

1980 WL 120859 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 8, 1980

**\*1 RE: Request for an Opinion**

Sheriff Frank Powell  
Office of the Sheriff  
P. O. Box 143  
Columbia, South Carolina 29201

Dear Sheriff Powell:

You have asked for an opinion of this Office as to whether a law enforcement agency or its officers might be civilly liable for transporting a defendant to jail after that defendant had been placed under arrest by a private security guard or a private citizen. It is the opinion of this Office that a police officer may be immune from civil liability for transporting a defendant to jail if the law enforcement officer acts in good faith and if he holds a reasonable belief in the legality of his actions.

It has been the opinion of this Office that a private security guard, having lawfully arrested a defendant on property to which he is assigned and upon which he is empowered to make arrests, should then deliver the defendant to the proper authorities without leaving the assigned property. Opinion of the Attorney General No. 77-357 at page 284 (1977). That opinion reasons that since a private security guard loses certain authority and powers of arrest upon leaving property he is assigned to protect, a law enforcement agency is the appropriate agency by which a defendant should be transported from the scene of the arrest to jail. Thus, the opinion states, a law enforcement officer transporting a prisoner lawfully arrested by a private security guard would be immune from liability if he immediately transported the prisoner to jail or to a committing magistrate. The security guard is under a duty to go before a magistrate immediately to swear out a warrant and provide for the release of the prisoner. Id.

Clearly, it is the duty of every security guard to protect the life and property to which he is assigned. To enable the private security guard to protect this property, he is empowered to affect arrests as a sheriff by virtue of [Section 40-17-130, of the South Carolina Code of Laws](#), (1976). Sheriffs and their deputies are under a duty to patrol the county and to use every means to prevent or detect, arrest and prosecute for offenses committed within their jurisdiction. Section 23-13-70. It must be said that they are under a duty to assist each other as well as citizens of the county in the detection, arrest, and prosecution of criminal offenses. Therefore, a deputy sheriff is under a duty to assist a private security guard or private citizen in bringing the criminal offender to justice. If a law enforcement officer is asked by a private security guard who has arrested a prisoner, to transport that prisoner to jail, the deputy is under a duty to transport that prisoner to jail.

However, it must be remembered that it is the law of this State that an individual detaining another without just cause or excuse may be civilly liable. [Thomas v. Colonel Stores, Inc.](#), 236 S.C. 95, 113 S.E.2d 337. If the law enforcement officer transports the prisoner to jail, knowing that the prisoner was unlawfully arrested, he may be civilly liable to that prisoner. Further, the law enforcement officer who delays unreasonably in transporting to jail a prisoner lawfully arrested, might also be civilly liable. [Thomas v. Colonel Stores, Inc.](#), *supra*. The law enforcement officer who transports a prisoner arrested by a security guard or citizen, acting in good faith and reasonably believing in the legality of his actions, will be immune from civil liability. [Pritchard v. Perry](#), 508 F.2d 423 (CA 4 1975).

**\*2** The law enforcement officer or citizen who arrests a prisoners without a warrant must forthwith take the prisoner to a judge or magistrate so that a warrant of arrest may be procured and the prisons dealt with according to law. Sections 17-13-10; 22-5-200; [Westbrook v. Hutchinson](#), 195 S.C. 101, 10 S.E.2d 145. Therefore, it is the duty of the security guard, having made arrest

without a warrant on his assigned property, to go before the magistrate so that the prisoner may be dealt with according to law. The law enforcement officer called to respond to the scene of an arrest by a private security guard or private citizen for the sole purpose of transporting a prisoner to a committing magistrate or to jail is under no duty to investigate the arrest or make a determination as to whether probable cause existed to make the arrest. The security guard or private citizen would be under a duty to go immediately to the committing magistrate to swear out a warrant and that the prisoner may otherwise be dealt with according to law.

The law enforcement officer's duty in transporting a prisoner arrested by a citizen to the committing magistrate or to jail terminates upon the officer's turning custody of the prisoner over to the magistrate or to the jailer if no magistrate is immediately available. Generally, a person who is neither active himself in the commission of the false imprisonment or false arrest, nor responsible for the acts of others who are active in the commission of the tort, is not liable for a false imprisonment. 23 Am.Jur.2d, False Imprisonment, Section 30 at pages 94-95. Thus, if the law enforcement officer was not active in the commission of an unlawful arrest on the part of a security guard or citizen, and has no reason to believe that the arrest of his prisoner was unlawful, he is not liable to the prisoner for the improper acts of the arresting security guard or citizen. Likewise, the officer who takes a prisoner immediately to a committing magistrate or to jail, and who is not active in some subsequent delay in securing the release of the prisoner, is not liable to the prisoner for the subsequent conduct of others. The law enforcement officer who properly transports the prisoner from the place of his arrest by a citizen to a committing magistrate or to jail for imprisonment pending his release by a judicial officer is not liable for the actions of any other during the course of the prisoners arrest and subsequent imprisonment. 32 Am.Jur.2d False Imprisonment, Section 30, *supra*; see also [Plummer v. Northern Pacific Railway Company](#), 79 Mont. 82, 255 P. 18.

It should be borne in mind that the duty of the law enforcement officer transporting the prisoner arrested by a private citizen ends when that law enforcement officer has delivered the prisoner to the appropriate magistrate or jailer. The law enforcement officer is under a duty to advise him in whom he places custody of that prisoner is of the circumstances of the arrest and subsequent transportation of the prisoner. Should the citizen or security guard not come forward to swear out a warrant, then the magistrate or jail administrator must secure the release of the prisoner.

\*3 It must be remembered, that the law enforcement officer's belief in the legality of his actions must be reasonable. Should he be asked by a private citizen to transport a prisoner arrested for the commission of a misdemeanor in the citizen's presence without a warrant, the law enforcement officer may not, acting reasonably, transport that prisoner to jail, for a private citizen does not have the power of arrest without a warrant for a misdemeanor committed in his presence.<sup>1</sup> Section 17-13-10 *et seq.* Nor would a law enforcement officer be said to have acted reasonably in accepting the prisoner for transportation to jail from anyone whom the law enforcement knew did not have the authority to arrest the prisoner at the time and place alleged by the arresting citizen. However, if the police officer had no reason to believe that the arresting individual was without the authority or power to have made the arrest, he is likewise under no duty to investigate the circumstances surrounding the arrest but may simply provide transportation of that prisoner to jail or to the committing magistrate to be dealt with according to law.

You have also asked whether the transportation and booking of persons arrested by private security agencies would be considered illegal in that the public agency would be supporting a private enterprise, that is, private security agencies. This Office is unaware of any reason why such assistance by law enforcement officers or agency would be inappropriate. As private security agencies are licensed in this State in an effort to assist law enforcement authorities in their duties, it is likewise the duty of the local law enforcement agency to assist any citizen in the detection and prosecution of a crime committed within its jurisdiction. Thus, such assistance by a law enforcement agency should be encouraged so that the duties of both law enforcement and private security agencies may be effectively carried out.

It should be noted that Chapter 17 of title 40 does not address the responsibilities of local law enforcement agencies in assisting private security agencies. It appears that amendment of the legislation outlining the duties and liabilities of law enforcement agencies assisting private security agencies would be helpful.

However, it is the opinion of this Office that a law enforcement officer will not be civilly liable for transporting to jail a prisoner arrested by a private security guard or private citizen without a warrant if the officer does not know and has no reason to know of the illegality, if any, of the arrest and if the law enforcement officer acts in good faith and if he holds a reasonable belief in the legality of his actions.

Respectfully submitted,

Scott Elliott,  
Assistant Attorney General

#### Footnotes

- 1 Of course, it is the opinion of this Office that ‘persons apprehended in the act of shoplifting may be arrested by the person who sees the act being committed, even though the value of the goods is less than \$50.00 and regardless of whether or not the person who viewed the act of shoplifting is a private citizen or a police officer.’ Opinion of the Attorney General No. 3207 at p. 187 (1971).

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