



ALAN WILSON
ATTORNEY GENERAL

July 13, 2015

Mr. Jarrod M. Bruder
Executive Director
South Carolina Sheriff's Association
P.O. Box 11549
Columbia, SC 29211

Dear Mr. Bruder:

We are in receipt of your opinion request concerning the legality of hiring private security guards to protect a public school. First, you ask whether "private security guards licensed by SLED . . . have the statutory authority to protect a public building or public property?" Second, you ask whether a public school is "considered a public building or public property?" And third you ask that "assuming a private security guard lacks the authority to provide security for a public building, exactly what authority does a private security guard have if he or she is hired to protect a public school? Our responses follow.

Law/Analysis

1. The Authority of a Licensed Private Security Guard to Protect Public Property

With respect to your first question, whether a properly licensed private security guard has authority to protect public property, we believe, and our prior opinions reflect, that private security guards possess only the same authority as that of a private citizen to protect public property and do not possess the additional powers of arrest granted licensed private security guards in Section 40-18-110 of the Code.¹ See Op. S.C. Att'y Gen., 2010 WL 928439 (February 1, 2010) ("[A] private security guard is not authorized . . .to exercise the power of arrest on public property."); Op. S.C. Att'y Gen., 2009 WL 1649235 (May 8, 2009) (same); Op. S.C. Att'y Gen.,

¹ Section 40-18-110 of the Code, entitled "[a]uthority and arrest powers of those licensed or registered under chapter" states as follows:

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.

S.C. Code Ann. § 40-18-110 (2011).

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2008 WL 5476548 (December 16, 2008) (same); Op. S.C. Att’y Gen., 2006 WL 2849806 (September 29, 2006) (same); Op. S.C. Att’y Gen., 1980 WL 121140 (April 2, 1980) (same).

In 1977, this Office found private security guards employed at Presbyterian College, despite being authorized to make arrests on the private school’s campus, possessed only the same power of a private citizen to arrest individuals on the adjacent city streets and public roads going into and out of the campus. Op. S.C. Att’y Gen., 1977 WL 24545 (June 29, 1977). In so concluding we explained “[s]ecurity officers working for a private security agency falling within the purview of Section 56-646.1 et seq. [the then existing version of the Private Detective and Private Security Agencies Act] have no authority to exercise police powers except on the private property they were hired to protect.” Op. S.C. Att’y Gen., 1977 WL 24545 (June 29, 1977).

In 1980, we were again asked whether properly licensed private security guards may exercise the power of arrest granted under the Private Detective and Private Security Agencies Act (“the Act”) on public property and again, citing to our 1977 opinion, we said they cannot. There we stated, “a private security guard is not authorized [under the Act] . . . to exercise the power of arrest on public property.” Op. S.C. Att’y Gen., 1980 WL 121140 (April 2, 1980). As a result, we concluded, consistent with our prior opinion, that a properly licensed private security guard only has the same powers as that of a private citizen on public property. Op. S.C. Att’y Gen., 1980 WL 121140 (April 2, 1980).

We have repeatedly cited, and in fact quoted that position in subsequent opinions and reaffirm that position today.² Accordingly, it remains the position of this Office that when a properly licensed private security guard is protecting public property, he or she does not possess the additional powers of arrest discussed in Section 40-18-110 of the Code, but instead has only the authority of a private citizen.

2. Whether a Public School is Considered Public Property

Next, you ask us whether a public school is considered “a public building or public property?” Because public school land is owned and possessed by the respective school district trustees and a school district is a separate body politic and political subdivision of the State we believe that it is.

In Patrick v. Maybank, 198 S.C. 262, ---, 17 S.E.2d 530, 534 (1941) our Supreme Court explained that not only are school districts a separate body politic, but they are also political

² See e.g., Op. S.C. Att’y Gen., 2010 WL 928439 (February 1, 2010) (“[A] private security guard is not authorized . . . to exercise the power of arrest on public property.”); Op. S.C. Att’y Gen., 2009 WL 1649235 (May 8, 2009) (same); Op. S.C. Att’y Gen., 2008 WL 5476548 (December 16, 2008) (same); Op. S.C. Att’y Gen., 2006 WL 2849806 (September 29, 2006) (same).

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subdivisions that can hold property. Moreover, a prior opinion from this Office explains that property owned by a school district or school district board of trustees “occupies the status of public property and is not to be regarded as the private property of the school district by which it is held or wherein it is located.” Op. S.C. Att’y Gen., 1985 WL 166080 (October 2, 1985) (quoting 68 Am.Jur.2d, Schools, § 69 p. 418); see also, 78 C.J.S. Schools and School Districts, § 242, p. 1199. Thus, we believe, consistent with our prior opinion and the aforementioned authorities that a public school is public property for purposes of your question.

3. The Authority of a Private Security Guard in a Public School

Finally, you ask us “what authority does a private security guard have if he or she is hired to protect a public school?” As discussed in above in Section (1), a properly licensed private security guard protecting public property has only the authority of a private citizen when protecting such property.

As explained above, our prior opinions clearly explain that a properly licensed security guard patrolling on public property does not possess the additional powers of arrest granted under Section 40-18-110 of the Code, but instead only has those powers of arrest possessed by a private citizen. See Op. S.C. Att’y Gen., 2010 WL 928439 (February 1, 2010) (“[A] private security guard is not authorized ...to exercise the power of arrest on public property.”); Op. S.C. Att’y Gen., 2009 WL 1649235 (May 8, 2009) (same); Op. S.C. Att’y Gen., 2008 WL 5476548 (December 16, 2008) (same); Op. S.C. Att’y Gen., 2006 WL 2849806 (September 29, 2006) (same); Op. S.C. Att’y Gen., 1980 WL 121140 (April 2, 1980) (same); Op. S.C. Att’y Gen., 1977 WL 24545 (June 29, 1977). Under state statutory law, a private citizen can arrest an individual (a) upon “view of a felony committed” (b) upon “certain information that a felony has been committed” or (c) upon “view of a larceny committed[.]” S.C. Code Ann. § 17-13-10 (2014). South Carolina statutory law also permits a private citizen to arrest “a person in the nighttime by efficient means as the darkness and the probability of escape render necessary, even if the life of the person should be taken, when the person: (a) has committed a felony; (b) has entered a dwelling house without express or implied permission; (c) has broken or is breaking into an outhouse with a view to plunder; (d) has in his possession stolen property; or (e) is being under circumstances which raise just suspicion of his design to steal or to commit some felony, flees when he is hailed.” S.C. Code Ann. § 17-13-20 (2014); see also, Op. S.C. Att’y Gen., 2012 WL 5376055 (October 19, 2012). Outside of these state statutory provisions regarding citizen’s arrest, “there is no common law right to make warrantless citizen’s arrests of any kind[.]” State v. McAteer, 340 S.C. 644, 650, 532 S.E.2d 865, 868 (2000).

Conclusion

In conclusion, it remains the opinion of this Office that when a properly licensed private security guard is protecting public property, he or she does not possess the additional powers of

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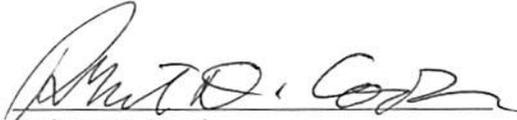
arrest discussed in Section 40-18-110 of the Code, but instead has only the authority of a private citizen. Further, and again consistent with our prior opinions, we believe a public school is considered public property. Accordingly, and as mentioned in our prior opinions, a private security guard has only the powers of a private citizen when patrolling and protecting a public school meaning such an individual possesses only the powers of arrest granted under Sections 17-13-10 and 17-13-20 of the South Carolina Code.

Sincerely,



Brendan McDonald
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General