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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

February 22, 2005

Major Mark A. Keel
Chief of Staff
South Carolina Law Enforcement Division
P. O. Box 21398
Columbia, South Carolina 29221-1398

Dear Major Keel:

In a letter to this office you questioned the authority of a private security guard to issue citations for traffic violations in neighborhoods which have adopted the provisions of S.C. Code Ann. §§ 56-5-6310 et seq. (1991 and 2004). Such provisions authorize the enforcement of certain traffic regulations on private roads.

Generally, a registered security guard is granted the same arrest authority as a deputy sheriff. See: S.C. Code Ann. § 40-18-110 (2004). In an opinion of this office dated May 23, 1995 it was determined that a private security guard is a law enforcement officer on private property for purposes of issuing a uniform traffic ticket pursuant to S.C. Code Ann. § 56-7-10 (2004). That provision authorizes a uniform traffic ticket to be used by law enforcement officers for traffic offenses and certain other offenses.

Section 56-5-6310 states in part:

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....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. (emphasis added).

As emphasized, Section 56-5-6310 is quite specific in stating that "(t)he provisions of this chapter, comprising the Uniform Act Regulating Traffic on highways in this State, shall be applicable to

private roads....” Therefore, any offense set forth in chapter 5 of Title 56 is applicable to private roads when there is consent by the owner to the application of the provisions of such chapter to such private roads. This office in an opinion dated August 30, 2001 determined that a registered security guard can issue a uniform traffic ticket for a statutory traffic violation on private roads which are properly brought under the Uniform Act Regulating Traffic.

You have questioned whether a licensed private security guard within a private neighborhood which has filed the written consent set forth by Section 56-5-6310 may issue traffic citations to minors for driving a motor vehicle in violation of the provisions of Title 56, Chapter 1 dealing with licensing requirements or Title 56, Chapter 3 dealing with insurance requirements. S.C. Code Ann. § 56-1-20 (1991) states that

(n)o person, except those expressly exempted in this article shall drive any motor vehicle upon a highway in this State unless such person has a valid motor vehicle driver’s license issued to him under the provisions of this article.... (emphasis added).

Such provision is set forth in Article 1, Chapter 1 of Title 56. Pursuant to S.C. Code Ann. § 56-1-10(6) (2004), the term “highway” as used in Section 56-1-20 is defined as

(t)he entire width between the boundary lines of every way publicly maintained when any part of it is open to the use of the public for purposes of vehicular traffic. (emphasis added).

S.C. Code Ann. § 56-3-110 (1991) provides that

(e)very motor vehicle, trailer, semitrailer, pole trailer and special mobile equipment vehicle driven, operated or moved upon a highway in this State shall be registered and licensed in accordance with the provisions of this chapter. It shall be a misdemeanor for any person to drive, operate or move upon a highway or for the owner knowingly to permit to be driven, operated or moved upon a highway any such vehicle which is not registered and licensed and the required fee paid as provided for in this chapter. (emphasis added).

S.C. Code Ann. § 56-3-20 (2004) states that

For purposes of this chapter...(Chapter 3 of Title 56 which includes Section 56-3-110)..., the following words and phrases are defined as follows:

(25) “Street” or “highway” means the entire width between boundary lines of every way publicly maintained when any part of it is open to the use of the public for vehicular traffic. (emphasis added).

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In the letter enclosed with your request, reference was also made to the provisions of S.C. Code Ann. § 56-10-520 (2004) which states that

A person who owns an uninsured vehicle: (1) licensed in this State; or (2) subject to registration in this State; who operates or permits the operation of that motor vehicle without first having paid to the director the uninsured motor vehicle fee required by Section 56-10-510, to be disposed of as provided by Section 56-10-550, is guilty of a misdemeanor.

Therefore, Sections 56-1-20 and 56-3-110 dealing with licensing individuals and registering and licensing vehicles are only applicable to vehicles driven on "highways", i.e., publicly maintained roads. Section 56-10-520 is only applicable to uninsured vehicles subject to registration. The only vehicles subject to registration are those, as provided by Section 56-3-110, driven upon a highway. Also, Section 56-10-520 is included in Chapter 10 of Title 56.

As set forth, Section 56-5-6310 is specifically stating that "(t)he provisions of this chapter, comprising the Uniform Act Regulating Traffic on highways in this State, shall be applicable to private roads", authorizes any offense set forth in Chapter 5 of Title 56 to be applicable to private roads when there is consent by the owner to the application of the provisions of such chapter to such private roads. However, as to offenses set forth by Sections 56-1-20, 56-3-110, and 56-10-520, such would not be applicable to private roads inasmuch as they are not set forth in chapter 5 of Title 56. As a result, in my opinion, a licensed security guard within a private neighborhood which has consented to the applicability of the Uniform Act Regulating Traffic to its private roads would not be authorized to issue citations for violations of Sections 56-1-20, 56-3-110, and 56-10-520 dealing with requirements under such provisions for a driver's license and the registration and insurance requirements of motor vehicles. Such offenses are only applicable to vehicles driven on publicly maintained highways but are not applicable to vehicles driven on private roads.

I would only add further that this office has advised that "the question of whether specific property is public or private is... irrelevant as to certain traffic offenses." Op. Atty. Gen., October 2, 1985. For instance, S.C. Code Ann. § 56-5-2930 (2004) states that "(i)t is unlawful for a person to drive a motor vehicle within this State while (1) under the influence of alcohol..." (emphasis added). As set forth in State v. Allen, 314 S.C. 539, 540, 431 S.E.2d 563, 564 (1993), "...Section 56-5-2930 by its terms is not limited to public highways but applies anywhere within out State boundaries." See also: Ops. Atty. Gen. dated December 23, 1974 (the offense of reckless driving applies to private property); January 18, 1988 (the offense of reckless homicide may be committed on private property). Pursuant to Section 56-5-6320, termination of consent of the applicability of the Uniform Act Regulating Traffic to private roads may be made pursuant to such provision. However, Section 56-5-6330 states that "(t)he termination shall not affect those portions of this chapter which apply to private roads irrespective of the provisions of this article." Therefore, as to any offense where the language of the statute fails to sets forth any requirement that the offense be

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committed on a public highway or street, termination of consent to the applicability of the Uniform Act Regulating Traffic would not prevent the enforcement of such offense on a private road.

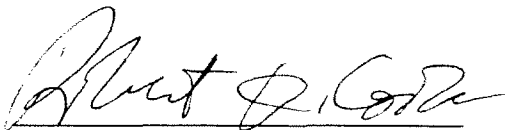
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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