



HENRY McMASTER
ATTORNEY GENERAL

August 10, 2009

The Honorable John M. Knotts, Jr.
Senator, District No. 23
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Knotts:

In a letter to this office you questioned the arrest powers of security guards licensed in this State. You have questioned whether a licensed security guard is considered a law enforcement officer within the boundaries of the property he or his company have contracted to protect. You also questioned whether a security guard has the right to sign an arrest warrant on a suspect that has committed an offense on the property the guard is contracted to protect.

S.C. Code Ann. § 40-18-110 provides for the law enforcement authority of a security guard licensed by the State Law Enforcement Division. Such provision states 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 powers of arrest only on the property on which he is employed.

In its decision in City of Easley v. Cartee, 309 S.C. 420, 422, 424 S.E.2d 491, 492 (1992), the State Supreme Court recognized that

[t]he legislature has granted licensed security guards the authority and power of sheriffs to arrest any person violating the criminal statutes of this State...The power is limited only by the requirement that the arrest must be made on property that the security officer is licensed to protect...Thus, like the police, licensed security officers perform a law enforcement function and act in an official capacity when making an arrest. Cf. State v. Brant, 278 S.C. 188, 293 S.E.2d 703 (1982) (security guard is a law enforcement officer for purpose of resisting arrest prosecution); Chiles v. Crooks,

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708 F.Supp. 127, 131 (D.S.C.1989) (arrest by security guard on licensed premises is action under color of state law within scope of 42 U.S.C. § 1983).

Therefore, consistent with such, a licensed security guard is considered a law enforcement officer within the boundaries of the property he or his company have contracted to protect.

As to your question of whether a security guard has the right to sign a warrant on a suspect that has committed an offense on the property the guard is contracted to protect, a prior opinion of this office dated November 16, 1983 recognized the authority of a security guard to go to a magistrate and swear out a warrant. The opinion referenced a prior 1973 opinion of this office stating that "...any person who had knowledge of the facts involved, either directly or upon information imparted to him by others, could sign an affidavit upon which an arrest warrant could be issued." In an opinion dated September 8, 1980 it was stated that

[i]t has been the opinion of this Office that a private security guard, having lawfully arrested a defendant on property to which he is assigned and upon which he is empowered to make arrests, should then deliver the defendant to the proper authorities without leaving the assigned property. Opinion of the Attorney General No. 77-357 at page 284 (1977). That opinion reasons that since a private security guard loses certain authority and powers of arrest upon leaving property he is assigned to protect, a law enforcement agency is the appropriate agency by which a defendant should be transported from the scene of the arrest to jail. Thus, the opinion states, a law enforcement officer transporting a prisoner lawfully arrested by a private security guard would be immune from liability if he immediately transported the prisoner to jail or to a committing magistrate. The security guard is under a duty to go before a magistrate immediately to swear out a warrant and provide for the release of the prisoner...

Clearly, it is the duty of every security guard to protect the life and property to which he is assigned. To enable the private security guard to protect this property, he is empowered to affect arrests as a sheriff by virtue of...(statutory law)...Sheriffs and their deputies are under a duty to patrol the county and to use every means to prevent or detect, arrest and prosecute for offenses committed within their jurisdiction...It must be said that they are under a duty to assist each other as well as citizens of the county in the detection, arrest, and prosecution of criminal offenses. Therefore, a deputy sheriff is under a duty to assist a private security guard or private citizen in bringing the criminal offender to justice. If a law enforcement officer is asked by a private security guard who has arrested a prisoner, to transport that prisoner to jail, the deputy is under a duty to transport that prisoner to jail...

The law enforcement officer or citizen who arrests a person without a warrant must forthwith take the person to a judge or magistrate so that a warrant of arrest may be

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procured and the prisons dealt with according to law...Therefore, it is the duty of the security guard, having made arrest without a warrant on his assigned property, to go before the magistrate so that the prisoner may be dealt with according to law. The law enforcement officer called to respond to the scene of an arrest by a private security guard or private citizen for the sole purpose of transporting a prisoner to a committing magistrate or to jail is under no duty to investigate the arrest or make a determination as to whether probable cause existed to make the arrest. The security guard or private citizen would be under a duty to go immediately to the committing magistrate to swear out a warrant and that the prisoner may otherwise be dealt with according to law. (emphasis added).

Therefore, in the opinion of this office, a security guard has the right to sign an arrest warrant on a suspect that has committed an offense on the property the guard is contracted to protect.

With kind regards, I am,

Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



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Deputy Attorney General