

The State of South Carolina



Office of the Attorney General

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December 7, 1994

Barry D. Mallek, Chief of Police
Town of Duncan Police Department
153 West Main Street
Post Office Drawer 188
Duncan, SC 29334

Dear Chief Mallek:

Attorney General Medlock has referred your letter of November 10, 1994 to me for reply.

Your first question concerned a verification of Attorney General Opinion 92-07, regarding off duty employment of County Deputy Sheriffs. Your question was: Could an off duty deputy sheriff work within an incorporated town's limits, if the job was not sanctioned nor approved by the town council or the chief of police; in the alternative, would only the town's police department have an option of working an off duty job within the town.

Attorney General Opinion 92-07 concerned off duty deputies of the Lexington County Sheriff's Department wearing uniforms of the Town of Pine Ridge, while patrolling that town pursuant to an agreement between the town and the sheriff's department. The deputies involved derived their law enforcement authority, while patrolling Pine Ridge, from their commissions as Lexington County Deputy Sheriffs; this office advised that they should continue to wear only their Lexington uniforms. Regarding your question, this Opinion may not be applicable. Deputy sheriffs are given law enforcement authority throughout the county, including sites within

Barry D. Mallek, Chief of Police

Page 2

December 7, 1994

incorporated town limits. They are allowed to work off duty performing private jobs in uniform and armed, under S.C. Code Ann. §23-24-10 (1993 Supp.), with the permission of enforcement agency and governing body by which they are employed.

In addition, the State Ethics Commission advised in their Opinion A092-154 (May 27, 1992) that police officers may utilize uniforms, weapons, and like equipment during off duty security work under §23-24-10 when approved by their law enforcement agency and governing body, when no additional public expense would be involved.

In a prior Opinion this office stated that officers moonlighting outside their jurisdiction would be acting as private citizens and have only the law enforcement authority granted to other private citizens. 1985 Opinion Attorney General No. 85-25, page 81.

Your second question sought a clarification of the above 1985 Opinion. Duncan is the home of Spartanburg County District Five's Middle and High School. You inquired whether police officers from neighboring towns, which Duncan did not have a law enforcement agreement with, could work off duty school activities in uniform with police powers. You also questioned what liability the district would incur.

Answering the second question first, I would have to refer you to the school district's attorney for information about liability. I would not want to advise you about liability which could not fall upon your department. However, there is a reference to liability found at §23-24-30, and as provided therein off duty work performed by a law enforcement officer is not considered work done within the scope of employment, and no municipal, county, state or any political subdivision would be liable for action performed by off duty law enforcement officers working pursuant to the provisions of §§23-24-10 et seq.

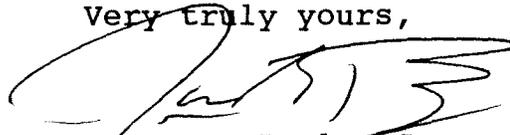
Regarding the first question, Opinion No. 85-25 does not appear to have been superseded, so officers moonlighting outside their jurisdiction will be acting as private citizens. The authority for an officer to moonlight falls under §§23-24-10 et seq., and at §23-24-10 approval is required by the law enforcement agency and its governing body. I am not aware of circumstances under which the Town of Duncan, or Spartanburg County, could approve employment of law enforcement officers outside of the county. Please understand that I am not advising you regarding the authority of deputy sheriffs, since as noted above they appear to have police authority within the entire county, which would include various towns contained therein.

Barry D. Mallek, Chief of Police
Page 3
December 7, 1994

Your third question concerned campus police officers as referenced as S.C. Code Ann. §59-116-10. You stated that Spartanburg County School District Five had hired a school district police officer, who was commissioned as a State Constable. Section 59-116-10 only applies to campus security departments of colleges or universities, which is specifically defined as institutions of higher learning, private or public, of two or four years in length. That section, and the chapter in which it is contained, would not apply to high schools.

You stated the officer was commissioned as a State Constable. Reading the powers of a state constable together with the persuasive (though not applicable by definition) provisions of §59-116-30 (D), it could be argued that the Spartanburg District Five School District police officer could arrest on campus property, and could arrest off campus property if: (1) the person had committed a criminal offense on campus, and (2) the arrest was made during the person's immediate and continued flight from (3) the campus.

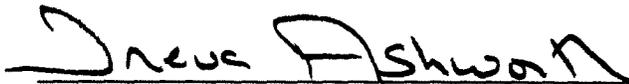
Very truly yours,



James G. Bogle, Jr.
Assistant Attorney General

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APPROVED:



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