685 (1960). Consistent with Brant, a private security guard should be construed as being within the definition of a "law enforcement officer" as used in Section 56-7-10. Therefore, a private security guard registered or licensed by SLED would be authorized to use a uniform traffic ticket in making arrests on the property the guard is hired to protect.

The authority of such security guards to use emergency lights and issue uniform traffic tickets is specifically referenced in State Law Enforcement Division Regulation 73-40(17) which states:

(s)ecurity patrol cars shall utilize emergency lights that are amber in color. If a security agency feels blue or red emergency lights are necessary on their patrol vehicles, the following is required:

(a) owner of the property which the security agency is patrolling shall comply with all provisions of the South Carolina Uniform Act regulating traffic to private roads... (Sections 56-5-6310 et seq. of the Code)...

(b) copies of all written approvals governed by the provisions of the Act given above shall be filed with SLED.

(c) security agency shall make application to the Division for uniform traffic summons books.

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(d) emergency blue or red lights shall be removed or concealed when security patrol car is not on said property which security agency is patrolling.

Therefore, properly registered or licensed security guards are authorized to use uniform traffic tickets in association with arrests made on the property they are hired to protect when in compliance with SLED regulations.

You also asked whether your officers are authorized to run breathalyzer tests on a defendant arrested by a private security guard using a uniform traffic ticket. I assume that the arrest for driving under the influence was made on a road which the security guard was hired to protect and which was brought within the provisions of Section 56-5-6310 et seq. of the Code. Pursuant to Section 56-5-2950 of the Code, a breathalyzer test

... shall be administered at the direction of a law enforcement officer who has apprehended a person while driving a motor vehicle upon the public highways of this State while under the influence of intoxicating liquor... The arresting officer shall not administer the test.

Consistent with the conclusion reached in your first question, it appears that a private security guard would be within the definition of the term "law enforcement officer" as used in Section 56-5-2950. Therefore, an officer properly trained and certified as provided in Section 56-5-2950 as a breathalyzer operator would be authorized to conduct a breathalyzer test on a defendant arrested by a private security guard for the offense of driving under the influence.

Inasmuch as private security guards are authorized to use the uniform traffic ticket in making arrests, an answer to your third question concerning an alternate procedure does not appear necessary. However, as to your further question dealing with possible liability to your department in handling defendants arrested by private security guards, I am enclosing a copy of a prior opinion of this Office dated September 8, 1980 which discusses a similar question.

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If there is anything further, please advise.

Sincerely,

*Charles H. Richardson/ps*

Charles H. Richardson  
Assistant Attorney General

CHR/rhm

Enclosures

REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions