



ALAN WILSON
ATTORNEY GENERAL

February 5, 2016

The Honorable Steve Loftis
Sheriff, Greenville County
4 McGee St.
Greenville, SC 29601

Dear Sheriff Loftis:

We are in receipt of your opinion request asking for our advice and guidance concerning “investigations and arrests made by private security officers.” Specifically, your opinion request acknowledges that pursuant to Section 40-18-110 of the Code a licensed private security guard possesses the “arrest power given to sheriff’s deputies . . . on the property on which he is employed,” but in light of the terms of Section 22-5-110(B)(1) and (2) of the Code, ask whether private security guards may sign an arrest warrant. You further ask our opinion on “the validity of an arrest warrant signed by a private security officer” in light of Section 22-5-110’s terms, and ask us to address “what obligation a law enforcement officer has in the service of the process and arrest of a defendant” where a private security officer serves as the affiant in an arrest warrant. Our responses follow.

I. Law

A. Authority of a Private Security Guard under Section 40-18-110 of the Code

As touched on in your letter, Section 40-18-110 of the South Carolina Code addresses the authority and arrest powers of private security officers¹ explaining:

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 possess the powers of arrest only on the property on which he is employed.

S.C. Code Ann. § 40-18-110 (2011). Acknowledging this provision, this Office, in a 2012 opinion, stated “[w]e have previously advised that private security guards are considered law enforcement officers” when acting “within the boundaries of the property they or their company

¹ A private security officer and a private security guard are, for purposes of this opinion, one in the same. Like prior opinions mentioned below, these terms will be used interchangeably throughout this opinion.

have contracted to protect.” Op. S.C. Att’y Gen., 2012 WL 4711427 (September 25, 2012) (citing Op. S.C. Att’y Gen., 2011 WL 1444710 (March 16, 2011), et al.). This conclusion is supported by our Supreme Court’s decision in City of Easley v. Cartee, 309 S.C. 420, 424 S.E.2d 491 (1992), which explained that private security officers, when “acting on property that the security officer is licensed to protect . . . perform a law enforcement function and act in an official capacity when making an arrest.” 309 S.C. at 422, 424 S.E.2d at 492 (citing State v. Brant, 278 S.C. 188, 293 S.E.2d 703 (1982) (security guard is a law enforcement officer for purpose of resisting arrest prosecution); Chiles v. Crooks, 708 F.Supp. 127, 131 (D.S.C. 1989) (arrest by security guard on licensed premises is action under color of state law within scope of 42 U.S.C. § 1983)). In light of this role, our prior opinions have instructed that a private security officer who arrests an individual on the property he is licensed to protect is “under a duty to go to the magistrate and swear out an arrest warrant.” Op. S.C. Att’y Gen., 2012 WL 4711427 (September 25, 2012) (quoting Op. S.C. Att’y Gen., 1983 WL 182058 (November 16, 1983)).

B. The Courtesy Summons and Section 22-5-110(B) of the Code

Section 22-5-110(B) of the Code addresses arrest warrants and courtesy summons. As mentioned in your request letter, Section 22-5-110(B)(1) explains “[a]n arrest warrant may not be issued for the arrest of a person unless sought by a law enforcement officer acting in their official capacity.” S.C. Code Ann. § 22-5-110(B)(1) (2015 Supp.). Continuing, subsection (B)(2) adds, “[i]f an arrest warrant is sought by someone other than a law enforcement officer, the court may issue a courtesy summons.” S.C. Code Ann. § 22-5-110(B)(2) (2015 Supp.). In a prior opinion, this Office, in analyzing Section 22-5-110(B)(1)’s “law enforcement” language relied on our Supreme Court’s holding in City of Easley v. Cartee—that a private security officer acting on property he is licensed to protect is acting in an official capacity—and concluded a private security officer is considered a law enforcement officer for purposes of Section 22-5-110(B). See Op. S.C. Att’y Gen., 2012 WL 4711427 (September 25, 2012) (“It is the opinion of this Office, therefore, that §§ 22-5-115 and 22-5-110 would not be applicable to private security guards, inasmuch as these guards are recognized as having the law enforcement authority of a deputy sheriff on the property they are hired to protect.”).

II. Analysis

A. Private Security Guards, Arrest Warrants and Section 22-5-110

Because the underlying issue concerning each of your questions is whether Section 22-5-110(B)(1) prohibits private security guards from seeking arrest warrants, we will first address the application of Section 22-5-110(B)(1) to private security guards. In other words, we must determine whether Section 22-5-110(B)(1)’s terms restrict a private security guard from seeking an arrest warrant. Assuming such a security guard is properly licensed pursuant to the terms of Chapter 18 of Title 40 and is operating on the property he or she is licensed to protect, we believe it does not.

While it is true Section 22-5-110(B)(1) reflects that only a “law enforcement officer acting in their official capacity” may seek an arrest warrant, our prior opinions suggest that when properly licensed private security officers are acting in their official capacity, they are considered law enforcement officers and, as a result, may seek an arrest warrant. Specifically, and as detailed above in Section I(A), our prior opinions explain properly licensed private security guards “are considered law enforcement officers” when acting “within the boundaries of the property they or their company have contracted to protect.” Op. S.C. Att’y Gen., 2012 WL 4711427 (September 25, 2012) (citing Op. S.C. Att’y Gen., 2011 WL 1444710 (March 16, 2011), et al.). Indeed, our Supreme Court in Cartee held that private security guards, when acting on the property they are licensed to protect, “perform a law enforcement function and act in an official capacity when making an arrest.” 309 S.C. at 422, 424 S.E.2d at 492. Similarly, our federal district court has explained that a properly licensed private security guard, clothed with arrest powers on the property he or she is licensed to protect under the terms of Chapter 18 of Title 40, acts under the color of law for purposes of liability under 42 U.S.C. § 1983, and therefore acts in the same capacity as law enforcement. See Chiles, 708 F.Supp. at 131 (explaining a security guard licensed under South Carolina’s security guard licensing scheme acts under color of state law when effecting an arrest on the property he or she is licensed to protect); Thompson v. McCoy, 425 F.Supp. 407, 409 (D.S.C. 1976) (finding licensed South Carolina security guard acted under color of law when he arrested plaintiff on the property he was licensed to protect). Thus, we believe, consistent with these authorities, that a properly licensed private security guard is considered a law enforcement officer for purposes of Section 22-5-110(B)(1) when he or she is operating on the property he or she is licensed to protect. As a result, it our opinion Section 22-5-110(B)(1)’s restrictions on seeking arrest warrants were not intended to apply to private security guards operating on the property he or she is licensed to protect. See Op. S.C. Att’y Gen., 2012 WL 4711427 (September 25, 2012) (“It is the opinion of this Office, therefore, that §§ 22-5-115 and 22-5-110 would not be applicable to private security guards, inasmuch as these guards are recognized as having the law enforcement authority of a deputy sheriff on the property they are hired to protect.”).

1. May a Private Security Guard Sign an Arrest Warrant?

Understanding these authorities, we now return to your first question, whether a private security guard may sign an arrest warrant. Again, assuming a private security guard is properly licensed pursuant to the terms of Chapter 18 of Title 40 and is operating on the property he or she is licensed to protect, we believe that they can.

Having established Section 22-5-110(B)(1)’s limitations on seeking arrest warrants is not applicable to a private security officer operating on the property he or she is licensed to protect, it follows that a private security officer arresting an individual on such property may sign an arrest warrant. See Op. S.C. Att’y Gen., 2012 WL 4711427 (September 25, 2012) (“It is the opinion of this Office, therefore, that §§ 22-5-115 and 22-5-110 would not be applicable to private security

guards, inasmuch as these guards are recognized as having the law enforcement authority of a deputy sheriff on the property they are hired to protect.”). In fact, as mentioned above, our prior opinions reflect that “[t]he law enforcement officer or citizen who arrests a person without a warrant must forthwith take the person to a judge or magistrate so that a warrant of arrest may be procured and the prisoner dealt with according to law.” Op. S.C. Att’y Gen., 2012 WL 4711427 (September 25, 2012) (quoting Op. S.C. Att’y Gen., 2009 WL 2844878 (August 10, 2009)). In light of this, we have explained, on multiple occasions, “*it is the duty of the security guard, having made arrest without a warrant on his assigned property, to go before the magistrate so that the prisoner may be dealt with according to the law.*” Op. S.C. Att’y Gen., 2012 WL 4711427 (September 25, 2012) (quoting Op. S.C. Att’y Gen., 2009 WL 2844878 (August 10, 2009) (emphasis in original)). Thus, from our review, not only is a private security guard authorized to sign an arrest warrant when acting in his or her official capacity but, where a private security guard arrests an individual on the property he or she is licensed to protect, such an officer in fact has a duty to seek an arrest warrant as mentioned in our prior opinions. As a result, we believe it follows that a private security guard may sign an arrest warrant.

2. The Validity of an Arrest Warrant Signed by a Private Security Guard

You next ask, in light of Section 22-5-110(B)(1)’s terms, whether an arrest warrant signed by a private security guard would be valid. We believe that it would.

As explained in Section I(A), a properly licensed private security guard is considered a law enforcement officer for purposes of Section 22-5-110(B)(1) when operating on property he or she is licensed to protect. See Op. S.C. Att’y Gen., 2012 WL 4711427 (September 25, 2012) (“It is the opinion of this Office, therefore, that §§ 22-5-115 and 22-5-110 would not be applicable to private security guards, inasmuch as these guards are recognized as having the law enforcement authority of a deputy sheriff on the property they are hired to protect.”). In light of this, it is our opinion that Section 22-5-110(B)(1)’s restrictions on seeking arrest warrants were not intended to apply to private security guards operating in such a capacity. See Op. S.C. Att’y Gen., 2012 WL 4711427 (September 25, 2012) (“Because a private security guard is recognized as having law enforcement authority of a deputy sheriff on the property he is hired to protect, he is not considered an affiant ‘who is not a law enforcement officer’ for purposes of requiring the issuance of a courtesy summons rather than an arrest warrant.”). As a result, Section 22-5-110(B)(1)’s limitation on who may seek an arrest warrant does not affect the validity of an arrest warrant signed by a private security guard so long as the guard is properly licensed pursuant to the terms of Chapter 18 of Title 40 and is operating on the property he or she is licensed to protect.

3. Obligation to Serve Arrest Warrant Signed by Private Security Guard

In your third question you ask what obligation a law enforcement officer has in the service of the process and arrest of a defendant where a private security officer serves as the

affiant in an arrest warrant. Because South Carolina law instructs that a sheriff and his deputies have a duty and responsibility “to serve legal process, including arrest warrants” we believe that duty is not changed by the mere fact that an arrest warrant is signed by a private security officer. Op. S.C. Att’y Gen., 1995 WL 803370 (April 18, 1995).

A sheriff, as the chief law enforcement officer of the county, possesses “a number of statutory . . . as well as common law duties and responsibilities.” Op. S.C. Att’y Gen., 1995 WL 803370 (April 18, 1995) (citing S.C. Code Ann. § 23-13-10, *et seq.*). For instance, Section 23-15-40 of the Code explains a sheriff or his deputies “shall serve, execute and return every process, rule, order or notice issued by any court of record in this State or by other competent authority.” S.C. Code Ann. § 23-15-40 (2007). Additionally, “[t]he sheriff or his deputy shall arrest all persons against whom process for that purpose shall issue from any competent authority commanding such person to be taken into custody” S.C. Code Ann. § 23-15-50 (2007).² “Service of an arrest warrant is an important duty imposed upon the Sheriff and his deputies which is ministerial in nature.” Op. S.C. Att’y Gen., 1995 WL 803370 (April 18, 1995). As mentioned by our Supreme Court:

[w]hen a warrant is placed in [the sheriff’s] hands by proper authority, his duty is to execute it or attempt to do so. It is no part of his duty to inquire whether the prosecution is well founded, either in law or fact, and it would be impertinent in him to do so

The sheriff is a ministerial officer. He is neither judge nor lawyer. It is not his duty to supervise or correct judicial proceedings; but being an officer of court, ministerial in character, he cannot impugn its authority nor inquire into the regularity of its proceedings. His duty is to obey. This principle applies alike to him, whether the execution issues from a court of general or limited jurisdiction.

Rogers v. Marlborough County, 32 S.C. 555, --- 11 S.E. 383, 383-84 (1890).

Understanding that a sheriff and his deputies are ministerial officers as it relates to the service of arrest warrants, we believe, regardless of the applicability of Section 22-5-110, that where a judge has found the existence of probable cause, the sheriff and his deputies are required to serve an arrest warrant signed by a private security officer acting in such a capacity. Indeed, as stated by the Court in Rogers, “[w]hen a warrant is placed in [the sheriff’s] hands by proper authority, his duty is to execute it or attempt to do so.” 32 S.C. at ---, 11 S.E. at 384. To conclude otherwise would not only be inconsistent with the commands of the Rogers Court, but would also be at odds with the statutory mandates in Sections 23-15-40 and 23-15-50 of the Code.

² Notably, while it could be argued South Carolina’s summary courts are not “courts of record” for purposes of Section 23-15-40, a prior opinion of this Office has explained such courts fall into the category of “other competent authority” as used in the statute. Op. S.C. Att’y Gen., 1990 WL 599346 (December 18, 1990).

III. Conclusion

In conclusion, and in keeping with our prior opinions, we believe that a properly licensed private security guard is considered a law enforcement officer for purposes of Section 22-5-110(B)(1) when he or she is operating on the property he or she is licensed to protect. As a result, it is the opinion of this Office that Section 22-5-110(B)(1)'s restrictions on seeking arrest warrants were not intended to apply to private security guards operating on the property he or she is licensed to protect as they possess the same authority as a deputy sheriff when operating on such property. In light of this conclusion, it follows that private security guards acting in such a capacity may sign an arrest warrant and by doing so, will not invalidate such a warrant. Finally, regardless of the applicability of Section 22-5-110(B)(1)'s limitation on who may seek an arrest warrant, because a sheriff and his deputies are ministerial officers as it relates to the service of arrest warrants, once a judge has found the existence of probable cause and given the warrant to the sheriff or his deputies for purposes of service, such individuals have a duty to execute or attempt to execute the warrant under South Carolina law.

Sincerely,



Brendan McDonald
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General