ALAN WILSON
ATTORNEY GENERAL

January 23, 2019

Chief Mark A. Keel
South Carolina Law Enforcement Division
PO Box 21398
Columbia, SC 29221-1398

Dear Chief Keel:

We received your request seeking an opinion on whether individual school districts can be licensed as proprietary security businesses in South Carolina. This opinion sets out our Office's understanding of your question and our response.

Issue (quoted from your letter):

> I write today to request an opinion regarding whether or not individual school districts can be licensed as proprietary security businesses in South Carolina. By way of background, SLED has received several inquiries by school districts across the State inquiring as to whether or not the individual school districts can apply for and receive a proprietary security business license as provided for in S.C. Code Ann. § 40-18-60. Such licensure would appear to allow the school districts to directly employ licensed security guards who would be vested with law enforcement authority on all properties owned by the school district. A casual review of the general powers and duties of school districts set forth in S.C. Code Ann. § 59-19-[90] does not appear to contain the authority for such licensure. Further, given the Chief of SLED's broad authority to regulate security businesses established in S.C. Code Ann. § 40-18-30, SLED is concerned about potential issues presented by the exercise of such authority over publically elected school board officials. However, SLED would appreciate a formal opinion from the Attorney General's Office in this matter.

Law/Analysis:

It is the opinion of this Office that a court faced with this question would conclude that an individual school district cannot be licensed as a proprietary security business in South Carolina. This does not mean that a school district cannot use private security guards to provide security on school grounds as discussed in our February 24, 2016 opinion addressed to Senator Paul Thurmond. *Op. S.C. Att'y Gen.*, 2016 WL 963708 (February 24, 2016). Nothing in this opinion should be construed as detracting from the reasoning and conclusion of that 2016 opinion, and

we unequivocally affirm it. In this opinion, we simply answer a legal question which was not addressed in that prior opinion, and this opinion should be read in that context.

As you are aware, our Office issued an opinion dated February 24, 2016 in response to the following question:

> [Could] a school district . . . 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)?

Op. S.C. Att'y Gen., 2016 WL 963708 (February 24, 2016). For reasons discussed in that opinion, our Office concluded that a private security guard would have the same authority on public school property as if they were hired to protect private property, but not the same authority as a School Resource Officer pursuant to 5-7-12. *Id.* Consistent with that reasoning, we also concluded that a school district could lawfully use a private security guard to provide security on school property. *Id.* The focus of that 2016 opinion was squarely on resolving a distinction stemming from a 1980 opinion between private property and public property for the purpose of determining the legal authority of a private security guard. *Id.* For that reason, our opinion extensively discussed legal developments since 1980 while deferring to SLED on questions of licensure. *Id.* ("Security officers licensed by SLED pursuant to § 40-18-10 *et seq.* could be used by the school, in our opinion.").

The question now posed by SLED is whether an individual school district could go still further than merely using private security guards to provide security on school property, and actually become a proprietary security business in its own capacity. This question was not addressed in our 2016 opinion, and this author's research has not identified any reported South Carolina case or prior opinion of this Office which addresses that specific question directly. It appears that a court faced with this question would rely upon the rules of statutory construction to give effect to the intent of the Legislature in codifying Sections 40-18-60 and 59-19-90. As this Office has opined on numerous previous occasions:

> The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *State v. Morgan*, 352 S.C. 359, 574 S., E.2d 203 (Ct. App. 2002) (citing *State v. Baucom*, 340 S.C. 339, 531 S.E.2d 922 (2000)). All rules of statutory interpretation are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999).

Op. S.C. Att'y Gen., 2005 WL 1983358 (July 14, 2005). Additionally, where a State agency is tasked with enforcing a State law, that agency's interpretation of the law being enforced receives substantial deference. *See Logan v. Leatherman*, 290 S.C. 400, 403, 351 S.E.2d 146, 148 (1986). To quote again from a previous opinion of this Office:

> [O]ur Court of Appeals has stated, "agencies charged with enforcing statutes . . . receive deference from the courts as to their interpretations of those laws." *State v. Sweat*, 379 S.C. 367, 385, 665 S.E.2d 645, 655 (Ct. App. 2008). Our Supreme Court has recognized this fundamental principle of deference to an administrative agency interpretation in *Logan v. Leatherman*, 290 S.C. 400, 403, 351 S.E.2d 146, 148 (1986), when it concluded that "construction of a statute by the agency charged with executing it is entitled to the most respectful consideration [by the courts] and should not be overruled absent cogent reasons." Particularly will the courts defer to the agency's interpretation of a statute where, as here, "the agency's construction lies within its area of expertise." *Op. S.C. Atty. Gen.*, January 5, 2011 (2011 WL 380157). . . . For all these reasons, therefore, "[i]t is this Office's longstanding policy . . . to defer to the [interpretation of] the administrative agency charged with the regulation [of] . . . the subject matter." *Op. S.C. Atty. Gen.*, August 9, 2013 (2013 WL 4497164).

Op. S.C. Att'y Gen., 2013 WL 4873939 (September 5, 2013). Accordingly, this opinion will seek to answer your question by construing the relevant statutes according to these rules as a court would. *Id.*

As a preliminary matter, we note that a court faced with the question presented in your letter would observe that your agency's construction of Chapter 18 of Title 40 is entitled to great deference because SLED is the administrative agency entrusted with licensing and regulating private security businesses. S.C. Code Ann. § 40-18-30 (2011) (establishing the powers of SLED with respect to private security businesses); *cf. Logan v. Leatherman, supra.* Based upon your letter, we understand that SLED's interpretation of Sections 40-18-30 and 40-18-60 is that the General Assembly did not intend for individual school districts to be licensed as proprietary security businesses. Consistent with our Office's longstanding policy, we typically would defer to this interpretation under normal circumstances. *Op. S.C. Atty. Gen.*, 2013 WL 4497164 (August 9, 2013). In this instance, however, the interpreting agency has requested that this Office opine on the accuracy of its interpretation. We begin by examining the texts of the relevant statutes in Chapter 18 of Title 40 of the South Carolina Code of Laws.

Chapter 18 of Title 40 of the South Carolina Code governs "Private Security and Investigation Agencies," including proprietary security businesses. *See* S.C. Code Ann. § 40-18-10 *et seq.* Those businesses are defined by Section 40-18-20 to mean "employing security

officers who are assigned to security duties on the employer's property." S.C. Code Ann. § 40-18-20(B)(2) (2011). Section 40-18-60 governs proprietary security business licenses specifically and includes the requirements for obtaining and maintaining such a license. S.C. Code Ann. § 40-18-60 (2011). Later in the same Chapter, Section 40-18-140 expressly excludes political subdivisions from application of the Chapter by providing in relevant part that:

> This chapter [meaning Chapter 18, which includes licensure of proprietary security business] does not apply to:
>
> (1) an officer or employee of the federal government, or of this State or a political subdivision of either, or of a municipal corporation while the employee or officer is engaged in the performance of official duties . . . ."

S.C. Code Ann. § 40-18-140(1) (2011) (emphasis added). Under South Carolina law, "the nature and character of school districts as local political subdivisions is undisputed." *Op. S.C. Att'y Gen.*, 1986 WL 191976 (January 30, 1986) (citing *Stackhouse v. Floyd*, 248 S.C. 183, 149 S.E.2d 437 (1966); *Holland v. Kilgo*, 253 S.C. 1, 168 S.E.2d 569 (1969)); *see also Op. S.C. Att'y Gen.*, 1983 WL 181766 (February 23, 1983) ("[A] school district is a body politic and corporate under the laws of this state and constitutes one of our most important political subdivisions . . . .") (quoting *Patrick v. Maybank*, 198 S.C. 262, 17 S.E.2d 530, 534 (1941)). Therefore, it appears that South Carolina school districts are excluded from the application of Section 40-18-60, which establishes the process by which an entity may obtain and maintain licensure as a proprietary security business. *Id., see also* S.C. Code Ann. § 40-18-60 (2011). We believe that a court would conclude that the plain language of this Section directly controls the question presented here.

As additional support for this conclusion, we turn to the text of Section 40-18-60 (which governs proprietary security business licenses) and we quote certain relevant portions of that lengthy Section here:

> A) An employer who utilizes a person who is armed, uniformed, or has been delegated arrest authority for work on the employer's premises in connection with the affairs of the employer must make application to SLED for a proprietary security business license and pay an annual license fee, set by SLED regulation.
>
> (1) If the applicant is an association or corporation, the chief executive officer of the association or corporation must be the applicant or must designate in writing the corporate officer or principal who is the applicant.

(2) If the applicant is a partnership, all partners must complete an application form.

(3) The application for license must be made, under oath, on a form approved by SLED. The application must state the applicant's full name, age, date and place of birth . . . . Each applicant must submit with the application one complete set of the applicant's fingerprints on forms specified and furnished by SLED and one color photograph of the applicant's full face, without head covering, taken within six months of the application.

(B) SLED may grant a license to a person who:

. . .

(9) has satisfied SLED that the applicant and company are financially responsible;

(10) has satisfied SLED that the person or company has or will have a competent, certified training officer and an adequate training program with a curriculum approved by SLED, or that adequate training will be obtained from another approved source; and

(11) has met other qualifications SLED may establish by regulation.

(C) SLED must grant a license to the applicant to employ security officers upon satisfaction of the competency and integrity of an applicant, or, if the applicant is an officer of an association, partnership, or corporation, upon satisfaction of the competency and integrity of the officers and principals.

(D) Immediately upon receipt of a license, the licensee must post and at all times display the license in a conspicuous location at his place of business and at each location where security personnel are posted.

(E) Issuance of the license authorizes the licensee to post persons performing the duties of security officers at each location of company property owned by the licensee. The licensee must immediately notify SLED of the address of each site where security officers are assigned and where assignments are discontinued.

. . .

> (I) A person is exempt from the provisions of this section if he receives compensation for private employment on an individual, independent contractor basis as a patrolman, guard, or watchman and if he has full-time employment as a law enforcement officer with a state, county, or municipal law enforcement agency. For this exemption to be valid, the person must not be employed by another law enforcement officer.

S.C. Code Ann. § 40-18-60 (2011). We observe that this text contains numerous instances of language which apparently contemplate the application would be completed by natural persons on behalf of private corporate entities or partnerships:

- "[i]f the applicant is an association or corporation, the chief executive officer . . . must be the applicant . . . ." in § 40-18-60(A)(1);
- "[i]f the applicant is a partnership, all partners must complete an application form" in § 40-18-60(A)(2);
- "[t]he application must state the applicant's full name, age, date and place of birth" in § 40-18-60(A)(3);
- satisfaction "that the applicant and company are financially responsible" in § 40-18-60(B)(9);
- "satisfaction of the competency and integrity of the officers and principals" in § 40-18-60(C); and
- display of the license "at his place of business" in §40-18-60(D).

Conversely, the only reference in Section 40-18-60 to political subdivisions is found in Subsection (I), which provides an exemption from the Section for a person who also "has full-time employment as a law enforcement officer with a state, county, or municipal law enforcement agency." § 40-18-60(I). While not necessarily dispositive, the most logical inference from this language is that the Legislature contemplated that proprietary security business licensees would be available to private corporate entities or partnerships, while political subdivisions would continue to exercise their police power through certified law enforcement officers. *See* § 40-18-60(A)-(I).

In light of the fact that the General Assembly expressly excluded political subdivisions from application of Section 40-18-60, and the fact that the language of that Section contemplates the licensure of private businesses, the only remaining question is whether the Legislature also created any exception to this general rule for school districts specifically. *See* § 40-18-60, -110. We turn next to the statutes setting out the powers and duties of a school district to determine whether there is any indication that the General Assembly intended to empower a district to seek a proprietary security business license, notwithstanding Section 40-18-110. Our Office has

previously observed that "[t]he powers and authority of the boards and officers of school districts and other local school organizations are ordinarily purely statutory and are limited to those powers expressly conferred by statute or necessarily implied from those so conferred or from duties imposed by statute." *Op. S.C. Att'y Gen.*, 1976 WL 22912 (March 11, 1976) (quoting 78 C.J.S., Schools & School Districts, § 119). Section 59-19-10 of the Code provides that "[e]ach district shall be under the management and control the board of trustees," and the clearest delineation of the powers and duties of such a board are set out in Section 59-19-90. S.C. Code Ann. § 59-19-10, -90 (2004). That statute is too lengthy to set out fully in this opinion, but each of the powers established in the twelve subsections may be summarized by quoting the brief opening description from each subsection:

(1) *Provide schoolhouses.*
(2) *Employ and discharge teachers.*
(3) *Promulgate rules and regulations.*
(4) *Call meetings of electors for consultation.*
(5) *Control school property.*
(6) *Visit schools.*
(7) *Control educational interest of district.*
(8) *Charge matriculation and incidental fees.*
(9) *Transfer and assign pupils.*
(10) *Prescribe conditions and charges for attendance.*
(11) *Provide school-age child care program or facilities therefor.*
(12) *Establish the annual calendar.*

S.C. Code Ann. § 59-19-90 (2004). Each of the powers and duties set out above is followed by a lengthier description in the full text of the statute, but setting out that additional text is not necessary here. *See id.*

For the purposes of this opinion, the relevant question is whether one of the twelve powers and duties enumerated in Section 59-19-90 either expressly confers or necessarily implies the power to seek licensure as a proprietary security business. *Cf. Op. S.C. Att'y Gen.*, 1976 WL 22912 (March 11, 1976). We believe that a court would conclude that no such power is expressly conferred from the statutory text because none of the enumerated powers reference the licensure or operation of a security business (or any business of any kind). *Cf. Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) ("The cannon of construction *'expressio unius est exclusion alterius*' . . . holds that 'to express or include one thing implies the exclusion of another, or of the alternative.'").

Additionally, our research has not identified any other statute which expressly provides such a power elsewhere in Chapter 19 of Title 59. *See* S.C. Code Ann. § 59-19-10 *et seq.* While the Chapter does expressly reference the power to of a school board of trustees to purchase or condemn land or hire a medical professional, for example, we have not located any express authority to obtain or maintain a proprietary security business license. *Id.*

In the absence of any express power to operate a proprietary security business, the only remaining argument for such a construction is that such a power is necessarily implied. Subsection 59-19-90(5) does provide that a school board of trustees has the power to: "*Control school property.* Take care of, manage and control the school property of the district." § 59-19-90(5). We observe without opining that this power appears to be consistent with using SROs or private security guards to control school property, as discussed in our 2016 opinion. *Op. S.C. Att'y Gen.*, 2016 WL 963708 (February 24, 2016). However, we believe that a good-faith reading of the statutory power to "[t]ake care of, manage and control the school property of the district" does not include the authority to obtain a proprietary security business license normally obtained by private businesses. *See* § 59-19-90(5); *cf.* §§ 40-18-60 & -110. We believe that a court would reject such a construction as unsupported by the text and far outside of the legislative intent of the General Assembly. *See Op. S.C. Att'y Gen.*, 2005 WL 1983358 (July 14, 2005) ("The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible.").

Conclusion:

In summary: Chapter 18 of Title 40 provides for the licensure and regulation of proprietary security businesses. S.C. Code Ann. § 40-18-10 (2011) *et seq.* The General Assembly also expressly provided that the same Chapter has no application to political subdivisions, which includes school districts under long-established South Carolina law. § 40-18-110; *Op. S.C. Att'y Gen.*, 1986 WL 191976 (January 30, 1986). Our Office has not identified any expressly conferred or necessarily implied power of a school district to seek such a license. *Cf.* § 59-19-90. In the absence of any such statutory exception, the reasonable conclusion is that Section 40-18-110 controls and school districts do not have the power to obtain proprietary security business licenses. § 40-18-110.

For these reasons, it is the opinion of this Office that a court faced with the question would conclude that individual school districts cannot be licensed as proprietary security businesses in South Carolina. This does not mean that a school district cannot use private security guards to provide security on school grounds as discussed in our February 24, 2016 opinion addressed to Senator Paul Thurmond. *Op. S.C. Att'y Gen.*, 2016 WL 963708 (February 24, 2016). Nothing in this opinion should be construed as detracting from the reasoning and

conclusion of that 2016 opinion, and we unequivocally affirm it. In this opinion, we simply answer a legal question which was not addressed in that prior opinion, and this opinion should be read in that context.

Because we believe that the text and intent of the statutes discussed above unambiguously lead to this conclusion, we omit any discussion in this opinion of the separation of powers issue at this time. However, please do not hesitate to let us know if you would like a follow-up opinion discussing that particular issue.

Sincerely,

David S. Jones
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General