

7118 Liberty



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

August 30, 2001

Robert M. Stewart, Chief  
South Carolina Law Enforcement Division  
P.O. Box 21398  
Columbia, South Carolina 29221-1398

**Re: Authority of Private Security Officers**

Dear Chief Stewart:

You have requested an opinion from this Office "concerning authority of a private security officer employed in an enclosed and/or gated residential enclave to pursue and stop vehicles and detain and issue Uniform Traffic Tickets or administrative penalty notices to violators on streets within the enclave." Specifically, you ask the following questions:

(1) Does a properly registered private security officer (§40-18-80) have lawful authority, limited or unlimited, under statutory law and SLED regulations, to pursue, stop, detain and issue a Uniform Traffic Ticket and/or a private penalty notice to a violator, on private roads, of state traffic laws or private traffic policies, whether or not the roads are enrolled pursuant to the S. C. Uniform Act Regulating Traffic, as addressed in SLED Regulation 73-40.17; and

(2) does a private company or association of property owners have lawful authority to assess and enforce collection of penalties against violators of state traffic laws or private traffic policies for traffic violations occurring on their private roads, whether or not enrolled in the UART; and

(3) does a private security officer have lawful authority, limited or unlimited, under statutory law and SLED regulations, to pursue and stop motorists on private roads, whether or not enrolled in the UART, by use of amber lights on a security vehicle?

Each question will be addressed in turn.

*Request Letter*

### QUESTION 1

In order to be answered fully and coherently, I have divided your first question into four subparts: (a) the authority of a properly registered security guard to issue a uniform traffic ticket for a statutory traffic violation while patrolling private roads registered pursuant to the S.C. Uniform Act Regulating Traffic (S.C. Code Ann. §§56-5-6310 et seq.) (hereinafter UART), (b) the authority of a properly registered security guard to issue a uniform traffic ticket for a statutory traffic violation while patrolling private roads which are not registered pursuant to UART, (c) the authority of a properly registered security guard to issue a uniform traffic ticket for a violation of private traffic policy while patrolling private roads registered pursuant to the S.C. Uniform Act Regulating Traffic, and, (d) the authority of a properly registered security guard to issue a private penalty notice for a violation of a private traffic policy.

(a) S.C. Code Ann. §56-6-6310, allowing private roads to be included in UART, was passed in the summer of 1978. Shortly after its passage, this Office issued an opinion that "private police may enforce speed limits on private roads so long as the owner has complied with the [provisions of §56-5-6310 et seq.]." See OP. ATTY. GEN. (Dated August 1, 1978). Further, this Office has previously "... 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 OPS. ATTY. GEN. (Dated April 30, 1987 & May 23, 1995). Accordingly, it is my opinion that a properly registered security guard can issue a uniform traffic ticket for a statutory traffic violation on private roads which are properly under the UART.

(b) This Office has previously opined that, in order for the UART to be applicable to the private roads of a subdivision which are maintained by a homeowners' association, the proper filings and postings pursuant to §56-5-6310 must be accomplished by the association. See OP. ATTY. GEN. (Dated April 2, 1990). The opinion went on to state that, absent such appropriate filings and postings, the traffic controls would be unenforceable by a law enforcement agency, such as a Sheriff's Office, and that any traffic tickets issued should probably be voided.<sup>1</sup> As a registered security guard is granted the same authority and arrest power given to sheriff's deputies, See S.C. Code Ann. §40-18-110, the opinion would also be applicable to private security guards patrolling such private roads. Therefore, it is my opinion that a private security guard is not authorized to issue a uniform traffic ticket for a traffic violation on private property not enrolled in the UART.<sup>2</sup>

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<sup>1</sup> The referenced opinion also stated that the specific issue raised in the opinion could only be resolved with finality by a court.

<sup>2</sup> Certain traffic laws, such as driving under the influence, are applicable state wide, including private roads not enrolled in the UART. See State v. Allen, 314 S.C. 539, 431 S.E.2d 563 (1993)

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(c) In addressing a question concerning the ability of private security guards to issue uniform traffic tickets for violations of the regulations of a private shopping mall, this Office stated :

As to whether the security guards could ticket vehicles for violating mall regulations such as improper parking, etc., I know of no state statutory authority which may be construed as authorizing the issuance of a summons for such purposes. Security guards, inasmuch as they are vested with the same authority and power as sheriffs, are authorized to issue uniform traffic tickets in those circumstances permitted by Section 40-17-130. However, such tickets may not be used to cite for the violation of a regulation promulgated by a private institution, such as a shopping mall.

See OP. ATTY. GEN. (Dated February 25, 1981). It makes sense that the same logic would be applicable to your questions. Further, this Office has consistently opined that the uniform traffic ticket should only be used in those instances specifically provided for in Title 56 of the Code. These instances include traffic offenses described or defined in Title 56 (See OP. ATTY. GEN. (Dated March 20, 1984), any offense specifically listed in §56-7-10 and any case where an offense is committed in the presence of a law enforcement officer and the punishment is within the jurisdiction of magistrate's court and municipal court pursuant to §56-7-15. A violation of a private traffic policy promulgated by a homeowners' association would fit none of these categories. Accordingly, it is my opinion that a private security guard should not issue a uniform traffic ticket for a violation of a private traffic policy.

(d) Pursuant to S.C. Code Ann. §40-18-110, a properly registered security officer "may arrest a person violating or charged with violating a criminal statute of this State ... (emphasis added)." In no circumstance would a security guard be authorized to perform a custodial arrest pursuant to a violation of a private traffic policy promulgated by a homeowners' association. Whether a security guard would have the authority to issue a non-custodial penalty notice for a violation of a private traffic policy would most likely be dependant on the nature of the homeowner's association agreement or related covenants, membership in the association or some contractual provision, such as a rental agreement, which would tie the alleged violator to the agreement and covenants.

## QUESTION 2

As mentioned in 1(d) above, the ability of a property or homeowners' association to assess and collect fines and penalties for violations occurring on private property would probably depend on the nature of the homeowners association's agreement and whether the violator was a member of the association or in a position contractually which would bind the violator to the terms of the agreement. Courts in other jurisdictions have addressed similar questions. In Florida, the state District Court of Appeal held that a homeowners' association had the authority to assess fines against a homeowner based on violations of covenants restricting parking. See Zerquera v. Centennial Homeowners' Association Inc., 721 So.2d 751 (1998). Similarly, the Court of Appeals of Wisconsin noted in Crouse, et al. v. Lake Camelot Property Owners' Association, et al., 362 N.W.2d 446

(1984), that the property owners' "association's power to fine its members depends on the contract between the association and the members embodied in the bylaws and articles." Accordingly, there appears to be some authority for the enforcement of the fines and penalties referenced in your question. I can find no South Carolina authority to the contrary.

While a property owners' association may be able to assess and collect such fines and penalties, such action would be strictly a private matter between the association and the violator. No person acting under his/her authority as a state law enforcement officer could enforce such and no state criminal court (municipal, magistrate's or general sessions) would have jurisdiction over actions pursuant to the alleged violations and fines. See 184 ALA. OP. ATTY. GEN. 30 (Dated September 1, 1981) (Restrictive covenants should be enforced by private landowners and not by municipal governments); See also KY. OP. ATTY. GEN. (OAG 80-616 - Dated November 20, 1980) (property owners should institute legal proceedings for breach of restrictive covenant, not city).

### QUESTION 3

For clarity's sake, I have divided your third question into two subparts: (a) the authority for a private security officer to stop a motorist on a private road which is enrolled in the UART for a violation of state law using amber lights on a security vehicle, and (b) the authority for a private security officer to stop a motorist on a private road for a violation of private traffic policy using amber lights on a security vehicle.

(a) Clearly, pursuant to S.C. Code Ann. §40-18-110, private security officers have lawful authority to perform custodial arrest while on the property they are hired to protect. This authority is not dependant on or limited by the color of lights on the vehicle they drive. Section 56-5-750 makes it unlawful "for a motor vehicle driver, while driving on a road, street, or highway of the State, to fail to stop when signaled by a law enforcement vehicle by means of a siren or flashing light." The statute does not mention a red or blue light only, but provides that the driver should stop for the "flashing light" of a law enforcement vehicle. While these statutes would appear to indicate that amber lights could be used for a traffic stops, they do not end the inquiry.

Section 56-5-4700 is titled "Audible signal devices and signal lamps for authorized emergency vehicles, school buses and police vehicles" and provides in subsection (c) that

"A police vehicle when used as an authorized emergency vehicle may but need not be equipped with alternately flashing red lights as specified herein. Also, such vehicle may in lieu of the alternately flashing red lights be equipped with a special dome-mounted oscillating, rotating, or flashing red or blue light visible from a distance of five hundred feet to the front in normal sunlight; provided, that it shall be unlawful for any person to possess any flashing, oscillating or rotating blue light on any vehicle except one used primarily for law enforcement purposes.

Provided, further, that after January 1, 1967, all police vehicles when used as an authorized emergency vehicle shall then be equipped with dome-mounted, oscillating, rotating or flashing blue lights visible from a distance of five hundred feet."

While not specifically stating such, it can be implied from the above statute that police vehicles are to use only flashing blue lights. Further, in a letter provided by you from Patrick Teague, Senior Assistant General Counsel for SCDPS, it is apparent that the position of SCDPS is that "amber lights are not authorized for law enforcement purposes in this state ... [and] ... [a]n amber light is not a symbol of police/law enforcement authority in this state." Mr. Teague explains that the rationale behind such is that "[i]t is important that the general public be aware that only blue lights are used for criminal law enforcement purposes so as to avoid confusion and alarm." The reasoning expressed by Mr. Teague is compelling and the interpretation of SCDPS in this matter is entitled to a great deal of deference. Moreover, SLED regulation 73-40(17) provides that "Security Patrol cars shall utilize emergency lights that are amber in color ... [i]f a Security Agency feels blue or red emergency lights are necessary on their patrol vehicles, the following is required:

(a) Owner of the property which the security agency is patrolling shall comply with all provisions of the South Carolina Uniform Act Regulating Traffic to Private Roads.

(b) Copies of all written approvals governed by the provisions of the Act given above shall be filed with SLED.

(c) Security Agency shall make application to the Division for Uniform Traffic Summons Books.

(d) Emergency blue or red lights shall be removed or concealed when security patrol car is not on said property which security agency is patrolling."

It appears that, in such regulation, SLED contemplated that blue lights would be necessary for the a private security vehicle to make traffic stops on private roads enrolled in the UART and issue Uniform Traffic Tickets for such violations. If the standard amber light could be used to make the contemplated traffic stop, the distinction drawn in the SLED regulation would appear to be unnecessary.

(b) As mentioned above, a private security officer is not authorized to make a custodial arrest nor issue a uniform traffic ticket for a violation of a private traffic policy only. The authority to issue a private penalty notice would come from the homeowners' association agreement and not state traffic laws. Whether the members of the association have agreed to observe the authority of a yellow light appears to be a matter of that agreement. There appears to be, however, no state law which would impose a duty on a driver to stop for such.

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This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Avant", written over a horizontal line.

David K. Avant  
Assistant Attorney General

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