

1980 WL 121077 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 6, 1980

***1 Re: Municipality's Authority To Contract With A Private Security Agency**

Sheriff Frank Powell
Office of the Sheriff
County of Richland
Post Office Box 143
Columbia, South Carolina

Dear Sheriff Powell:

You have asked this Office whether 'a town or municipality [has] the authority to contract with a private security agency giving the agency personnel police power to arrest on public streets and public property.' It appears as though the municipality would not have the authority or power to make such a contract.

Law enforcement is a proper exercise of this State's police power. The power of a municipality to establish a law enforcement agency is found in Section 5-7-1010 of the South Carolina Code of Laws (1976) which reads, in its pertinent part:

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.

Police officers shall be vested with all the powers and duties conferred by law upon constables, in addition to the special duties imposed upon them by the municipality.

Thus, the State has delegated certain of its police powers to the municipality and that delegation contained in Section 5-7-1010 limits the municipality to the employment or election of police officers. The system envisioned by the legislation demands that the municipality stand in the position of employer to that of its officers charged with the responsibility of law enforcement with direct control over each of them. It may not be inferred from the language of the legislation that this delegation of the State's police power be performed by a private entity such as a private security agency.

Generally, the State's police power may be delegated by the legislature to a municipality, but the legislative reach of that authority must be strictly construed. McQuillan, Municipal Corporations, Vol. 6, § 24.39 at 557. Further, a municipality has no greater powers in passing an ordinance relative to the police power than those delegated to it by the legislature. [Henderson v. City of Greenwood](#), 172 S.C. 16, 172 S.E. 689. Clearly, the legislation in question empowers the municipality to employ police officers. Since the extent of the legislative grant provides only for the employment of police officers; the municipality is powerless to contract with a private security agency for law enforcement purposes. To construe the statute otherwise authorizes the municipality to delegate its authority to exercise the police power. It has long been the law in this State that no municipality may by contract part with the authority delegated it by the State to exercise the police power, [Sammons v. City of Beaufort](#), 225 S.C. 490, 83 S.E.2d 153. Here the State has delegated the power of law enforcement to its municipalities and the municipality may not part with that power by contract with a private security agency.

***2** Therefore, for the above reasons, a town or a municipality may not contract with a private security to give the agency personnel police power to arrest on public streets and public property.

Sincerely,

Scott Elliott
State Attorney

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