



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

October 15, 2004

The Honorable P. J. Tanner
Sheriff, Beaufort County
P. O. Box 1758
Beaufort, South Carolina 29901

Dear Sheriff Tanner:

In a letter to this office you questioned the authority of law enforcement officers and private security guards to issue uniform traffic tickets for motor vehicle violations which are not hazardous moving violations in private communities in your county. You particularly referenced the provisions of S.C. Code Ann. Section 23-1-15 (1989) which states:

Any real property which is used as a parking lot and is open to use by the public for motor vehicle traffic shall be within the police jurisdiction with regard to the unlawful operation of motor vehicles in such parking lot. Such parking lots shall be posted with appropriate signs to inform the public that the area is subject to police jurisdiction with regard to unlawful operation of motor vehicles. The extension of police jurisdiction to such areas shall not be effective until the signs are posted. In any such area the law enforcement agency concerned shall have the authority to enforce all laws or ordinances relating to the unlawful operation of motor vehicles which such agency has with regard to public streets and highways immediately adjoining or connecting to the parking area.

As I explained in our telephone conversation, as set forth by such provision, Section 23-1-15 applies only to property used as a parking lot which is open to use by the public. It would not be applicable to streets and roads in the communities you referenced.

As I indicated, another provision, S.C. Code Ann. Section 56-5-6310 (Supp. 2003) authorizes the enforcement of certain traffic regulations on private roads. Such statute provides:

The provisions of this chapter, comprising the Uniform Act Regulating Traffic on the highways in this State, shall be applicable to private roads if the owner, including any corporation or homeowners' association holding title to community roads and excluding those only holding easements over such roads, shall file a written consent stating that the undersigned is the owner of the private roads shown on an attached plat and consents to the application of the provisions of this chapter for purposes of

highway safety on such private roads. When the road is owned by two abutting owners, both shall consent to the application of this chapter. In the event there are more than two owners of the road, the provisions of this chapter shall apply when a majority of those owners of the total front footage abutting such road shall consent thereto. The consent shall be executed with the same formalities as a deed and with the plat shall be filed with the clerk of court or register of deeds for the county in which the private road is located and with the sheriff of such county. No derivation clause shall be required. Such filing shall not constitute a dedication to the public of such roads nor shall it constitute permission by the owner for the public to use such roads. The written consent shall become effective thirty days from the date it is filed with the clerk of court or register of deeds.

Another provision, S.C. Code Ann. Section 56-5-6340 (Supp.2003) states:

The speed limits and location of traffic control signs on private roads subjected to the Uniform Act Regulating Traffic pursuant to § 56-5-6310 shall be established as follows:

(a) The owner of the private roads or both owners, or a majority of the owners, as the case may be, shall submit proposed speed limits and proposed locations for traffic control signs to the sheriff of the county in which the roads are situate and shall obtain the sheriff's written approval of such speed limits and traffic control signs. Such approval shall be filed with the clerk of court or register of deeds and the affected roads then posted by signs identical or similar to those used on public roads.

(b) After filing with the clerk or register such speed limits and traffic control signs shall become effective as soon as they are posted on signs and thereafter may be enforced by the State Highway Patrol, officers of the sheriff's department and state constables appointed by the Governor, in addition to any other persons having authority to take out warrants or make arrests.

As set forth, pursuant to Section 56-5-6310, the provisions of Chapter 5 of Title 56 which comprise the Uniform Act Regulating Traffic on the highways in this State are applicable to private roads that have been dedicated as set forth by such provision and could be enforced on such dedicated private roads. Violations of other statutory provisions not set forth in Chapter 5 of Title 56 could not be enforced in such circumstances.

As referenced, you also questioned the authority of law enforcement as to property posted pursuant to Section 23-1-15. Again, the provisions of Section 23-1-15 would apply only to property

used as a parking lot which is open to use by the public. It would not be applicable to streets and roads in the communities you referenced.

As to Section 23-1-15, you particularly questioned the authority of law enforcement officers and private security guards to issue uniform traffic tickets for motor vehicle violations which are not hazardous moving violations. You cited the example of an individual who drives a motor vehicle and is stopped for a valid reason. As a result of the stop, it is determined that the driver has a suspended license and the vehicle is uninsured. Neither of these offenses is considered a hazardous moving violation. For instance, S.C. Code Ann. Section 56-1-460 (Supp. 2003) states in part that "...a person who drives a motor vehicle on any public highway of this State when his license to drive is canceled, suspended, or revoked must, upon conviction, be punished...(as set forth). You questioned whether these offenses can be ticketed in these circumstances when the offense occurs on private property posted pursuant to Section 23-1-15.

As set forth by Section 23-1-15, as to areas posted pursuant to such provision, "(i)n any such area the law enforcement agency concerned shall have the authority to enforce all laws or ordinances relating to the unlawful operation of motor vehicles which such agency has with regard to public streets and highways immediately adjoining or connecting to the parking area." (emphasis added). Therefore, any offense "relating to the unlawful operation of motor vehicles" can be cited in such circumstances.¹ As stated in an opinion of this office dated August 15, 1995, by posting "this entitles law enforcement officers to enforce all traffic offenses where the operation of a motor vehicle on a public highway is a required element of the offense." As referenced, in your cited example of driving under suspension, Section 56-1-460 prohibits driving a vehicle on any

¹This office has additionally advised that "the question of whether specific property is public or private is ... irrelevant as to certain traffic offenses." Op. Atty. Gen., October 5, 1985. In Op. Atty. Gen., Op. No. 92-45 (August 14, 1992), we stated that "[w]e have determined that Section 23-1-15 would have no effect on a traffic offense in which the commission on public property is not an element, such that certain traffic offenses may be committed and are enforceable on private property regardless of whether the property is posted." See Ops. Atty. Gen. dated May 21, 1980; September 29, 1975. For example, the offense of driving under the influence may be committed on private property even though it is not posted because operation of a motor vehicle on a public highway is not a required element of the offense. Op. Atty. Gen. dated April 22, 1985. See also Ops. Atty. Gen. December 23, 1974 (Reckless driving applies to offenses on private property even though not posted as the presence of the offender on a public highway is not made an element); January 18, 1988 (Reckless homicide committed on private property); May 21, 1980 (A violation of the handicapped parking provision may occur on private property which is not posted because presence on a public highway is not an element of the offense). Therefore, as to any offense where the language of the statute setting forth the offense does not require that the offense be committed on a public highway or street, posting of the private property would not be necessary for the commission and enforcement of the act.

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public highway when the driver's license is suspended. In my opinion, such offense relates to the "unlawful operation of motor vehicles" and could be ticketed where the offense occurs on private property posted pursuant to Section 23-1-15. Therefore, offenses considered to be related to the operation of a motor vehicle on a public highway could be enforced. Such would include violations within the category of nonhazardous moving violations if they relate to the operation of a motor vehicle on a public highway.

As to the authority of a private security guard, S.C. Code Ann. Section 40-18-110 (Supp. 2003) provides that

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 powers 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 power of arrest only on the property on which he is employed.

Therefore, a registered or licensed private security guard has the same arrest authority as a deputy sheriff to make an arrest but such authority is restricted to the property "on which he is employed". In an opinion dated August 30, 2001, this Office has concluded that "...a private security guard is a 'law enforcement officer' on such [private] property for purposes of issuing a Uniform Traffic Ticket pursuant to Section 56-7-10." See also Ops. Atty. Gen. dated April 30, 1987 & May 23, 1995. In the April 30, 1987 opinion, this Office stated that properly licensed private security guards were "law enforcement officers" for the purposes of § 56-7-10, and that they could use uniform traffic tickets to effectuate arrests. Their arrest authority would be equal to that of a deputy sheriff on property on which he is employed.

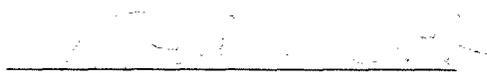
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:


Robert D. Cook
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