ALAN WILSON
ATTORNEY GENERAL

February 24, 2016

The Honorable Paul Thurmond, Member
South Carolina Senate, District No. 41
P.O. Box 142
Columbia, SC 29211

Dear Senator Thurmond:

You have asked for a follow-up opinion to the November 24, 2015 opinion regarding School Resource Officers ("SRO's"). You request our opinion as to whether "a school district could employ directly a security officer other than a School Resource Officer to provide protection at schools and, if so, by what authority and with what powers. For example, could a school district directly employ individuals to provide security protection for its schools under Section 40-18-60 (proprietary security business license)?"

LAW/ANALYSIS:

Our opinions, over the course of almost forty years, have concluded that licensed security officers do not possess arrest powers on public property. Only recently, in Op. S.C. Att'y Gen., 2015 WL 4497733 (July 13, 2015), we reviewed these opinions as follows:

> . . . our prior opinions reflect, that private security guards possess only the same authority as that of a private citizen to protect public property and do not possess the additional powers of arrest granted licensed private security guards in Section 40-18-110 of the Code. . . . See Op. S.C. Att'y Gen., 2010 WL 928439 (February 1, 2010) ("[A] private security guard is not authorized …to exercise the power of arrest on public property."); Op. S.C. Att'y Gen., 2009 WL 1649235 (May 8, 2009) (same); Op. S.C. Att'y Gen., 2008 WL 5476548 (December 16, 2008) (same); Op. S.C. Att'y Gen., 2006 WL 2849806 (September 29, 2006) (same); Op. S.C. Att'y Gen., 1980 WL 121140 (April 2, 1980) (same).
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> In 1977, this Office found private security guards employed at Presbyterian College, despite being authorized to make arrests on the private school's campus, possessed only the same power of a private citizen to arrest individuals on the adjacent city streets and public roads going into and out of the campus. Op. S.C. Att'y Gen., 1977 WL 24545 (June 29, 1977). In so concluding we explained "[s]ecurity officers working for a private security agency falling within the purview of Section 56-646.1 et seq. [the then existing version of the Private Detective and Private Security Agencies Act] have no authority to exercise police powers except on the private property

> they were hired to protect." Op. S.C. Att'y Gen., 1977 WL 24545 (June 29, 1977).
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> In 1980, we were again asked whether properly licensed private security guards may exercise the power of arrest granted under the Private Detective and Private Security Agencies Act ("the Act") on public property and again, citing to our 1977 opinion, we said they cannot. There we stated, "a private security guard is not authorized [under the Act] . . . to exercise the power of arrest on public property." Op. S.C. Att'y Gen., 1980 WL 121140 (April 2, 1980). As a result, we concluded, consistent with our prior opinion, that a properly licensed private security guard only has the same powers as that of a private citizen on public property. Op. S.C. Att'y Gen., 1980 WL 121140 (April 2, 1980).

The 2015 opinion noted that "[w]e have repeatedly cited, and in fact quoted that position in subsequent opinions and reaffirm that position today." In addition, the 2015 opinion stated that "it remains the position of this Office that when a properly licensed private security guard is protecting public property, he or she does not possess the additional powers of arrest discussed in Section 40-18-110 of the Code, but instead has only the authority of a private citizen."

In essence, you ask us to revisit that conclusion, stated and restated in numerous opinions over the years. As you probably are aware, "we have long recognized that we will not overrule our prior opinions unless clearly erroneous or unless applicable law has changed." Op. S.C. Att'y Gen., 2005 WL 2250210 (September 8, 2005). Thus, employing that standard, we review our prior opinions which have concluded that on public property, a licensed private security guard possesses only the same arrest powers as a private citizen.

Section 40-18-10 et seq. deals with the licensure of security officers in South Carolina. Security officers are licensed and regulated by SLED. See § 40-18-30. As we have stated previously, in Op. S.C. Att'y Gen., 2006 WL 2593075 (August 3, 2006):

> [p]rivate security guards are licensed by SLED. See S.C. Code Ann. § 40-18-80. SLED is also authorized to promulgate regulations regarding private security guards. See S.C. Code Ann. 40-18-30.

The powers of a licensed security officer are set forth in § 40-18-110. That provision states as follows:

> [a] person who is registered or licensed under this chapter and who is hired or employed to provide security services on specific property is granted the authority and arrest power given to sheriff's deputies. The security officer may arrest a person violating or charged with violating a criminal statute of

> this State but possesses the powers of arrest only on the property on which he is employed. (emphasis added).

As indicated above, our opinions regarding the issue of a licensed security officer's authority or lack thereof to enforce state laws on public property appear to have had their origin with the June 29, 1977 opinion. There, the question involved the authority of licensed security officers employed by Presbyterian College to exercise police powers on city streets and public roadways running through or adjacent to the campus. We noted that the statutes relating to security officers limited the authority of these officers to the "property" for which they were hired to protect. Therefore, we concluded that:

> [g]iven the wording of the Act itself plus the legislative intent manifested thereby, it appears that the authority of your officers to make arrests and perform other police duties would be strictly confined to the property of Presbyterian College. The authority of your officers to pursue and/or arrest offenders outside that property would be no greater or less than that of private citizens.

(emphasis added). Thus, the 1977 opinion was limited to the question of whether licensed security officers possess police powers on city streets and roadways. We concluded that they do not. While the particular property involved there was that of Presbyterian College, a private institution, there was no suggestion in that opinion that licensed security officers lacked enforcement powers if the particular property for which they were hired to protect is "public property."

The April 2, 1980 opinion, however, swept much broader in its conclusions than our 1977 opinion. The issue in 1980 related to the authority of security officers to enforce the law on "public property," as opposed to city streets and roadways. We enclosed a copy of an opinion dated March 6, 1980, noting that, pursuant to that opinion "a municipality [Arcadia Lakes] is not authorized to contract with a private security guard to provide the personnel of the private agency the power of arrest on public streets and public property." (emphasis added). There, we quoted from the March 6, 1980 opinion as follows:

> . . . no municipality may by contract part with the authority delegated it by the State to exercise the police power. . . . (T)he State has delegated the power of law enforcement to its municipalities and the municipality may not part with the power by contract with a private security agency.

Then, the April, 1980 opinion referenced our earlier 1977 opinion as follows:

> . . . in a previous opinion, 1977 Op. Att'y Gen. No. 77-203, pp. 154-155, [this office] addressed the question of whether private security officers hired by a college in this State could exercise police powers on city streets and public

> roadways that ran through or were adjacent to the campus. The opinion stated that such private security guards as private guards '. . . had no authority to exercise police powers except on the private property they were hired to protect.' The opinion further stated that '. . . the authority of . . . (such) . . . officers to pursue and/or arrest offenders outside that . . . (private) . . . property would be no greater or less than that of private citizens.' This opinion appears to be consistent with the opinion issued by this Office earlier this month referenced above. Thus, in specific response to your first question, a private security officer is not authorized pursuant to Section 40-17-130, supra [now § 40-18-110] to exercise the power of arrest on public property.

(emphasis added).

As noted above, this opinion has been reaffirmed on numerous occasions since its issuance in 1980. Importantly, that 1980 opinion appears to be based primarily upon the lack of authority of a "municipality . . . by contract [to] part with the authority delegated it by the State to exercise the police power. . . ." By contrast, the 1980 opinion did not address the fact that what is now § 40-18-110 does not provide any express exception for "public" property, but simply references "property" generally. At the time the 1980 opinion was written, current § 40-18-110 (then, § 40-17-130 or Section 13 of Act No. 387 of 1973) read as follows:

> [a]ny person covered by the provisions of Section 9 or properly registered or licensed under this Act who is 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.

Thus, it can be readily seen that, just as § 40-18-110 does not distinguish between "public" and "private" property, neither did the predecessor Act upon which the 1980 opinion was based.

Significantly, however, there have been a number of legal developments since our April, 1980 opinion was rendered. These developments signal that our 1980 opinion may have been misplaced. For example, we have issued an opinion, Op. S.C. Att'y Gen., 1985 WL 166051 (No. 85-81) (August 8, 1985). There, we addressed the issue of whether the Board of Corrections could contract with a private corporation to assist in the operation of a prison facility. While we emphasized that in the operation of a prison facility, the State must maintain supervision and control, nevertheless, case authorities "support the idea that historically, governmental entities have often contracted with private entities to assist in the operation and maintenance of penal institutions." In that instance, we noted, the maintenance of supervision and control could be by contract. In such event, we saw no unlawful delegation of the police power.

In addition, our Supreme Court has also concluded that, since the 1980 opinion was issued, a licensed security officer is a "law enforcement officer" for purposes of the offense of resisting arrest. In State v. Brant, 278 S.C. 188, 190, 293 S.E.2d 703, 704 (1982), the Court stated:

> [t]he State Law Enforcement Division (SLED) has the authority to license and regulate private security agencies under § 40-17-10, S.C., et seq. Security guards licensed by SLED, as was the security guard in this case, are granted powers identical to those of a sheriff on the property he is hired to protect. See S.C. Code of Laws (1976) § 40-17-130.

The Brant Court thus concluded that ". . . a security guard licensed by SLED stands in the shoes of the sheriff for purposes of arrest while he is on the property he is hired to protect." 278 S.C. at 191, 293 S.E.2d at 704.

Also instructive is Easley v. Cartee, 309 S.C. 420, 424 S.E.2d 491 (1992). In that case, the Supreme Court concluded that a licensed security officer could serve as a prosecutor in Magistrate's Court because as a "law enforcement officer," he or she is authorized to prosecute in summary court. See In the Matter of Richland County Magistrate's Court, 389 S.C. 408, 413, 699 S.E.2d 161, 164 (2010) [law enforcement officers, including licensed security officers, in prosecuting cases in summary court, "act on behalf of the State."] The Court in Cartee explained as follows:

> [w]e have approved the practice of allowing law enforcement officers to prosecute misdemeanor cases in Magistrate's and Municipal Court. State v. Messervy, 258 S.C. 110, 187 S.E.2d 524 (1972). The City asserts that licensed security officers have the same authority as law enforcement officers to prosecute misdemeanor cases in Magistrate's Court. We agree.
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> The legislature has granted licensed security officers the authority and power of sheriffs to arrest any person violating the criminal statutes of this State. See S.C. Code Ann. 40-17-130 (1986). The power is limited only by the requirement that the arrest must be made on property that the security officer is licensed to protect. Id. Thus, like the police, licensed security officers perform a law enforcement function and act in an official capacity when making an arrest. Cf. State v. Brant, 278 S.C. 188, 293 S.E.2d 703 (1982) (security guard is a law enforcement officer for purpose of resisting arrest prosecution); Chiles v. Crooks, 708 F.Supp. 127, 131 (D.S.C. 1989) (arrest of security guard on licensed premises is action under color of state law within scope of 42 U.S.C. § 1983). Therefore, in light of the legislature's extension of law enforcement authority to licensed security officers, we hold that licensed security officers may prosecute misdemeanor cases in Magistrate's or Municipal Court. . . .

309 S.C. at 421-422, 424 S.E.2d at 492 (emphasis added).

Thus, it can be seen that the Court in Cartee emphasized that the "power" bestowed by the licensed security statute "is limited only by the requirement that the arrest must be made on property that the security officer is licensed to protect." (emphasis added). The Court did not enunciate any other limitation such as that the enforcement action taken by the security officer must be on private property, not public property. Nor, seemingly, was the Court troubled by the fact that the delegation of authority to prosecute constituted an unlawful delegation of the police power, a major concern expressed in the April 4, 1980 opinion.

To summarize, when we wrote the April, 1980 opinion, distinguishing between "public" and "private" property for purposes of enforcement by a licensed security officer, we did not have the benefit of our August 8, 1985 opinion. Nor had Brant and Cartee yet been decided by our Supreme Court. Particularly important here is the Supreme Court's language used in Brant that a ". . . a security guard licensed by SLED stands in the shoes of the sheriff for purposes of arrest while he is on property he is hired to protect." (emphasis added). Clearly, the Court's strong statement regarding a security guard's authority clearly suggests that such an officer possesses power to enforce the criminal laws "on the property he is hired to protect" whether that property be private or public. Thus, we believe that these subsequent decisions strongly support the conclusion that our earlier April, 1980 opinion is now out of step with the legal reasoning articulated in those subsequent decisions. Accordingly, we must reluctantly overrule our prior opinions to the extent that they conclude that a security officer may not enforce the criminal laws on "public property." The statute (§ 40-18-110) states expressly that a security officer possesses the power of arrest "on the property on which he is employed" whether that be public or private property. Of course, we continue to adhere to the position that city streets and highways do not constitute the "property on which" the security officer is employed for purposes of the arrest power of a security officer. Thus, such officers possess no power of arrest on public streets or roadways.

CONCLUSION:

It is our opinion that a court would likely conclude that a licensed security officer possesses the authority to arrest on public property including public schools. Pursuant to § 40-18-110, a licensed security officer is given the power of a deputy sheriff and the power of arrest "on the property on which he is employed." The statute does not mention "public property" as an exception, nor does the statute suggest that "public property" is not included. A deputy sheriff, of course, possesses the power to enforce the criminal law on public as well as private property. Thus, in our opinion, the licensed security officer statute authorizes licensed security officers to enforce laws on public property.

Since our April, 1980 opinion was written (and upon which we have since relied and reaffirmed), our Supreme Court has issued the Brant and Cartee decisions, both affirming the fact that § 40-18-10 et seq. deems a security officer a "law enforcement officer" for all purposes

(including prosecuting in summary court) on the "property on which he is employed." Indeed, in Brant, the Court stated clearly that "a security guard licensed by SLED stands in the shoes of the sheriff for purposes of arrest while he is on the property he is licensed to protect." And in Cartee, the Court upheld the security officer's serving as prosecutor in summary court. In neither of these decisions did the Court note any exception if the particular property is public property. Given these intervening developments since our 1980 opinion was issued, we believe the law has sufficiently evolved that our opinions must now be modified.

Thus, to answer your specific question, it is our opinion that a school district could lawfully employ directly a security officer other than a School Resource Officer to provide protection at schools. Security officers licensed by SLED pursuant to § 40-18-10 et seq. could be used by the school, in our opinion. Such officers would possess the powers of a deputy sheriff on the property they are hired to protect – in this instance, a public school. Any opinion of this Office to the contrary is now superseded.

Such authority, we emphasize, does not give security officers general police powers on public streets and roadways. Streets and roadways generally cannot reasonably be deemed the "property on which [the security officer] is employed" under the statute.

We caution, however, that the functions of a licensed security officer and that of a School Resource Officer ("SRO") are not one and the same. A security officer is licensed to protect the property for which he or she is employed to protect, including school property, with the full authority of a deputy sheriff to enforce the criminal laws, but only on that property. A School Resource Officer possesses much broader statutory powers, however, including "statewide jurisdiction to arrest persons committing crimes in connection with school activity or school-sponsored event." See § 5-7-12. In addition, an SRO is "a sworn law enforcement officer pursuant to the requirements of any jurisdiction of this State, who has completed the basic course of instruction for School Resource Officers as provided by the National Association of School Resource Officers or the South Carolina Criminal Justice Academy, and who is assigned to one or more school districts in this State to have as a primary duty to act as a law enforcement officer, advisor and teacher for that school district." (emphasis added). Id.

In short, while a licensed security officer may be employed by a school district to provide security protection on school property, as set forth above, such security officer is not authorized to function as a School Resource Officer, or with the broad powers thereof, as defined by § 5-7-12.

Sincerely,

Robert D. Cook
Solicitor General