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HENRY McMASTER
ATTORNEY GENERAL

September 29, 2006

The Honorable Garry R. Smith
Member, House of Representatives
210 Foxhound Road
Simpsonville, South Carolina 29680

Dear Representative Smith:

You have inquired into the possible means by which the Town of Gray Court could obtain law enforcement services for the Town. You indicated that currently the Town pays the Laurens County Sheriff's Department for the services of a deputy but this system is not working out and the Town feels it needs a different means to provide law enforcement services.¹ Because of the costs involved, there is no present consideration to the Town having its own police department.

One means that has been considered is contracting with a private security company to provide law enforcement services to the Town. Prior opinions of this office have concluded, however, that a municipality is not authorized to contract with a private security company for law enforcement purposes. See, e.g., Ops. Atty. Gen. dated January 24, 1994 and March 1, 1989. An opinion of this office dated June 8, 1993 stated that

Law enforcement is a proper exercise of this State's police power. The power of a municipality to establish a law enforcement agency is found in Section 5-7-110...Thus, the State has delegated certain of its police powers to the municipality and that delegation...limits the municipality to the employment or election of police officers. The system envisioned by the legislation demands that the municipality stand in the position of employer to that of its officers charged with the responsibility of law enforcement with direct control over each of them. It may not be inferred

¹Prior opinions of this office have recognized the authority for a sheriff's department to contract with a municipality to provide police protection. See, e.g., Ops. Atty. Gen. dated August 25, 2006, February 11, 1997 and May 17, 1978. An opinion dated May 20, 1996 concluded that a sheriff "...as a county official, is not generally considered to be obligated to provide specific service within a municipality, but is authorized to offer contract law enforcement service to a municipality."

from the language of the legislation that this delegation of the State's police power may be performed by a private entity such as a private security agency.

Another opinion dated March 6, 1980 similarly concluded that a municipality "...is powerless to contract with a private security agency for law enforcement purposes...[N]o municipality may by contract part with the authority delegated it by the State to exercise the police power." See also: Sammons v. Beaufort, 225 S.C. 490, 83 S.E.2d 153 (1954) (a municipality delegated police power may not divest itself of such by contract or otherwise).

Additionally, this office has concluded that private security guards have no authority to exercise law enforcement authority except on the private property they are hired to protect. See: Op. Atty. Gen. dated April 2, 1980. S.C. Code Ann. § 40-18-110 which grants arrest authority to licensed or registered security guards states that a licensed security guard "...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." The April, 1980 opinion concluded that "...a private security guard is not authorized...to exercise the power of arrest on public property." See also: Op. Atty. Gen. dated June 29, 1977. The lack of authority to exercise law enforcement powers on public property would be an obvious hindrance to a security guard providing law enforcement protection to a municipality.

One alternative that may be considered is allowing deputy sheriffs to "moonlight" and provide law enforcement services to the Town as authorized by S.C. Code Ann. §§ 23-24-10 et seq. Section 23-24-10 states that

[u]niformed law enforcement officers, as defined in Section 23-6-400(D)(1), and reserve police officers, as defined in Section 23-28-10(A), may wear their uniforms and use their weapons and like equipment while performing private jobs in their off duty hours with the permission of the law enforcement agency and government body by which they are employed.

Section 23-24-20 provides that

[e]ach agency head shall determine before such off-duty work is approved that the proposed employment is not of such nature as is likely to bring disrepute on the agency, the officer, or the law enforcement profession, and that the performance of such duties and the use of such agency equipment is in the public interest.

As to off duty work by a deputy sheriff in the same county in which he is employed, an opinion of this office dated April 18, 1995 stated that

[a]s long as law enforcement officers are moonlighting within their jurisdiction, they possess complete law enforcement authority while working off-duty pursuant to

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Section 23-24-10 et seq. With respect to deputy sheriffs, this jurisdiction includes the entire county.

Another opinion of this office dated December 7, 1994 concluded that

[d]eputy sheriffs are given law enforcement authority throughout the county, including sites within incorporated town limits. They are allowed to work off duty performing private jobs in uniform and armed under...(Section)...23-24-10 with the permission of the enforcement agency and governing body by which they are employed.²

Consistent with such, the Town could consider allowing deputy sheriffs to “moonlight” and provide law enforcement services to the Town in the manner referenced.

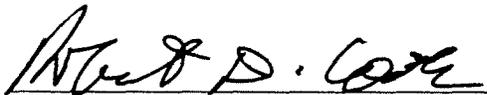
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General

²An opinion dated March 20, 1985 commented that “...a police officer is generally acting under color of this office by actually holding himself out as a police officer, either by wearing his uniform or in some other manner openly advertising his official position in order to observe the unlawful activity involved....” Referencing such, an opinion of this office dated March 10, 1992 concluded that “...inasmuch as the deputies involved derive their law enforcement authority while patrolling...(a)...town from their commissions as deputy sheriffs, it appears that they should continue to wear their deputy uniforms....”