

1983 WL 181744 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 10, 1983

*1 The Honorable Clyde M. Dangerfield
Member
House of Representatives
Labor, Commerce and Industry Committee
Post Office Box 11867
407 Blatt Building
Columbia, South Carolina 29211

Dear Sir:

The Attorney General has referred your letter, dated January 19, 1983, to me for reply.

Your inquiry concerned the legal restrictions for off-duty city police officers exercising police powers for compensation. More specifically, the community of Snee Farm wish to contract with the city of Mt. Pleasant for the use of off-duty city police officers to augment regular law enforcement patrols in that community. It appears Snee Farm is within the city limits of Mt. Pleasant.

It is my conclusion that Mt. Pleasant and Snee Farm could not enter into such a contract. However, my review of the law does indicate some inconsistencies, as will be discussed below, that may be remedied by appropriate legislation.

The prohibitions against such a contract and the use of police officers are, first, specifically directed at the officers, and second, directed against the governing body that employs them. [Section 16-9-230 of the Code of Laws](#) prohibits a public employee from receiving compensation in addition to that provided by law for performance of his or her duties:

No person holding an office or position of trust or profit in this State or in the public institutions thereof shall accept rebates or extra compensation in addition to that provided by law. Any person violating the provisions of this section shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars or be imprisoned for not less than three months nor more than five years.

And § 16-9-250 makes it unlawful for police officers to receive remuneration for performance of their official duties

It shall be a misdemeanor for any sheriff or other peace officer in South Carolina to make any charge for the arrest, detention, conveying or delivering of any person charged with the commission of crime in this State, except the mileage and necessary expenses as now provided by law. Any sheriff or other officer who shall violate the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars nor more than two hundred dollars or imprisoned not less than thirty days and not more than six months, or both fined and imprisoned at the discretion of the court.

It may be assumed that Mt. Pleasant police officers are already responsible for enforcement of the law in Snee Farm, which apparently, lies within the city limits.

The Ethics Act, [§§ 8-13-10 et seq., Code of Laws of South Carolina \(1976\)](#), provides additional prohibitions and criminal penalties appropriate to the instant case. Section 8-13-20 defines the scope of the Act to include as 'public employees' any person employed by a municipality. And § 8-13-430 prohibits receipt of compensation in addition to that received by a public employee in his or her official capacity:

***2** No person shall offer or pay to a public official or public employee and no public official or employee shall solicit or receive any money in addition to that received by the public official or public employee in his official capacity for advice or assistance given in the course of his employment as a public official or public employee.

Section 8-13-440 prohibits the use or disclosure of confidential information gained in the course of employment as a public official for financial gain. This office has construed that section, and § 8-13-430, to preclude a city police chief from being licensed and doing business as a private detective or private security guard. A copy of that opinion, dated April 21, 1981, is attached.

It also appears that Snee Farm could not be established as a 'special police district', allowing it to obtain deputy sheriffs for law enforcement duties, under §§ 23-27-10 et seq. of the Code. That provision of the Code by definition is limited to providing police protection to 'unincorporated villages or towns or thickly populated areas outside' city limits.

There is some authority, albeit conflicting, in Chapter 7 of Title 5 of the Code, dealing with the powers, duties, and responsibilities of municipalities, which would allow a municipality to contract to provide police protection. However, the statute imposes a limitation to areas outside the corporate limits, at § 5-7-110:

Any municipality may appoint or elect as many police officers, regular or special, as may be necessary for the proper law enforcement in such municipality and fix their salaries and prescribe their duties . . . any such police officers shall exercise their powers on all private and public property within the corporate limits of the municipality and on all property owned or controlled by the municipality wheresoever situated; provided, that the municipality may contract with any public utility, agency, or with any private business to provide police protection beyond the corporate limits . . .

Thus, the statutes appear to restrict the actions of the individual officer, and the contracting powers of the municipality.

However, as noted at the beginning of this letter, there is more recent legislation which appears to carve an exception to the rules above. It is directed at the individual officer, and is found in Act 529, 60 Statutes 1552 (1978), codified at §§ 23-24-10 et seq., [Code of Laws of South Carolina \(1976\)](#). The intent of that statute, as expressed by the General Assembly in § 1 of the Act, was a finding that 'the mere presence of uniformed police officers performing private jobs during their off-duty hours adds substantially to the security of the public' at no additional public expense.

In summary, Act 529 authorizes law enforcement officers to wear their uniforms, use their weapons 'and like equipment' (a description probably not intended to include marked vehicles' since such a broad description is absent) while performing private jobs in their off-duty hours. Such work must be with the permission of the law enforcement agency and governing body by which they are employed. See §§ 23-24-10 and 23-24-20. A determination must, accordingly, be made that such employment would be in the public interest.

***3** It may be argued that the potential conflicts of interest and criminal liabilities outweigh the utility of Act 529. And while it may be argued that Act 529 is a special statute, and therefore an exception to the general provisions found in Titles 8 and 16 cited above, such an interpretation would not be the better practice under normal rules of statutory construction, considering the absence of specific language noting the exception in Act 529. And the presumption is certainly against regarding Act 529 as repealing by implication the earlier statutes, given the absence of clear, specific language indicative of such an intent to repeal by the General Assembly. See 73 Am.Jur.2d 'Statutes' §§ 257, 392-399.

On the other hand, this Office is aware of the fact that many uniformed police officers throughout the State moonlight on their off-duty time working as private security guards for various clubs, department stores, private parties, and other business and functions. It is the opinion of this Office that, given the language of Act 529, such duty is legitimate. However, in accordance with your request, I feel obligated to call to your attention the fact that Act 529 does not contain language exempting officers

from the provisions of Titles 8 and 16. Moonlighting by uniformed police officers is therefore a legitimate activity, although not specifically described as such in the statute.

Accordingly, while the community of Snee Farm may not contract with the city of Mt. Pleasant to provide such law enforcement officers and equipment, there would appear to be no prohibition against the individual officers moonlighting, wearing their uniforms and their firearms, but without their automobiles and other heavy equipment, for the residential community of Snee Farm.

In conclusion, this letter outlines the restrictions on police officers performing police functions during their off-duty hours. It also outlines restrictions on municipalities to contract with certain entities.

If this Office can furnish any additional assistance, please do not hesitate to contact it.

Sincerely yours,

James G. Bogle
Assistant Attorney General

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