

1981 WL 158240 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 21, 1981

***1 Re: Licensing of certain police officers as private detectives and private security guards**

Captain J. Leon Gasque
South Carolina Law Enforcement Division
Post Office Box 21398
Columbia, South Carolina 29221

Dear Captain Gasque:

You have asked whether the Chief of Police of a certain municipality may be licensed as a private detective and private security guard. It would not appear to be in the public interest for the Chief of Police to be a licensed private detective and private security guard.

The South Carolina State Law Enforcement Division is responsible for the licensing of private detectives and private security guards. Sections 40-17-10 et seq. However, a peace officer, independent of his official employment, working as a security guard for a private employer, may do so without being required to be licensed as a private security guard. Sections 40-17-150(a) (5), 24-24-10 et seq. Further, a uniformed law enforcement officer may wear his uniform and use his weapon while privately employed subject to the approval of the law enforcement agency and governing body for which he is employed. Sections 23-24-10 et seq. Thus, it is clear that certain police officers may perform the duties of private security guards without being licensed and while in uniform. However, this off-duty work and the use of agency equipment must be in the public interest. Section 23-24-20.

It must be assumed for the purposes of this opinion, that the Chief of Police is the primary law enforcement officer for the municipality and that all law enforcement of the municipality is subject to his direct supervision and control. It must likewise be assumed for the purpose of this opinion that the Chief of Police is responsible for the enforcement of the laws of this municipality and of this state at all times and must respond to all requests for law enforcement assistance at all times. Further, this police officer, as any municipal police officer, is responsible for exercising his power on all private and public property within the corporate limits of the municipality. Section 5-7-110. Thus, the conclusion is inescapable that this Chief of Police must be said to be subject to being on duty at all hours to enforce the laws of the municipality and this state.

A private detective by definition makes investigations to obtain information with reference to conduct, movement, and honesty of others; the location and disposition of lost and stolen property; the cause of fires, accidents or damaged persons or property; and evidence to be used in any civil court. Section 40-17-20(a). Likewise, a private security guard acts as a watchman or guard, is empowered to wear a pistol, and has the powers of arrest as that of a sheriff. Sections 40-17-20(b), 40-17-120 and 40-17-130.

The responsibilities of a Chief of Police and private detective and private security guard are similar. However, the Chief of Police as a law enforcement officer and public employee must at all times act in the public interest. Private detectives and private security guards must look out for the interest of private employers. All too often, the interests of the public and those of individual private citizens conflict. The Chief of Police, as a public employee, must avoid any conflict of interest between an official position and his private position. Performing substantially similar duties at certain times for the public interest and at other times for a more narrow private interest will inevitably lead to a conflict of interest.

*2 For instance, no public employee shall receive additional money or income to that received in his capacity as a public employee for the advice or assistance rendered by him in his official capacity. Section 8-13-430. Thus, the Chief of Police may not receive additional compensation to that of his salary as Chief of Police for exercising his authority within the corporate limits of the municipality. Since he is on call by the municipality at all times to arrest violators of the law and to investigate criminal conduct, any payment to the Chief by private employers for the same work as a private detective or private security guard must necessarily constitute double pay. This is prohibited by Section 8-13-430 and would constitute a conflict of interest.

Further, no public official or public employee can use confidential information gained during the course of his official employment in such a way as would result in financial gain for himself. Section 8-13-440. A law enforcement officer must necessarily solicit and use certain confidential information in the discharge of his responsibilities for the detection of crime and the enforcement of the law. Private detectives and private security guards, as professionals licensed to conduct investigations and make arrests, will likewise resort to the use of certain confidential information. However, the Chief of Police may not resort to the use of confidential information gained during the course of his public employment in making private investigations or arrests as a security guard. However, it would appear to be impossible for the Chief of Police to separate those confidences gained by him as a police officer from use in his private capacity.

Last, Section 8-13-460 provides that any public official or public employee who, in the exercise of official responsibilities, is required to take an action which would substantially affect his personal financial interests for those of a business with which he is associated must state for his employer in writing the nature of the potential conflict of interest, and he must then stand aside while his superior assigns the matter to another employee. It can be readily seen that a police officer in the discharge of his duties might be compelled to make investigation or arrests of certain individuals who, should the police officer be a licensed private detective or private security guard, might be clients. In those situations, the Chief of Police would have to step aside and allow another officer to make the investigation or make the arrest. This impediment to the police officer's exercise of his duties should not be encouraged.

As it can be seen, the Chief of Police of a municipality must shoulder serious responsibilities and must be prepared to discharge his responsibilities at all times. As pointed out above, it is difficult, if not impossible, to envision circumstances wherein a Chief of Police would not face potential and often times real conflicts of interest with his official responsibilities in the performance of those duties of a private investigator or private security guard. Any impediment to the Chief's exercise of his law enforcement powers is not in the public interest. While the Legislature has provided that certain law enforcement officers may in their off-duty time perform the duties of private security guards or watchmen which necessarily involve the exercise of their official powers as police officers, the Legislature has limited that off-duty work to those circumstances which are in the public interest. Not all such off-duty work is in the public's interest. The licensing of the Chief of Police of a municipality as a private detective or private security guard is not in the public interest.

*3 Therefore, it is the opinion of this office that the Chief of Police of a municipality may not be licensed as a private detective or private security guard subject to the provisions of the South Carolina Private Detective and Private Security Agencies Act. Sincerely,

Scott Elliott
Assistant Attorney General

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