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The State of South Carolina



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March 20, 1985

Jeffrey B. Moore, Executive Director
South Carolina Sheriff's Association
421 Zimalcrest Drive, Suite 306
Columbia, South Carolina 29210

Dear Mr. Moore:

In a letter to this Office you referenced the situation where law enforcement officers are moonlighting or engaging in off-duty work while in uniform outside of their jurisdiction without permission from any authority within the county where they are working. 1/ Referencing such, you have questioned whether in such circumstances any such officers should be considered as acting as private citizens without any specific law enforcement authority. You have also asked whether the moonlighting activity by such officers is prohibited unless specific

1/ You particularly referenced a situation where officers of the Charleston County Police Department are moonlighting, while in uniform, in Dorchester County. You stated that they have not received any permission from any authority within Dorchester County to so act. Based on my research, officers of the Charleston County Police Department are not granted any specific authority or jurisdiction beyond the limits of Charleston County. See Act No.190 of 1937.

REQUEST LETTER

Continuation Sheet Number 2

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permission for work outside of their regular jurisdiction is obtained. 2/

It is recognized that pursuant to Sections 23-24-10 et seq., Code of Laws of South Carolina, 1976, as amended, off-duty private jobs for law enforcement officers are permitted. In a previous opinion dated February 17, 1984 this Office stated that pursuant to such provisions, such off-duty work is permitted assuming the following conditions are met:

1. a determination by the agency head of the agency that employs the law enforcement officer that such employment would not have any adverse effects on the agency, officer or profession, and that such employment would be in the public interest;
2. permission of the law enforcement agency that employs the officer;

2/ Apparently, pursuant to the exemption provided by Section 40-17-150(a)(5), Code of Laws of South Carolina, 1976, no questions would arise as to whether such law enforcement officers in moonlighting outside their regular jurisdictions should be licensed by SLED as private security guards. The referenced statute provides that this State's Private Detective and Private Security Agencies Act, Sections 40-17-10 et seq., does not apply to

"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." (Emphasis added.)

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3. permission of the governing body by which they are employed if the official uniforms, weapons, and like equipment is to be utilized by the uniformed officer while off-duty;
4. notice is given by the officer to the law enforcement agency of the place of employment, of the hours to be worked and the type of employment.

Such statutes, however, do not comment on any of the questions you have raised as to officers moonlighting outside their jurisdiction.

Generally, a city police officer has no authority to arrest outside the city limits unless he is in pursuit and then he may arrest within a three mile radius of the corporate boundaries. See: Section 17-13-40, Code of Laws of South Carolina, 1976. Pursuant to Section 23-13-60, Code of Laws of South Carolina, 1976, a deputy sheriff is authorized "for any suspected freshly committed crime, whether upon view or upon prompt information or complaint" to "arrest without warrant." Section 17-13-30, Code of Laws of South Carolina, 1976 provides that "the sheriff and deputy sheriffs of this State may arrest without warrant any and all persons who, within their view, violate any of the criminal laws of this State...." In a previous opinion dated June 20, 1984, this Office determined that

"(w)hile the South Carolina Code does not specifically restrict a sheriff to the county in and for which he was elected, such restriction may be fairly implied from other related statutes read in pari materia with statutes on sheriffs and their deputies." See also: 80 C.J.S. Sheriffs and Constables Section 36; 70 Am.Jur.2d Sheriffs, Police, and Constables Section 27.

Several statutes authorize law enforcement activity by law enforcement officers outside their regular jurisdiction in certain instances. Pursuant to Section 23-1-210, Code of Laws of South Carolina, 1976, as amended, the intra-state transfer of municipal or county law enforcement officers on a temporary basis is authorized. Such statute specifically provides that

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"any municipal or county law enforcement officer may be transferred on a temporary basis to work in law enforcement in any other municipality or county in this State under the conditions set forth in this section, and when so transferred shall have all powers and authority of a law enforcement officer employed by the jurisdiction to which he is transferred."

Moreover, Section 5-7-120, Code of Laws of South Carolina, 1976, as amended, authorizes municipalities to send law enforcement officers to other municipalities when requested in cases of emergency. When officers are sent to another municipality, they have all the jurisdiction and authority of law enforcement officers of the requesting municipality. This Office also recognized in the June 20, 1984 opinion previously referenced that Sections 8-12-10 et seq., Code of Laws of South Carolina, 1976, "... would permit the interchange of local governmental employees, such as sheriffs' deputies, between the counties."

In an opinion dated May 17, 1978, this Office referencing Section 6-1-20, Code of Laws of South Carolina, 1976, and Article VIII, Section 13 of the South Carolina Constitution determined that:

"(t)he ability of political subdivisions to enter into an agreement for the joint administration, responsibility and sharing of the costs of services with other political subdivisions is granted ... (R)eadings these ... sections in conjunction enables an incorporated municipality to enter into a contractual arrangement with a county to provide law enforcement services to the municipality."

Referencing the above, it is clear that there is specific authority for a law enforcement officer to act outside his jurisdiction in certain circumstances. However, it is clear that implicit in any such authorization is the requirement that there be agreement between the two affected jurisdictions.

In a recent opinion dated January 28, 1985 this Office dealt with the question of the propriety of a city police officer to make drug purchases outside the city limits. The

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opinion recognized that a number of cases in other jurisdictions have sanctioned such activity and upheld arrests by officers operating outside their regular jurisdictions. However, such arrests were validated on the basis that such officers, as private citizens, possessed the power to arrest. See: McAnnis v. Florida, 386 So.2d 1230 (Fla. 1980); People v. Bloom, 577 P.2d 258 (Cal. 1978); Meadows v. State, 655 P.2d 556 (Okla. 1982). The opinion further recognized that South Carolina law relating to arrest by a citizen authorizes any citizen to arrest an individual for a felony and to take such individual to local law enforcement authorities. See: Section 17-13-10, Code of Laws of South Carolina, 1976. Such statute further provides for the arrest by a private citizen upon "view of a larceny committed." 3/ The opinion, however, also stated in a footnote that

"(c)ourts have held that a police officer acting 'under color' of office, but outside his jurisdiction may not make an arrest; in other words, he must be acting as a citizen. A police officer is generally acting under color of his office by '... actually holding himself out as a police officer, either by wearing his uniform or in some other manner openly advertising his official position in order to observe the unlawful activity involved...."

3/ Section 17-13-20, Code of Laws of South Carolina, 1976 also provides that:

"Any citizen may arrest any person in the nighttime by such efficient means as the darkness and the probability of escape render necessary, even if the life of such person should be thereby taken, when such person (a) has committed a felony, (b) has entered a dwelling house with evil intent, (c) has broken or is breaking into an outhouse with a view to plunder, (d) has in his possession stolen property or (e) being under circumstances which raise just suspicion of his design to steal or to commit some felony, flees when he is hailed.

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As to your particular question as to whether the law enforcement officers moonlighting outside their jurisdictions should be considered as acting as private citizens without any specific law enforcement authority, it appears that unless such officers' law enforcement authority had been expanded pursuant to one of the previously referenced agreements, such officers in moonlighting outside their regular jurisdictions would be acting as private citizens. As such, they would only have that law enforcement authority previously recognized granted to other private citizens.

In your letter you referenced that the law enforcement officers you cited typically wear their uniforms while moonlighting outside their regular jurisdictions. As stated above, a law enforcement officer is generally considered to be acting "under color of his office" by holding himself out as a police officer, such as when the officer wears his regular uniform. However, as stated in the previous opinion of this Office cited above, courts have generally held that a law enforcement officer acting outside his regular jurisdiction may not make an arrest as a law enforcement officer but instead must act as a private citizen.

In State v. Shipman, 370 So.2d 1195 (Fla. 1978) the Florida District Court of Appeal determined that a law enforcement officer's actions in making an arrest as a private citizen outside his jurisdiction

"... would not be sustainable as those of a private citizen if ... (he) ... was 'acting under color of office' at the time ... (he made the arrest)...." 370 So.2d at 1196.

Therefore, as to the situation you referenced, the officers in wearing their uniforms while "moonlighting" outside of their jurisdictions should not be considered to be exercising their regular law enforcement authority. Instead, by wearing their uniforms in such circumstances, the officers are waiving that law enforcement authority they possess, i.e., that of a private citizen.

You also questioned whether the moonlighting activity described above by such law enforcement officers is prohibited unless specific permission for such work outside their regular

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jurisdictions is obtained. 4/ Referencing the above, such activity does not appear to be absolutely prohibited. However, as pointed out, unless such officers' law enforcement authority has been expanded such as pursuant to one of the type agreements discussed in this opinion, such officers in moonlighting outside their regular jurisdictions would only possess that law enforcement authority granted to private citizens generally. Moreover, if the officers wear their regular uniforms in such circumstances, their actions would not be sustainable as those of a private citizen since they would be "acting under color of office."

If there are any further questions, please advise.

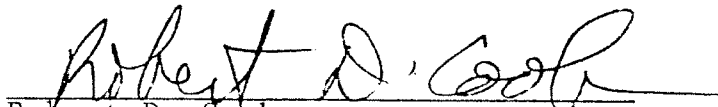
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR:djg

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions

4/ This opinion does not attempt to comment on whether any local policies or regulations of a particular law enforcement agency would prohibit such activity. Such would have to be examined on a case-by-case basis.