



ALAN WILSON  
ATTORNEY GENERAL

March 17, 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 as to whether an out-of-state company can hire off-duty police officers to provide armed security in this State without being licensed as a private security business under Chapter 18 of Title 40 of the S.C. Code. By way of background, you state:

SLED is requesting an opinion from your office in reference to Title 23, Chapter 24 – *Off-Duty Private Jobs of Law Enforcement Officers*.

SLED is inquiring as to whether an out-of-state company (Off-Duty Services), not licensed in this state, can hire off-duty police officers in South Carolina to provide armed security in this state.

The company, based out of Texas, is operating like a private security company, but hires police officers, not security guards. The company does not hold a valid license to conduct business authorized in Chapter 18, Title 40, South Carolina Code of Laws.

#### Law/Analysis

As your letter indicates, Chapter 24 of Title 10 of the S.C. Code (1976, as amended) concerns "Off-Duty Private Jobs of Law Enforcement Officers." Relevant to the issue at hand, § 23-24-10 states:

Uniformed law enforcement officers, as defined in Section 23-23-10, and reserve police officers, as defined in Section 23-28-10(A), may wear their uniforms and use their weapons and like equipment while performing private jobs in their off duty hours with the permission of the law enforcement agency and governing body by which they are employed.

§ 23-24-10 (Supp. 1994). An officer seeking to perform any such off-duty, private work is "required to notify the appropriate law enforcement agency of the place of employment, the hours to be worked, and the type of employment." § 23-24-50 (Supp. 1978).

As for the duties of the law enforcement agency employing the officer, § 23-24-20 states:

Each agency head shall determine before such off-duty work is approved that the proposed employment is not of such nature as is likely to bring disrepute on the agency, the officer, or the law enforcement profession, and that the performance of such duties and the use of such agency equipment is in the public interest.

§ 23-24-20 (Supp. 1978); see also § 23-24-30 (providing that a public employer is not liable for the acts of an officer committed while performing any such off-duty, private work).

We have repeatedly advised that officers "moonlighting" in accordance with the above provisions retain full law enforcement authority and the right to utilize their agency issued uniforms, weapons, and other equipment when performing such off-duty work within their jurisdiction. See, e.g., Ops. S.C. Att'y Gen., 1995 WL 803370 (April 18, 1995) ("As long as law enforcement officers are moonlighting within their jurisdiction, they possess complete law enforcement authority while working off-duty pursuant to Section 23-24-10 et seq. With respect to deputy sheriffs, this jurisdiction includes the entire county."); 1994 WL 738179) (Dec. 7, 1994) ("Deputy sheriffs are given law enforcement authority throughout the county, including sites within incorporated town limits. They are allowed to work off duty performing private jobs in uniform and armed, under ... § 23-24-10, with the permission of enforcement agency and governing body by which they are employed."). As we further advised in the preceding 1994 opinion, "officers moonlighting outside their jurisdiction would be acting as private citizens and have only the law enforcement authority granted to other private citizens."

The issue before us is somewhat novel in that off-duty officers are not being hired directly by the private individual or business seeking their services. Instead, any such individual or business contracts with the company which in turn procures an off-duty officer on the client's behalf. Thus, the company essentially acts as a middleman or broker for the services of an off-duty officer. We see nothing in the provisions of §§ 23-24-10 et seq. which evinces a legislative intent to prohibit law enforcement officers from accepting off-duty jobs solely on the basis their services were procured indirectly in such a manner. Thus, we believe an officer may accept off-duty, private employment opportunities offered by such a company so long as the work to be performed is within the officer's jurisdiction *and* the officer obtains permission for any such work from the agency and governing body by which he is employed pursuant to § 23-24-10. In any event, the chief of the respective law enforcement agency has the right under § 23-24-20 to deny any employment opportunities the company offers one of his officers if he determines that the work to be performed is not in the public interest or will bring discredit to the officer, the agency, or law enforcement in general.

With regards to your specific question as to whether the company at issue should be licensed under Chapter 18 of Title 40, the services provided by the company most closely resemble those provided by a contract security business.<sup>1</sup> See § 40-18-20(B)(1) (Supp. 2002) (" 'Contract security business' means engaging in the security business by providing private patrol, watchman, guard, security, or bodyguard service for a fee"). A contract security business license is required for "[a]ny 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 ..." § 40-18-50(A). Furthermore, § 40-18-80(A) (Supp. 2000) generally provides that a person may not perform, and a licensee may not authorize a person

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<sup>1</sup> This is as opposed to a proprietary security business which means "employing security officers who are assigned to security duties *on the employer's property.*" § 40-18-20(B)(2) (emphasis added).

to perform, the duties of a security officer unless that person holds a valid security officer registration certificate issued by SLED.

We have repeatedly advised public policy dictates law enforcement officers should not also be registered by SLED as private security officers. See, e.g., Ops. S.C. Att'y Gen., 1990 WL 599221 (Mar. 6, 1990) ("due to potential conflicts with the public interest which law enforcement protects, it would not appear to be in the public interest for ... SLED to register a law enforcement officer as a ... private security guard"); 1985 WL 259221 (Sept. 24, 1985) (public interest dictates law enforcement officer should not also be registered private security guard; duties of officer serving in both capacities would conflict as he would have to choose between serving interests of public or private employer). In any event, SLED regulations expressly prohibit law enforcement officers from being registered as private security guards. See S.C. Code Regs. 73-409 ("persons holding commissions or appointments that confer law enforcement authority ... may not hold private security or private investigation licenses or registrations").<sup>2</sup>

We also note that § 40-18-50(H) contains an exemption to that section's licensing requirement for a contract security business which states:

(H) A person is exempt from the provisions of this section if he receives compensation for private employment on an individual, independent contractor basis as a patrolman, guard, or watchman and if he has full-time employment as a law enforcement officer with a state, county, or municipal law enforcement agency. For this exemption to be valid, the person must not be employed by another law enforcement officer.

§ 40-18-50(H).

As we have repeatedly cautioned when discussing when discussing the prior, similar version of § 40-18-50(H),<sup>3</sup> this exemption neither authorizes a law enforcement officer to own a private security business, nor to contract with or be employed by one. See, e.g., Ops. S.C. Att'y Gen., 1990 WL 599221 (Mar. 6, 1990); 1989 WL 406098 (Feb. 3, 1989). Rather, this exemption simply acknowledges that, consistent with the "moonlighting" provisions of §§ 23-24-10 et seq., a law enforcement officer may

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<sup>2</sup> We note this provision exempts correctional officers "who hold limited-authority law enforcement commissions ... from this restriction for purposes of employment as private security officers."

<sup>3</sup> This exemption was previously found in § 40-17-150(a)(5) (repealed 2000) which provided that the provisions of Chapter 17 did not apply to:

(5) A person receiving compensation for private employment on an individual, independent contractor basis as a patrolman, guard or watchman who has full-time employment as a peace officer with a state, county or local police department. For such exemption to operate, the peace officer so defined shall (a) be employed in an employer-employee relationship, (b) on an individual contractual basis, and (c) not be in the employ of another peace officer.

Pursuant to Act No. 372 of 2000, Title 40 was amended by repealing Chapter 17 concerning private detective and security agencies and replacing it with current Chapter 18.

provide private security without a license so long as he is compensated "on an individual, independent contractor basis" and is not employed by another law enforcement officer.

In light of the above prior opinions and S.C. Code Regs. 73-409, it is abundantly clear that a law enforcement officer may not be registered as a private security officer or otherwise employed by a private security business. Thus, construing § 40-18-50 as requiring the company at issue to obtain a contract security business license on the sole basis that it "hires" law enforcement officers for off-duty work would, in effect, require the company to obtain a license *not* to conduct business we already concluded is lawful under §§ 23-24-10 *et seq.* Such an absurd result could not have been intended by the Legislature. See 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) ("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"). Accordingly, it is our opinion the company at issue is not subject to the licensure requirements of Chapter 18 of Title 40.<sup>4</sup>

### Conclusion

It is our opinion that, so long as the provisions of §§ 23-24-10 *et seq.* concerning "moonlighting" are complied with, a company such as the one at hand may lawfully procure an off-duty law enforcement officer to provide armed security for a private individual or business within this State. Pursuant to § 23-24-10, law enforcement officers may, with the permission of the agency and governing body that employs them, perform private jobs when off-duty while utilizing their agency-issued uniforms and weapons. Although the issue at hand is somewhat novel in that the company apparently acts as a broker who procures off-duty officers on behalf of clients, nothing in §§ 23-24-10 *et seq.* evinces a legislative intent to require off-duty officers to be hired directly by the individual or business seeking their services. In any event, the chief of a law enforcement agency retains the right under § 23-24-20 to deny any such proposed off-duty work if he determines that the work to be performed is not in the public interest or will bring discredit to the officer, agency, or law enforcement in general. We also note, as we have before, that any moonlighting pursuant to §§ 23-24-10 *et seq.* should be performed only within the respective officer's jurisdiction. This is because an officer acting outside his jurisdiction only has the law enforcement authority of a private citizen, and an officer's off-duty work cannot be approved by the agency head or governing body of another separate jurisdiction.

It is also our opinion that such a company is not required to obtain a contract security business license pursuant to § 40-18-50 by virtue of the fact it procures off-duty officers to provide armed security for clients. Consistent with prior opinions of this Office and S.C. Code Regs. 73-409, law enforcement officers are prohibited from also being registered as private security officers. In addition, we have repeatedly advised that law enforcement officers should not contract with or be employed by a private security business. Thus, if § 40-18-50 is construed as requiring the company at issue to be licensed on the sole basis that it "hires" or procures off-duty officers to provide armed security for its clients, the company would then be unable to continue this practice entirely. In effect, the company would be required to obtain a license *not* to conduct business which we previously concluded is lawful under §§ 23-24-10 *et seq.* Such an absurd result could not have been intended by the Legislature. For these reasons

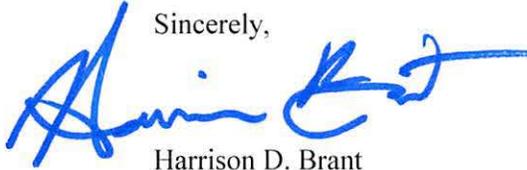
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<sup>4</sup> This is assuming, of course, the company does not also provide non-law enforcement private security in this State, in which case the company would be required to obtain a contract security business license. As a licensed contract security business, the company would then be prohibited from in any manner contracting with law enforcement officers under any scenario or business model.

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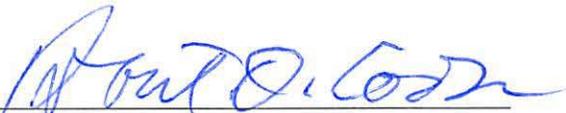
and under these particular circumstances, we believe the company is not subject to the licensure requirements of Chapter 18 of Title 40.

Sincerely,



Harrison D. Brant  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General