



HENRY MCMASTER
ATTORNEY GENERAL

December 16, 2008

The Honorable Mike Fair
Senator, District No. 6
P. O. Box 14632
Greenville, South Carolina 29610

Dear Senator Fair:

In a letter forwarded to this office the question was raised as to the applicability of S.C. Code Ann. § 22-5-115 to licensed security guards. Such provision states:

(A) [n]otwithstanding any other provision of law, a summary court or municipal judge may issue a summons to appear for trial instead of an arrest warrant, based upon a sworn statement of an affiant who is not a law enforcement officer investigating the case, if the sworn statement establishes probable cause that the alleged crime was committed. The summons must express adequately the charges against the defendant. If the defendant fails to appear before the court, he may be tried in his absence or a bench warrant may be issued for his arrest. The summons must be served personally upon the defendant. (emphasis added).

An amendment to S.C. Code Ann. § 22-5-110 was set forth in Act No. 346 of 2008. Such provision adds subsection (B) to the statute and states that:

[n]otwithstanding another provision of law, a person charged with any misdemeanor offense requiring a warrant signed by nonlaw enforcement personnel to ensure the arrest of a person must be given a courtesy summons. (emphasis added).

As noted in a prior opinion of this office dated September 25, 2008, a courtesy summons is issued by a summary court judge based upon the sworn statement of an affiant “who is not a law enforcement officer” or is issued to “nonlaw enforcement personnel.” That opinion concluded that a school resource officer is a law enforcement officer and would not be considered “nonlaw enforcement personnel” for purposes of Sections 22-5-110 or 22-5-115 regarding the issuance of a courtesy summons. See also: Op. Atty. Gen. dated August 18, 2008 (“...a courtesy summons would be applicable in shoplifting and fraudulent check cases involving misdemeanor offenses where the

warrant is signed by nonlaw enforcement personnel..."); Op. Atty. Gen. dated August 7, 2008 (“...a courtesy summons must be used for summary level crimes involving victims charging a misdemeanor offense when the affiant is non-law enforcement personnel.”) Therefore, consistent with such, a courtesy summons is to be utilized where an individual is charged with a misdemeanor offense and the affiant is nonlaw enforcement personnel.

S.C. Code Ann. 40-18-110 states that as to private security guards,

[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 power 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.
(emphasis added).

A prior opinion of this office dated April 7, 2008 referenced that consistent with such provision,

...private security guards have no authority to exercise law enforcement authority except on the private property they are hired to protect...(recognizing that such provision 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.”

An opinion of this office dated April 2, 1980 concluded that “...a private security guard is not authorized ...to exercise the power of arrest on public property.”

While these opinions differentiate the powers of arrest depending upon whether the property is public or property the security guard is hired to protect, they clearly recognize that a licensed security guard has the power of arrest. Indeed, Section 40-18-110 clearly states that such a guard on the property he is hired to protect “is granted the authority and arrest power given to sheriff's deputies.” See: Ops. Atty. Gen. dated August 3, 2006, February 22, 2005 and October 15, 2004. Also, the State Supreme Court in City of Easley v. Cartee, 309 S.C. 420, 424 S.E.2d 491 (1992) recognized that

[t]he legislature has granted licensed security officers 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 the 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.

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See also: State v. Brant, 278 S.C. 188, 293 S.E.2d 703 (1982) (security guard is a law enforcement officer for purposes of resisting arrest prosecution.).

Consistent with the above, in the opinion of this office, Sections 22-5-115 and 22-5-110 would not be applicable to licensed security guards inasmuch as these guards are recognized as having the law enforcement authority of a deputy sheriff on the property they are hired to protect. Therefore, they would not be considered as an affiant "who is not a law enforcement officer" for purposes of requiring the issuance of a courtesy summons instead of an arrest warrant.

If there are any questions, please advise.

Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
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REVIEWED AND APPROVED BY:



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