



ALAN WILSON  
ATTORNEY GENERAL

February 18, 2014

Mark A. Keel, Chief  
South Carolina Law Enforcement Division  
P.O. Box 21398  
Columbia, S.C. 29221

Dear Chief Keel,

You seek an opinion of this Office concerning the potential use of radar speed measurement devices by private security officers on the properties they are hired to protect. By way of background, you provide us with the following information:

SLED is inquiring as to whether or not a private security officer registered under Chapter 18 [of Title 40 of the S.C. Code] can be certified as a radar operator on the property he is assigned to protect. A regulation under the South Carolina Criminal Justice Academy's Code of Regulations states that only Class I Certified Law Enforcement Officers and appointed Reserve Officers can be accredited as Traffic Radar Operators.

#### Law/Analysis

As we have previously advised, there is no provision in the S.C. Code of Laws which requires law enforcement officers to be certified to use radar or other speed measurement devices before they may operate such devices. See, e.g., Ops. S.C. Att'y Gen., 2003 WL 21043506 (April 17, 2003) ("The South Carolina Code of Laws does not address the use of radar by uncertified police officers"); 1983 WL 181826 (April 4, 1983) (advising we are "unaware of any statewide rules requiring certification of radar operators.... [and] there is no law in effect which requires successful completion of such training prior to using radar"). The only State-sponsored traffic radar operator certification we are aware of is offered by the S.C. Criminal Justice Academy (the "CJA") pursuant to S.C. Code Regs. 38-011 which states:

#### A. Qualification

Only Class 1 certified law enforcement officers and appointed reserve officers may be accredited as traffic radar operators.

#### B. Accreditation

To be accredited as a traffic radar operator, a law enforcement officer must complete a course of training taught by a certified law enforcement traffic radar instructor.

S.C. Code Regs. 38-011. Since private security officers are not Class 1 certified law enforcement officers or appointed reserve officers, they are not eligible for certification as traffic radar operators through the CJA.

In any event, the CJA is generally statutorily responsible for the training and certification of public law enforcement officers.<sup>1</sup> SLED, on the other hand, is the agency primarily responsible for the regulation of private security businesses and their officers in accordance with the statutory provisions of Chapter 18 of Title 40. For example, SLED is responsible for issuing security business licenses and security officer registration certificates to applicants who meet the qualifications set forth therein. See §§ 40-18-40 to -60, -80. A persons issued a security officer registration certificate from SLED "is granted the authority and arrest power given to sheriff's deputies.... on the property on which he is employed." § 40-18-110. SLED may issue a private security officer a permit to carry a firearm while performing security duties. § 40-18-100. Furthermore, pursuant to § 40-18-30(A) the Chief of SLED has the following powers and duties concerning security businesses:

(1) to determine the qualifications of applicants for licenses or registration under this chapter;

**(2) to promulgate regulations necessary to carry out this chapter;**

(3) to investigate alleged violations of this chapter and regulations promulgated by SLED;

**(4) to establish and enforce standards governing the safety and conduct of persons licensed and registered under this chapter;**

**(5) to provide, with the advice and consent of the South Carolina Criminal Justice Academy, for the curriculum, training, and certification of training officers, and to approve the curriculum utilized by licensees for the training of their security officers to ensure that security officers have the requisite knowledge and skills necessary to carry out their duties in the private security business. The fee for the training of security company training officers**

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<sup>1</sup> See § 23-23-20 (stating the CJA "shall provide facilities and training for all officers from state, county, and local law enforcement agencies and for other designated persons in the criminal justice system"); § 23-23-40 ("No law enforcement officer employed or appointed ... by any public law enforcement agency in this State is authorized to enforce the laws or ordinances of this State or any political subdivision thereof unless he has been certified as qualified by the Law Enforcement Training Council ...."); § 23-23-60(A) ("At the request of any public law enforcement agency of this State the council is hereby authorized to issue certificates and other appropriate indicia of compliance and qualification to law enforcement officers ...."); § 23-23-80 ("The South Carolina Law Enforcement Training Council is authorized to: ... (6) certify and train qualified candidates and applicants for law enforcement officers ....").

must be determined by the designated training facility and be retained by the facility to defray the costs of conducting the training; and

(6) to certify and register company training officers.

§ 40-18-30(A) (emphasis added).

Consistent with the authority granted it under § 40-18-30(A), SLED has promulgated a number of regulations concerning private security businesses and their officers. See generally S.C. Code Regs. 73-400 to -560. Pursuant to such regulations, a person must successfully complete a basic training course approved by SLED before he or she may become a registered private security officer. S.C. Code Regs. 73-420. The standard basic training course is taught by a certified private security training officer and consists of "the latest material provided to the trainer by the South Carolina Technical College Private Security Training School." Id. SLED may authorize private security businesses and their officers to, *inter alia*, use blue lights on private security vehicles and issue State Uniform Traffic Tickets for State traffic law violations on the specific property they are hired to patrol if certain conditions are met. S.C. Code Regs. 73-411, -413.<sup>2</sup> One such condition mentioned in S.C. Code Regs. 73-413 concerning the issuance of State Uniform Traffic Tickets is that private security officers "must receive training by their employer sufficient to ensure proper knowledge of the lawful use of such tickets."

In consideration of the above statutory and regulatory provisions, it is our opinion private security officers authorized to enforce traffic laws pursuant to S.C. Code § 73-413 may utilize speed detection devices such as radar, the use of which is widely recognized as a legitimate method of enforcing traffic laws. See Ops. S.C. Att'y Gen., 1981 WL 158027 (Oct. 26, 1981) (advising that private security agencies, when entitled to enforce traffic laws, "have the right to use speed detection devices such as radar "[a]s such devices would appear to be a legitimate method of enforcing traffic laws"); 1964 WL 11318 (May 8, 1964) ("RADAR, as a device of measuring speed of vehicles, is an established and recognized scientific instrument.... for the measure of the speed of vehicles"); see also State v. Williamson, 166 P.3d 387 (Idaho Ct. App. 2007) (accepting general reliability of speed and laser speed detection devices).

However, for several reasons we would discourage the use of speed detection devices such as radar by private security officers without having first received training sufficient to ensure the proper use of such devices. For one thing, SLED Regulations expressly prohibit private security officers from using any equipment or devices without adequate training:

Private security officers must not be issued or use equipment or devices for which they have not successfully completed training adequate to ensure the proper, accurate and safe use of such equipment. Documentation of such training must be maintained by the licensee and be available for inspection by SLED.

S.C. Code. Regs. 73-421.

Furthermore, case law and other sources indicate proof that an officer is qualified to use a speed detection device, which is usually established through testimony that the officer has completed adequate

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<sup>2</sup> S.C. Code Regs. 73-413 provides that approval for the possession and issuance of Uniform Traffic Tickets must also be obtained from the S.C. Department of Public Safety.

training in the use of the device, plays a significant role in determining whether the evidence obtained by any such device is admissible in a speeding case or sufficient to sustain a speeding conviction. See, e.g., State v. Brown, 344 S.C. 302, 543 S.E.2d 568 (Ct. App. 2001) (upholding magistrate's admission of radar reading into evidence where officer testified, *inter alia*, "she was trained in the operation of moving radar at the [CJA]"); Williamson, 166 P.3d at 390 (in speeding prosecution where state seeks to introduce radar or laser evidence, state must prove, *inter alia*, "the officer was qualified to operate the device"); 8 Am. Jur. 2d Automobiles § 981 (stating a radar reading is generally sufficient to sustain a speeding conviction if the prosecution shows, *inter alia*, "[t]he officer operating the device was adequately trained in its use"); Thomas J. Goger, Annotation, *Proof, by Radar or Other Mechanical or Electronic Devices, of Violation of Speed Regulations*, 47 A.L.R.3d 882 ("It is generally recognized that proper operation of a radar device is a prerequisite to a speeding conviction based on evidence obtained by use of the device .... An issue closely related ... involves the qualifications required of the police officer manning the radar equipment.").

However, any determination as to what constitutes training adequate to ensure the proper use of radar or other speed detection devices is a factual question beyond the scope of an opinion of this Office. See Op. S.C. Att'y Gen., 2014 WL 399594 (Jan. 6, 2014) ("this Office is not a fact-finding entity; investigations and determinations of fact are beyond the scope of an opinion of this Office and are better resolved by a court"). Thus, any such question is better resolved by a court or, for purposes of S.C. Code Regs. 73-421, SLED. See Op. S.C. Att'y Gen., 2013 WL 4397078 (July 25, 2013) (stating this Office, like a court, will "generally give deference to an administrative agency's interpretation of ... its own regulation"). As the agency primarily responsible for establishing standards concerning the qualifications, conduct, and training of private security officers, SLED is in a better position to determine the requisite degree and type of training necessary for private security officers to be qualified to operate radar and other speed detection devices.

### Conclusion

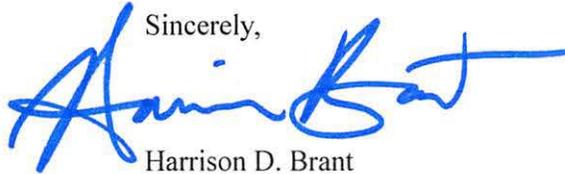
Private security officers are not currently eligible to obtain certification as traffic radar operators in South Carolina. As indicated in your letter, the only such state-sponsored certification we are aware of is offered by the CJA pursuant to S.C. Code Regs. 38-011 and is available only to Class 1 certified law enforcement officers and appointed reserve officers. However, state law does not make certification a prerequisite to the use of radar or other speed measurement devices for law enforcement purposes. Furthermore, pursuant to S.C. Code Regs. 73-413 private security officers may, if authorized to do so, issue State Uniform Traffic Tickets for violations of State traffic laws on the property they are hired to patrol. Since the use of radar is widely accepted as a legitimate method of enforcing traffic laws, we affirm the conclusion of a prior opinion in which we advised that "private security agencies [may] utilize such devices when entitled to enforce traffic laws." Op. S.C. Att'y Gen., 1981 WL 158027 (Oct. 26, 1981).

With that being said, we would discourage private security officers from using radar or other speed measurement devices without having first received training sufficient to ensure the proper use of such devices. Case law indicates proof of such adequate training is a significant factor considered by a court in determining whether the evidence obtained by any such device is admissible or sufficient to sustain a speeding conviction. In addition, SLED's regulations prohibit private security officers from being issued or using "equipment or devices for which they have not successfully completed training adequate to ensure the proper, accurate and safe use of such equipment." S.C. Code Regs. 73-421.

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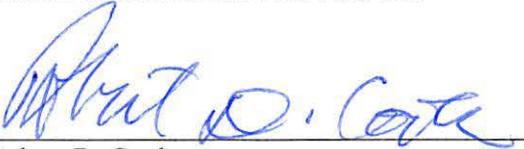
However, any determination as to what constitutes training adequate to ensure the proper use of such devices is a factual question beyond the scope of an opinion of this Office; such questions are best left to a court or, for purposes of S.C. Code Regs. 73-421, SLED. In any event, we note it is our belief that SLED has sufficient statutory authority to establish, if it so chooses, its own traffic radar operator certification to be issued to private security officers, as well as the training, qualifications, and other requirements necessary to obtain such certification.

Sincerely,



Harrison D. Brant  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General