1984 S.C. Op. Atty. Gen. 216 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-92, 1984 WL 159899

Office of the Attorney General

State of South Carolina
Opinion No. 84-92
July 30, 1984

***1 RE: Opinion Request (No. 1061)**

The Honorable J.P. Strom
Chief
State Law Enforcement Division
Post Office Box 21398
Columbia, South Carolina 29221

Dear Chief Strom:
Attorney General Medlock has referred your letter of June 18, 1984, to me for inquiry and reply.

In your letter, you presented the following questions: Under the provisions of § 40–17–100, may a person or corporation do private security work on-premises, away from the corporate office or industrial site under the following conditions:
1. At the residence of a corporate officer where business is conducted and confidential corporate documents are stored.

2. Same as above, but the residence is within a private residential area where security is provided by the Homeowners Association in accordance with § 40–17–100.

3. On leased property where corporate equipment is stored (e.g., airplane hanger) or where subsidiary corporate offices are located.

4. May a security company licensed under the provisions of § 40–17–40 provide security on the property of a homeowner who lives within a restricted area which is licensed to provide security for all homeowners within that area, as provided by § 40–17–100.

The appropriate statutory provisions are contained in §§ 40–17–10 et seq., the South Carolina Private Detective and Private Security Agencies Act. That Act provides for the licensing and registration of private security agency guards. An individual engaging in the private security business must receive a license, granted by the State Law Enforcement Division. Sections 40–17–50 and 40–17–70. Any person employed by another engaged in the private security business must be registered by SLED. Section 40–17–80. Upon proper registration, private security agency guards are given the same powers of arrest as that of a sheriff, and are also allowed to carry a firearm, provided they meet certain requirements promulgated by SLED. Sections 40–17–120 and 40–17–130. In addition, SLED has the authority to license private security guards, and specific requirements are set forth within the Act as to qualifications for applicants for a private security license. Finally, SLED has the authority to suspend or revoke a private security guard license. Section 40–17–140.

After analyzing the questions presented by you, and the enclosures you provided from the corporation that had requested this information, it would appear that disposition of your questions may be narrowed to the following: First, where a corporation has private security guards licensed under the provisions of § 40–17–100 to guard the premises of the corporation, in conjunction with the affairs of the corporation, may those security guards be detailed to guard the private residence of a corporation executive? That residence is not owned by the corporation, but the executive conducts business on behalf of the corporation

there. Second, if the corporation could not detail its uniformed security guards to the private residence with full arrest powers to provide security functions, could they proceed under § 40–17–40? And third, do the provisions of either of those two sections, or the balance of the Act, prohibit or restrict in any way the corporation's security guards from performing duties within the confines of a private residential area that already has a licensed security guard service?

***2** After analyzing the statute, and examining the case law that I have been able to locate on the subject, it is the opinion of this office that corporation security guards may not be detailed to guard the executive's private home, under the provisions of § 40–17–100. That conclusion is not without exception, which will be explained below. In addition, there would be no problem with the statute in allowing the corporate security guards to provide security at the corporation's premises, including its headquarters in Columbia, subsidiary corporation in Hilton Head, and leased building at the Columbia Airport where the corporate airplane is kept. Further, subject to the discussion below, it may be possible for the corporation to license itself as a private security company in accordance with the provisions of § 40–17–40, and contract with the chief executive to provide a security guard at his residence.

Unlike statutes regulating licensees under other State agencies, such as the Alcoholic Beverage Control Commission, there is nothing in the Act nor the regulations that requires SLED to consider the existence of other license holders within a given area, when considering whether or not to, grant a private security company license to an applicant. Accordingly, this office is not in a position to comment on whether or not any security guard work at a residence of a chief executive would interfere with the private security license held by the Homeowners Association for the entire residential area. Instead, it would be proper for the individual concerned to consult the contractual agreement he has with the Homeowners Association, to determine whether or not there is any relevant exclusion or limitation on such activity. That would be a matter for private counsel to inquire into on his behalf.

Section 40–17–40 allows an individual or corporation to establish itself as a security guard company, provided it meets the licensing requirements contained therein. Licenses are obtained from the State Law Enforcement Division. Additional requirements are set forth in § 40–17–50, and include a provision that a person desiring to operate a security business must have at least two years experience as a supervisor or administrator in industrial security or with a licensed private security agency, or certain other acceptable levels of experience. § 40–17–50(b)(7). Under those requirements, a corporation could obtain a license as a private security company, and then contract with its chief executive to provide uniformed security at his residence, much as any security company could to a private individual. The requirements of the statute regarding qualifications would have to be satisfied.

Section 40–17–100 provides in part as follows:
(a) Any person or corporation employing persons to do private security work on the premises and in connection with the affairs of such employer only and there exists an employer-employee relationship, shall be required to make application to [SLED] for a license . . . (emphasis added).

***3** The key language is as emphasized above: where the private security work was being done on the premises of the corporation, and in connection with the affairs of the employer. This requirement presents a question of fact, which can best be determined by examination of each individual case. It may not be possible to issue a comprehensive opinion on whether or not the corporate security guards of the business in your inquiry could be detailed to guard the executive's home under the provisions of § 40–17–100(a). The facts contained in the letters accompanying your inquiry indicate the executive in question conducts corporate business at his residence, works on models and prototypes of computers at his residence, conducts business meetings there, and stores confidential corporate documents there. Given that information, the next part of this analysis proceeds to an inquiry as to whether the courts would construe such activity as sufficient business activity to make the private residence, not owned by the corporation, a premise of the corporation. It must be remembered that there is nothing in the accompanying letters to indicate the executive is required to conduct such business on behalf of the corporation at a private residence. For that

reason, consistent with the cases described below, it is the opinion of this office that corporate security guards licensed under § 40–17–100(a) could not be detailed to guard the residence.

The Courts have examined this situation most often in analyzing provisions of the Internal Revenue Code. Treasury Regulation § 1.119 defines 'business premises of an employer' as a place of employment, and that definition is not necessarily governed by whether or not the employer owns the location. The courts have developed two tests to determine whether or not a location is a business premise of an employer: First, does the employee perform a significant portion of his duties for the employer at the location in question, or, second, is the location in question one where the employer conducts a significant portion of its business. 'Significant' is not defined by the courts, and appears to have been analyzed on a case-by-case basis. It should be noted that the definition has been tightening in the more recent cases. C.I.R. vs. Anderson, 371 F.2d 59 (6th Cir. 1966), cert. denied 387 U.S. 906, 87 S.Ct. 1687, 18 L.Ed.2d 623 (1967); United States Junior Chamber of Commerce vs. United States, 334 F.2d 660 (U.S. Ct.Cl., 1964); Goldsboro Christian School, Inc. vs. United States, 412 F.Supp. 1314, 1321 (E.D.N.C. 1977), aff'd., —— U.S. ——, 103 S.Ct. 2017, 76 L.Ed.2d 157 (1983). In Wilson vs. United States, 412 F.2d 694 (1st Cir. 1969), the court leaned toward a stricter definition, in nothing that the business premises of an employer is a term 'of great specificity.'

In C.I.R. vs. Anderson, supra, the issue was whether the value of meals and lodging furnished a taxpayer by an employer was properly excluded by the taxpayer from gross income. Anderson was employed to operate a motel, and required to live in a residence located several blocks away. He was on call to the motel around the clock, and received his meals at home. The home was provided by the corporation. Analyzing the Treasury regulations, and, more pertinent to this inquiry, the definition of 'business premises of the employer,' the court applied the test mentioned above, whether the location was a place where the employee performed a significant portion of his duties for the business, or a place where the employer conducted a significant portion of its business. The court reversed the tax court's finding in favor of the taxpayer, holding that the home, although provided by the employer and located a short distance from the motel, did not fall within the definition of 'business premise of the employer.'

***4** In addition, in Bob Jones University vs. United States, 670 F.2d. 167 U.S. Ct. Cl. 1982), a similar question was presented regarding off-campus housing provided by a university to its faculty members. The Court reviewed the phrase 'on the business premises,' and the judicial scrutiny and analysis given that phrase. It found that a precise definition was at best illusive, and 'admittedly incapable of generating any hard and fast line.' 670 F.2d at 176. The application of the test to determine whether or not a location was a business premises of an employer was found to be largely a factual one, requiring a 'common sense approach.' The phrase had been construed, the court noted, as meaning (1) living quarters that constituted an integral part of the business property, and (2) premises on which the employer carried on a substantial segment of its business activity. Functional, rather than spatial unity was determinative of whether lodging is on the employer's business premises. 670 F.2d at 176; Adams vs. United States, 585 F.2d 1060 (U.S. Ct. Cl. 1978). The court went on to find the university off-campus housing failed to meet these criteria. It was not geographically located within the university, being located across a six lane highway and, in some instances, out of sight of the university buildings. In addition, no substantial portion of the university's activities was conducted by the professors in their off-campus housing. Nor, pertinent to your inquiry, did the university require the faculty to perform services for it in their home.

Based upon the foregoing, a plain reading of § 40–17–100(a) would indicate that the corporate security guard's authority is limited to the premises of a corporation, in connection with the affairs of that corporation. To allow this definition to expand to a private residence, even considering the fact that business is conducted by a chief executive at that residence, and meetings are held there, would be a construction outside the limits of the statute. It is not within the province of this office to issue and opinion expanding a statute beyond its plain, clear language. Nor is that the province of the courts; if the General Assembly had intended for the language in § 40–17–100(a) to be broader, it presumably would have so stated. While the chief executive in your inquiry no doubt conducts business at his residence, it would appear that such activity is done out of choice, more than a requirement of the business; but even if it were not, this office should not set a definition that may be inconsistent from case to case, that may vary upon the circumstances, and that is not specifically provided for in the clear language of the statute.

It should be noted that an appellate court in this State has not dealt with this issue, and any opinion issued by this office should be understood within that context. It is possible a court, when presented with the factual situation stated in the letters accompanying your inquiry, could issue a ruling allowing corporate security guards to be detailed at the private residence of the executive in question. There is conflict among the authorities, even with regard to § 1.119 of the Treasury Regulations scrutinized in the cases cited above. For example, in Adams vs. United States, supra, the Court of Claims dealt with a situation where an executive of a corporation was provided a residence by his employer in Japan. He was required to accept that lodging to enable him to properly perform the duties of his employment, and there was a direct nexus between the housing and the business interest of the employer, given the peculiarities of Japanese society. The plaintiff, even though he had an office at his employer's headquarters, conducted business in his residence and conducted business entertaining there. The Court of Claims found that the residence fit the definition of § 1.119, and held in the plaintiff's favor, excluding the fair rental value of the residence from his gross income. However, it should be noted that in that case the plaintiff was required to accept the lodging in order to enable him to properly perform the duties of his employment. No such requirement is apparent from the information you have presented in your inquiry.

***5** In conclusion, therefore, it is the opinion of this office that, under § 40–17–100, a person or corporation may not do private security work on privately owned residential premises, away from the corporate office or industrial site. The corporation may provide security guards at business premises, and at a leased facility at an airport where corporate material is stored. The corporation may license itself as a private security company in accordance with the provisions of § 40–17–40, and then contract out to its chief executive to provide security at his residence, much as any private security company would. If that alternative is chosen, the corporation must comply with the requirements of the statute, including the two-year experience requirement. The effect of providing security for a residence located within a residential area that is already licensed to provide security for all homeowners, is a question to be examined by the chief executive in question, consulting his contract with the Homeowners Association or the private residential area.

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

James G. Boble
Assistant Attorney General

1984 S.C. Op. Atty. Gen. 216 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-92, 1984 WL 159899

End of Document