



ALAN WILSON
ATTORNEY GENERAL

February 3, 2014

Mark Keel, Chief
South Carolina Law Enforcement Division
P.O. Box 21398
Columbia, S.C. 29211

Dear Chief Keel,

You seek an opinion as to whether the developer of a "safety-related" smartphone application (the "Developer") and certain employees would be subject to the licensing and registration requirements of Chapter 18 of Title 40 of the S.C. Code concerning private security agencies if the application is made available for use in this State. By way of background, you provide us with a copy of a letter from the law firm representing the Developer which states:

The App permits smartphone users to contact a friend or professional safety responder if they feel unsafe or in an emergency. The App uses the phone's video-conferencing feature to enable the user to communicate with a friend or responder. Once connected, both the user and the friend or responder can see and speak to each other. The user can then point the phone at the scene around them or a potentially threatening person to transmit video and audio to the friend or responder. The friend or responder appears simultaneously on the phone's video screen and can communicate directly with the user or the threatening person over the phone's speakers. The friend or responder can then tell the threatening person they are being recorded and instruct them to walk away from the user. If necessary, the user or responder can also contact 911. (The phone's GPS permits police or the safety responder to locate the user.) Video and audio may be recorded on the device with backup on a remote server, which is available to police if requested. The responder may be a call center dispatcher, a guard or off-duty police officer working in a call center or similar facility likely to be in a different state, and who may appear on the phone's video screen wearing a security uniform.

With the above information in mind, you specifically ask the following questions:

- 1) Does the responder constitute a "security officer" as defined in S.C. Code § 40-18-20(C)?

- 2) Do the activities of the Developer or the responder constitute a "contract security business" as defined in S.C. Code § 40-18-20(B)(1)?

Law/Analysis

As previously mentioned, Chapter 18 of Title 40 of the S.C. Code¹ governs private security agencies. The provisions therein impose certain requirements upon persons or companies engaged in such in matters. S.C. Code § 40-18-50 sets forth the respective qualifications and requirements necessary to obtain a license to conduct a "contract security business" and provides, in relevant part:

(A) Any person engaged in the contract security business in an individual, self-employed capacity, or as an officer or principal of a corporation, or who furnishes security officers for a fee must make application in writing to SLED for a contract security business license and pay an annual license fee which must be set by regulation.

....

§ 40-18-50(A); see also § 40-18-60(A) ("An employer who utilizes a person who is armed, uniformed, or has been delegated arrest authority for work on the employer's premises in connection with the affairs of the employer must make application to SLED for a proprietary security business license").

As for security officers, § 40-18-60(A) states "[p]ersons performing the duties of security officers must also obtain valid security officer registration certificates...." SLED may grant a certified or licensed security officer a Security Weapons Permit to carry a firearm. § 40-18-100(A). However, a security officer issued such a permit "may only carry a firearm in an open and fully-exposed manner while in uniform and performing security duties or while in a vehicle enroute directly to or from a security post or place of assignment." § 40-18-100(C). Furthermore, § 40-18-110 provides:

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.

§ 40-18-110.

Certain terms used above and in all other provisions of Chapter 18 of Title 40 are given the following definitions "unless the context requires otherwise":

(B) "Security business" means the provision of personnel whose duties include watching over, protecting, or defending people or property against intrusion, damage, injury, or loss, and specifically includes, but is not limited to, the

¹ Pursuant to Act No. 372 of 2000, Chapter 17 of the S.C. Code concerning Detective and Private Security Agencies was repealed and replaced by the addition of Chapter 18 concerning Private Security and Investigation Agencies.

following authorities or responsibilities: to allow or refuse access to property or certain areas of property; detect, prevent, or report entry by unauthorized persons; observe for and react to hazards or hazardous situations; observe for and react to violations of law or policy; observe for and react to emergencies; observe for and react to thefts or other incidents; apprehend or report intruders or trespassers; and maintain order or discipline.

(1) "Contract security business" means engaging in the security business by providing private patrol, watchman, guard, security, or bodyguard service for a fee.

(2) "Proprietary security business" means employing security officers who are assigned to security duties on the employer's property.

(C) "Security officer" means a person who provides security service by performing any security function, as detailed in this chapter.

....

(E) "Uniform" means clothing displaying a badge, emblem, insignia, indicia, or print identifying the wearer as a security officer.

§ 40-18-20.

A number of rules of statutory construction are applicable here. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 581 (2000). "[Courts] will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute's operation." Harris v. Anderson County Sheriff's Office, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009). "If a statute's language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and a court has no right to impose another meaning." Strickland v. Strickland, 375 S.C. 76, 85, 650 S.E.2d 465, 472 (2007). "[S]tatutes must be read as a whole, and sections which are part of the same general statutory scheme must be construed together and each one given effect, if reasonable." State v. Thomas, 372 S.C. 466, 468, 642 S.E.2d 724, 725 (2007). "In construing a statute, [courts] will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature." Lancaster County Bar Ass'n v. S.C. Com'n on Indigent Defense, 380 S.C. 219, 222 670 S.E.2d 371, 373 (2008).

As previously indicated, a "security officer" is defined as "a person who provides security service by performing any security function, as detailed in this chapter." § 40-18-20(C). Thus, one must examine the various functions of security officers discussed throughout the provisions of Chapter 18 of Title 40 to determine whether a responder employed by the Developer falls within the statutory definition of a "security officer."

Many of the duties, services, and powers of security officers are described in the provisions of § 40-18-20(B) defining the types of security businesses. The general definition of a "security business"

indicates security personnel are responsible for, *inter alia*, watching over and defending people or property, allowing or refusing access to property, detecting or preventing unauthorized entries to property, and apprehending trespassers. § 40-18-20(B). Security personnel provided by a "contract security business" serve as watchmen, guards, security, or bodyguards. § 40-18-20(B)(1). Security personnel employed by a "proprietary security business" "are assigned to security duties on the employer's property." § 40-18-20(B)(2). Furthermore, a person properly registered or licensed under Chapter 18 of Title 40 has the powers of arrest on the specific property the person is hired or employed to provide security services on, § 40-18-110, and may carry a firearm while performing security duties if granted a permit to do so by SLED, § 40-18-100.

Considering together all of the duties, functions, and powers of security officers detailed in the various provisions above, it is evident that the Legislature's intent was to regulate persons who *physically* provide security services on or for some specific property in this State.² Here, responders employed by the Developer will simply answer "safety-related" calls from users from a remote location. They will not be responsible for, or even capable of, providing physical protection or other security services for such users or their property. Therefore, we do not believe such responders are "security officers" subject to the registration requirements of Chapter 18 of Title 40.

As to your second question, it logically follows that if responders employed by the Developer will not provide any security services contemplated by Chapter 18 of Title 40, then neither the Developer nor its responders would engage in a "contract security business" as defined in § 40-18-20(B)(1). Furthermore, nothing in Chapter 18 of Title 40 evinces an intent to regulate, as here, the use of personal devices, or any program or application operating therein, capable of establishing contact with an on-call responder stationed at a remote location. In any event, the Legislature undoubtedly did not contemplate the eventual creation and use of any such smart phone application when it amended Title 40 and added to it the provisions of Chapter 18 in 2000. Accordingly, it is our opinion neither the Developer nor its responders constitute a "contract security business," and thus are not subject to the licensing requirements of Chapter 18 of Title 40.

Conclusion

For the reasons discussed herein, it is our opinion based on the information provided that responders employed by the Developer are not "security officers" subject to the registration requirements

² Somewhat instructive on the issue, we previously described the relationship between a security officer's duties and powers and the specific property he or she is hired to protect as follows:

As to ... whether there is authority for an individual licensed as a private security guard to provide security for a moving individual, ... there appears to be no such authority.... [A]n individual licensed as a private security guard has the power and authority of a sheriff to make arrests, but such authority is limited to the property he is hired to guard or protect. Obviously, such guards, while hired to guard and patrol certain property, could provide security for any individuals on such property. However, away from such property, the private security guards would only have the powers of arrest of a private citizen....

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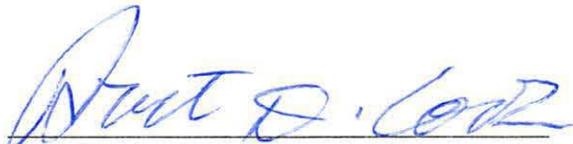
of Chapter 18 of Title 40. It is also the opinion of this Office that neither the Developer nor its responders constitute a "contract security business" subject to the licensing requirements of Chapter 18 of Title 40. If the Legislature determines that the regulation of the services provided by the Developer through this particular smartphone application and similar other programs or devices is warranted to protect the interests of the public, we would suggest new legislation be enacted which expressly covers the provision of such services to persons in this State.

Sincerely,



Harrison D. Brant
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General