

1978 S.C. Op. Atty. Gen. 63 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-39, 1978 WL 22522

Office of the Attorney General

State of South Carolina

Opinion No. 78-39

February 24, 1978

\*1 TO: Mr. Gary R. Baker

Executive Director

State Ethics Commission

QUESTION:

May a county or municipal law enforcement agency, upon request, provide special police services in addition to those regularly provided to private business concerns, charge a fee, and utilize regular police equipment and personnel desiring to work overtime?

AUTHORITIES:

[Article XII, Section 1 of the South Carolina Constitution \(1895\)](#);

[Section 4-9-10, et seq., 1976 Code of Laws of South Carolina](#);

[Section 5-7-110, 1976 Code of Laws of South Carolina](#);

[Section 5-7-130, 1976 Code of Laws of South Carolina](#);

62 C.J.S., [Municipal Corporations](#), Section 563, pp. 1950-51;

1955-56 Ops. A.G., dated March 19, 1956, p. 239.

DISCUSSION:

You have asked whether a county or municipal law enforcement agency may, upon request, provide special police services in addition to those regularly provided to private business concerns, charge a fee, and utilize regular police equipment and personnel desiring to work overtime. As I understand the situation, your commission has already issued an opinion (Advisory Op. 78-028) which you indicate essentially prohibits the use of police equipment by officers in their off-duty employment. Assuming, without deciding, that opinion is correct, we are asked whether the alternative mentioned above is lawful under South Carolina law. It is our opinion that it is.

It is noted that law enforcement agencies in general are designed and intended to preserve the peace and to protect the legal rights of citizens. 62 C.J.S., [Municipal Corporations](#), Section 563, pp. 1050-51; and see [Article XII, Section 1 of the South Carolina Constitution \(1895\)](#). However, the distinction between regular and special police service is a matter which our research indicates has not heretofore been addressed in this jurisdiction by either the courts or legislature. (But see 1955-56 Ops. A.G., dated March 19, 1956, p. 239.) That distinction, accordingly, may be made through appropriate regulations or ordinances. (See [Section 5-7-110](#), [Section 5-7-130](#), and [Section 4-9-10, et seq.](#))

Within such regulations or ordinances, it appears that a distinction between off-regular-duty police service and off-duty employment in general should be established and maintained. The practice you suggest is modeled on that used in Dade County, Florida. The regulations and ordinances which implement that program define 'off-regular-duty police service' as that employment which is conditioned upon vested police powers of an officer and the service is rendered during a period of time not within assigned hours of duty. 'Off-duty employment' is defined as including employment of a non-police nature in which vested police powers of an officer are not a condition for employment and work which will have no real or implied police service benefit to the employer. The Dade County plan goes on to explain in detail all guidelines and procedures involved in implementing and administering such a program.

\*2 However, it should be emphasized that the Dade County plan is but one of many possible alternatives available to law enforcement agencies. Different departmental demands clearly may require different approaches consistent with the peculiar characteristics of the particular community or locality involved. Similarly, different circumstances, even within the Dade County plan, might conceivably present special legal problems under South Carolina law. Accordingly, each program should be evaluated in its own context by the city or county attorney.

Nevertheless, it appears that the practice broadly outlined in your request is not inconsistent with the constitution or general law of this State and, therefore, may be adopted by law enforcement agencies desiring such a program.

CONCLUSION:

Therefore, it is the opinion of this Office that a county or municipal law enforcement agency may, upon request, provide special police services in addition to those regularly provided to private business concerns, charge a fee, and utilize regular police equipment and personnel desiring to work overtime.

Richard P. Wilson  
Assistant Attorney General

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