



ALAN WILSON
ATTORNEY GENERAL

April 14, 2014

The Honorable Joshua R. Edwards
Magistrate, Darlington County
115 Camp Road
Darlington, S.C. 29532

Dear Judge Edwards,

You seek an opinion of this Office as to the training required of magistrates' constables in order for them to carry a handgun while performing their duties in such capacity. Referencing the language of S.C. Code §§ 22-9-180 and -190, as well as two prior opinions from 1976 and 1978, you provide the following background information and specific questions on the matter:

Is it still the opinion of the Attorney General that magistrates' constables are still required to have the Class One (1) law enforcement officer's certification through the SC Criminal Justice Academy in order to carry a handgun while performing duties as a magistrate's constable?

It is my understanding that a Class Three (3) officer certification (Limited Duty Officer) was not offered by the SC Criminal Justice Academy in 1975-1976. However, a two-week training course was offered but later discontinued and the original Attorney General's opinion [from 1976] was restated.

There is no specific training at the SC Criminal Justice Academy directed specifically to magistrates' constables. The only training available through the SC Criminal Justice Academy would certify our constables as Class One officer [through] ... Basic Law Enforcement Training. This would put them on equal footing with a Class One police officer with full duties and responsibilities.

Would it be allowable to have our magistrates' constables trained and classified as Class Three (3) officers which would be the equivalent of limited duty officers as recognized by the SC Criminal Justice Academy?

Law/Analysis

The statutory provisions concerning magistrates' constables are generally found in Chapter 9 of Title 22 of the S.C. Code. Pursuant to § 22-9-180, magistrates' constables are authorized to carry weapons in limited circumstances:

Notwithstanding any other provision of law, magistrates' constables who have received the required training by the South Carolina Law Enforcement

Division as set forth in §§ 22-9-180 to 22-9-210, shall be authorized to carry pistols on and about their persons when on official duty as such constables and when going to and from their places of residence. *Provided*, however, that the Chief of the South Carolina Law Enforcement Division, after hearing and for cause, may deny such privilege to any such constable who is guilty of using his pistol at any time in a manner inconsistent with accepted law enforcement procedures as determined by the Chief or who has been convicted of any crime for which a penalty of imprisonment for more than one year may be imposed. The term "conviction" shall include a plea of guilty, a plea of *nolo contendere* or forfeiture of bail.

§ 22-9-180 (emphasis added).

Furthermore, § 22-9-190 states:

Notwithstanding any other provision of law, all full-time magistrates' constables shall attend the South Carolina Criminal Justice Training Academy within one year from June 29, 1976, or within one year from initial date of employment after June 29, 1976.

§ 22-9-190 (emphasis added). Pursuant to § 22-9-200, "[t]he Chief of [SLED] shall promulgate rules and regulations necessary to implement the provisions of §§ 22-9-180 to 22-9-210."

As indicated in the above provisions, before a magistrate's constable is authorized to carry a pistol pursuant to § 22-9-180 he must receive "the required training by [SLED]" and, pursuant to § 22-9-190, "attend the South Carolina Criminal Justice Training Academy." Pursuant to § 22-9-200, the Chief of SLED has the authority to promulgate rules and regulations necessary to implement §§ 22-9-180 and -190.

In consideration of these statutory provisions, this Office has issued several prior opinions specifically advising as to the type of training required of magistrates' constables before they may carry pistols. In 1976, we advised that since the only training offered by the S.C. Criminal Justice Academy (the "CJA") at that time was an two-week basic course of instruction, this was the training magistrates' constables must undergo before they may carry pistols. Op. S.C. Att'y Gen., 1976 WL 23010 (July 12, 1976).

However, in a 1978 opinion we advised that a two-week course then offered by the CJA specifically for magistrates' constables provided the training required by § 22-9-190 in order for a magistrate's constable to carry a pistol pursuant to § 22-9-180. Op. S.C. Att'y Gen., 1978 WL 22637 (Oct. 10, 1978). The information provided to us at that time indicated that the "two week school was planned by the Director of the Criminal Justice Academy in coordination with [SLED] and the Court Administration offices." Id. In reaching our conclusion, we stated as follows:

[W]ith reference to the two week school as outlined in your letter, it is the opinion of this Office that such course of instruction may be interpreted to be in compliance with the instruction mandated by Section 22-9-180. A review of Section 22-9-200 of the Code of Laws indicates that the Chief of the South Carolina Law Enforcement Division is authorized to promulgate such rules and regulations as are necessary to implement Sections 22-9-180 and 22-9-190. **Therefore, it would appear that pursuant to such grant of authority a course**

of instruction specifically structured toward providing magistrates' constables weapons training may be established and it would not be necessary that these constables successfully complete the eight week training session required of other law enforcement personnel.

Id. (emphasis added).

Furthermore, in a 1984 opinion we generally advised on the matter as follows:

Regarding ... the authorization for a Magistrate's Constable to carry a pistol, my examination of the criminal provisions of our Code of Laws generally relating to the possession of pistols, found at §§ 16-23-10 et seq., and the regulation of pistols, found at §§ 23-31-110 et seq., Code of Laws for South Carolina (1976) as amended, does not show an exception for Magistrates' Constables. However, § 22-9-180, Code of Laws of South Carolina, 1976, as amended, allows Magistrates' Constables to carry pistols on their persons when on official duty as such Constables and when going to and from their places of residence, provided they have received the required training by the South Carolina Law Enforcement Division. Such provision was a part of Act No. 667 of 1976, now found at §§ 22-9-180 through 22-9-210 of the 1976 Code of Laws as amended, which further provided for Magistrates' Constables to attend the Criminal Justice Academy and SLED to promulgate rules and regulations to implement such Act.

....

As to the training required of Magistrates' Constables, I can only refer you to the provisions of § 22-9-190, supra, which as referenced, requires such individuals to attend the Criminal Justice Academy, and § 22-9-180, supra, which references such individuals receiving the required training by SLED. **Inasmuch as § 22-9-200 ... authorizes SLED to promulgate rules and regulations to implement the provisions of Act No. 667 of 1976, it appears that it would be within the authority of SLED to establish the type of training required of Magistrates' Constables.**

Op. S.C. Att'y Gen., 1984 WL 159894 (July 26, 1984) (emphasis added).

As indicated in the above opinions, we have always deferred questions concerning the training required of magistrates' constables to carry pistols to SLED's authority to establish such training and promulgate rules and regulations for such purposes pursuant to §§ 22-9-180 and -200, as well as the CJA's authority to determine the training course required of magistrates' constables pursuant to § 22-9-190. However, we are unaware of any such training requirements SLED has promulgated by rule or regulation. It is also our understanding that although the CJA currently offers three levels of law enforcement certification accompanied by different training programs,¹ the only training program made

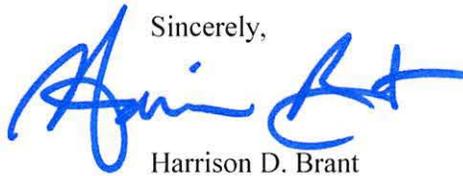
¹ S.C. Code Regs. 38-007 provides the following concerning the training requirements for the three classes of law enforcement certification:

A. Class 1 Certifications

available to magistrates' constables is the twelve-week course required for Class 1 Certification. Consistent with the CJA's training requirements, we must conclude that pursuant to § 22-9-190 magistrates' constables are required to complete the twelve-week course for Class 1 Certification before they are authorized to carry a pistol pursuant to § 22-9-180.

With that being said, we note that nothing prevents SLED and the CJA from establishing less intensive training requirements for magistrates' constables which, upon completion, would authorize them to carry a pistol. As indicated in the 1978 opinion mentioned above, this could be accomplished through a coordinated effort between the two agencies. However, any determination as to whether or how any such lesser training requirements should be established is within these agencies' discretion.

Sincerely,



Harrison D. Brant
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

1. Candidates for basic certification as law enforcement officers with full powers shall successfully complete a training program as approved by the Department and will be certified as Class 1-LE.

2. Candidates for basic certification as both law enforcement officers with full powers and as local detention facility officers (jailers) shall successfully complete the requirements to be certified as Class 1-LE and Class 2-LCO and will be certified as Class 1-LECO.

B. Class 2 Certifications

1. Candidates for basic certification as local detention facility officers (jailers) shall successfully complete a training program as approved by the Department and will be certified as Class 2-LCO.

2. Candidates for basic certification as correctional officers with the Department of Corrections shall successfully complete a training program as approved by the Department and will be certified as Class 2-SCO.

3. Candidates for basic certification as juvenile correction officers with the Department of Juvenile Justice shall successfully complete a training program as approved by the Department and will be certified as Class 2-JCO.

C. Class 3 Certifications. Candidates for basic certification as law enforcement officers with limited powers of arrest or special duties shall successfully complete a training program as approved by the Department and will be certified as Class 3-SLE.