

1977 WL 37023 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 8, 1977

*1 Mr. Kenneth H. Davis
Director of Public Safety
Walterboro, SC 29488

Dear Mr. Davis:

You have requested an opinion of this office as to the authority of the following officers to carry weapons and make arrests:

I. Special Deputies

II. State Constables

III. Special Police

(1) Security Guards

(2) Auxiliary Police

I. Special Deputies

Weapons—A special deputy is appointed by the sheriff for the service of process in civil and criminal proceedings only. Code of Laws of South Carolina (1976), § 23–13–40. He has no authority to carry a weapon since he has no general police authority and such authority is not necessary in performing his limited duties—i.e., serving criminal and civil process. Letter of May 7, 1965, by Assistant Attorney General Benjamin B. Dunlap; 1960–61 Op. Att’y Gen. 65.

Arrest—For the same basic reasons as stated above, a special deputy has no authority to arrest an individual, other than that possessed by any ordinary citizen.

II. State Constables

Weapons—Section 16–23–20, Code of Laws of South Carolina (1976) allows uncompensated Governor's constables to carry pistols ‘when they are carrying out official duties while in this state.’

Arrest—State Constables appointed by the Governor under § 23–1–60, 1976 Code of Laws of South Carolina, have all the powers of peace officers of the state. As such, they may arrest without a warrant any person who commits a misdemeanor in their sight. [State v. Luster](#), 178 S.C. 199, 182 S.E. 427. Similarly, their powers to arrest for felonies would be the same as that of other peace officers of this State.

III. Special Police

(1) Security Guards

Weapons—Section 40–17–120, 1976 Code of Laws of South Carolina, allows the Chief of the South Carolina Law Enforcement Division to grant to any employee of a licensed private security business a permit to carry a ‘pistol or revolver or other firearm.’ ‘Private security business’ is defined by § 40–17–20, 1976 Code of Laws of South Carolina, and means: Engaging in the business as or accepting employment as a private patrol, watchman or guard service for consideration [‘pay’] on a private contractual basis and not as an employee. Private security business shall not include persons employed exclusively and regularly by only one employer in connection with the affairs of such employer only and where there exists an employer-employee relationship unless the employer is in the private security business.

This section further states that:

Any person engaged in the private security business, or registered in accordance with the provisions of § 40–17–80, and issued a permit in accordance with this section shall be authorized to carry any such firearm in an open and fully exposed manner only while on duty and in uniform and while going to and from work. Provided, however, that the division may in its discretion issue an additional written, permit to any such person to carry such firearm about his person, whether conceded or not, even though such person is not in uniform nor on duty, when it is determined by the Division [Chief of SLED] that such additional permit will better enable such permittee to perform his assigned duties. No such additional permit to be effective in any place where alcoholic beverages, beer or wine are sold or consumed.

*2 By the same section, however, private detectives are not allowed permits to carry firearms.

Arrest—Section 40–17–130, 1976 Code of Laws of South Carolina, provides that registered or licensed employees of a private security business ‘hired or employed to patrol, guard or render a similar service on certain property shall be granted the authority and power which sheriffs have to make arrest of any persons violating or charged with violating any of the criminal statutes of this State, but shall have such powers of arrest only on the aforementioned property.’

(2) Auxiliary Police

Weapons—Act No. 687, 1976 Statutes at Large, p. 1853, provides that Auxiliary Police appointed pursuant to that act ‘shall have such authority and power as is prescribed by law for the other police officers of the municipality or county and such general police duties as shall be prescribed by the chief’. Therefore, auxiliary police may carry weapons if other ‘regular’ police of the municipality or county are allowed to carry weapons. Such auxiliary police, however, must comply with the provisions of Title 23, Chapter 23, Code of Laws of South Carolina (1976), relating to a completion of the training program at the South Carolina Law Enforcement Training School.

Arrest—Auxiliary police have the same arrest authority as other municipal or county police officers under the authority Act 687, cited above. Again, however, compliance with provisions relating to attendance at the South Carolina Law Enforcement School is necessary.

Sincerely,

Douglas J. Robinson
Law Clerk

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