

1977 S.C. Op. Atty. Gen. 284 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-357, 1977 WL 24744

Office of the Attorney General

State of South Carolina

Opinion No. 77-357

November 9, 1977

*1 TO: Chief J. P. Strom
South Carolina Law Enforcement Division (SLED)

QUESTION PRESENTED:

What authority do private security guards possess under the South Carolina Private Detective and Private Security Agencies Act (§ 40-17-10, et seq. of the 1976 Code) to transport to jail persons lawfully under arrest?

AUTHORITIES:

§ 40-17-10, et seq. of the 1976 Code of Laws of South Carolina, known as the South Carolina Private Detectives and Private Security Agencies Act;

[Westbrook v. Hutchinson, 195 S.C. 101, 10 S.E.2d 145 \(1940\);](#)

1970-1971 Op. Atty. Gen., No. 3207, p. 187.

DISCUSSION:

You have inquired into the authority of private security guards to transport to jail persons lawfully under arrest. The provisions of the South Carolina Private Detectives and Private Security Agencies Act (§ 40-17-10, et seq.) generally govern the powers and authority granted individuals licensed thereunder. In particular, § 40-17-130 grants private security guards the authority and power which sheriffs have to make arrests of any persons violating or charged with violating any of the criminal statutes of this State, but limits the exercise of such arrest powers to the assigned property. The exercise of such arrest powers is generally discussed in 1970-1971 Op. Atty. Gen., No. 3207, p. 187.

The question you pose, however, involves the security guard's individual responsibility following arrest. Generally, the common law, and in South Carolina the statutory law (See § 17-13-10 (1976)), provide that a private citizen may arrest an individual for a felony or larceny committed in his view. Attached to this authority to arrest is a corresponding duty to take the detained individual to the proper authorities to 'be dealt with according to the law.' [Westbrook v. Hutchinson, 195 S.C. 101, 10 S.E.2d 145 \(1940\)](#). Accordingly, it appears that private security guards have a similar duty to deliver such persons to the appropriate authorities as soon as is reasonably possible. Nevertheless, their authority as peace officers exists only on the assigned premises, as noted above. Therefore, a plethora of legal problems can be envisioned in situations in which the arresting guard may be required while off the premises to exercise general police powers in order to deliver persons safely to jail inasmuch as the subject statute and applicable law appear to offer him no refuge from subsequent suit for such acts. Moreover, the specificity of the statute's language indicates that the Legislative grant of authority should be limited to that of arrest and detention and not transportation. The recommended procedure, therefore, is to arrest and then notify the appropriate authorities for pickup and delivery to jail. The respective law enforcement officer who takes the arrestee into custody would not be exposed to potential liability from the arrest since 'in such cases the arrest is the act of the person who originally took the accused into custody and not that of the police officer to whose custody he is transferred. The police officer arriving on the scene of a misdemeanor after

the completion of the act is not empowered to arrest the accused at the direction of anyone else, but he may take custody of a defendant already lawfully under arrest.' 1970-1971 Ops.Atty.Gen., No. 3207, p. 187, 189.

CONCLUSION:

*2 Therefore, it is the opinion of this Office that private security guards should deliver persons arrested on the particular premises to the proper authorities without leaving the assigned property.

RICHARD P. WILSON

Assistant Attorney General

1977 S.C. Op. Atty. Gen. 284 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-357, 1977 WL 24744

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.