



ALAN WILSON
ATTORNEY GENERAL

March 16, 2018

The Honorable John E. Elkin
Chief of Police
The Foxville & Northern Railroad Co., LLC
PO Box 577
Pelion, SC 29123

Dear Chief Elkin:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

Routinely municipal police departments will initiate either a Memorandum of Understanding or contract with a sheriff's department to allow a deputy sheriff to be hired as a municipal employee to work as a patrol officer. A Railroad Special Agent holds a commission in this state as a "Special State Constable" and as such they have the same power, duties, and responsibilities as a Deputy Sheriff and other Police Officers. (Ref SC 58-13-920).

In the opinion of your office, may a Special State Constable commissioned in this state work in a part-time capacity for a municipal police department the same as any other deputy sheriff?

Law/Analysis

It is this Office's opinion that a special officer or constable commissioned in South Carolina as provided in Article 13, Chapter 13 of Title 58 may be hired to work in a part-time capacity for a municipal police department. Municipalities are authorized to appoint municipal police officers as follows:

Any municipality may appoint or elect as many police officers, regular or special, as may be necessary for the proper law enforcement in such municipality and fix their salaries and prescribe their duties.

Police officers shall be vested with all the powers and duties conferred by law upon constables, in addition to the special duties imposed upon them by the municipality.

Any such police officers shall exercise their powers on all private and public property within the corporate limits of the municipality and on all property owned or controlled by the municipality wheresoever situated; provided, that the municipality may contract with any public utility, agency or with any private business to provide police protection beyond the corporate limits. Should the municipality provide police protection beyond its corporate limits by contract, the legal description of the area to be served shall be filed with the State Law Enforcement Division, the office of the county sheriff and the Department of Public Safety.

S.C. Code Ann. § 5-7-110 (Supp. 2017). This Office's May 17, 1978 opinion to Greenville County Sheriff, Johnny Mack Brown, concluded that Section 5-7-110 allows a sheriff's department to contract with a municipality to provide law enforcement services:

There are currently no state statutes which would prevent the Greenville County Sheriff's Department from offering Contract Law Enforcement services to municipalities within Greenville County. Both counties and incorporated municipalities have the ability to contract, a power given them by sections 4-9-30(3) and 5-7-60 of the CODE OF LAWS OF SOUTH CAROLINA, 1976, respectively. Section 5-7-110, CODE OF LAWS OF SOUTH CAROLINA, 1976, grants a municipality the power to appoint as many police officers as are necessary for the proper law enforcement of the municipality. The ability of political subdivisions to enter into an agreement for the joint administration, responsibility and sharing of the costs of services with other political subdivisions is granted by Article VIII, Section 13, of the SOUTH CAROLINA CONSTITUTION, and section 6-1-20, CODE OF LAWS OF SOUTH CAROLINA, 1976. I believe reading these above sections in conjunction enables an incorporated municipality to enter into a contractual arrangement with a county to provide law enforcement services to the municipality.

Op. S.C. Atty. Gen., 1978 WL 34915, at *1 (May 17, 1978); see also Ops. S.C. Atty. Gen., 2008 WL 1960276 (April 7, 2008) (opining that a special tax district may contract with a county sheriff for police protection); 2006 WL 2849806 (September 29, 2006) (“[T]he Town could consider allowing deputy sheriffs to ‘moonlight’ and provide law enforcement services to the Town”); 1992 WL 575673 (November 6, 1992) (“[A] sheriff could offer contract law enforcement services to a municipality.”).

Your letter asks whether a special state constable can provide law enforcement services to a municipality in a similar manner as a deputy sheriff as described above. In order to address the validity of such an agreement to provide law enforcement services, consideration must be given to such a special officer's or constable's authority and jurisdiction. S.C. Code Ann. § 58-13-910 establishes the circumstances by which a special officer or constable for a railway or other common carrier may be appointed as follows:

Upon the application of the superintendent or manager of a railway or other common carrier doing business in this State, the Governor shall certify special officers or constables for the protection and safety of all property and interest of the common carrier, if the officers and constables are paid by the common carrier applying for their certification. Special officers or constables appointed pursuant to the laws of another state for protection of interstate shipments, passengers, and employees of railroad companies commissioned as railroad police officers in another state in which the common carrier operates and who meet all law enforcement training standards required in this State must be certified under the doctrine of full faith and credit with capacity in this State to enforce the laws for the protection of interstate shipments, passengers, and employees of railroad companies. The capacity may not be interpreted as a state commission but exists by virtue of the State of South Carolina under the doctrine of full faith and credit recognizing and giving full force and effect under our laws to the legal capacity created in the complying state.¹

Section 58-13-920 describes the terms, powers, duties, and responsibilities of such special officers or constables as follows:

Such special officers or constables shall have all the powers, duties and responsibilities of deputy sheriffs and other police officers, and their commissions shall continue so long as they are employed in such capacity by the railway or other common carrier. But the Governor shall revoke their commissions upon request of the superintendent or manager of the railway or other common carrier upon whose application they were appointed and the Governor may also at any time revoke such commissions for cause.

S.C. Code Ann. § 58-13-920. The South Carolina Supreme Court interpreted the various state constables offices' authority and jurisdiction in Richardson v. Town of Mount Pleasant, 350 S.C. 291, 566 S.E.2d 523 (2002). The Court explained state constables generally have state-wide jurisdiction, but such jurisdiction can be limited:

South Carolina statutes create additional constable's offices, which are generally filled by the governor's appointment or commission. Under S.C. Code Ann. § 23-1-60 (1976), the governor "may ... appoint such additional deputies, constables,

¹ This Office's March 11, 1998 opinion interpreted a prior version of this statute to prohibit an out-of-state resident from appointment as a special officer or constable. Op. S.C. Atty. Gen., 1988 WL 383507 (March 11, 1988). Section 58-13-910 was subsequently amended to allow special officers or constables who have been appointed pursuant to the laws of another state to be certified under the doctrine of full faith and credit to enforce the laws for the protection of interstate shipments, passengers and employees of railroad companies. 1989 Act No. 146, §1. As amended, Section 58-13-910 does specify, however, that such special officers and constables recognized according to the full faith and credit doctrine do not hold a state commission. It is this Office's opinion that special officers and constables recognized under this doctrine do not hold an office due to the occasional or intermittent nature of their exercise of law enforcement authority. See Edge v. Town of Cayce, 187 S.C. 171, 197 S.E.216 (1938).

security guards, and detectives as he may deem necessary to assist in the detection of crime and the enforcement of any criminal laws....” See also S.C. Code Ann. § 1-3-220 (Supp. 2001) (providing for the governor's appointment of a “chief constable”). State constables appointed by the governor have state-wide jurisdiction. See Power v. McNair, 255 S.C. 150, 177 S.E.2d 551 (1970).

...

The governor is also empowered to appoint special state constables whose jurisdiction is “limited to the lands and premises acquired by the United States government ... in Aiken, Allendale, and Barnwell counties.” S.C. Code Ann. § 23-7-40 (Supp. 2001). These “Savannah River” constables possess “all of the rights and powers prescribed by law for magistrates' constables and deputy sheriffs and powers usually exercised by marshals and policemen of towns and cities.” S.C. Code Ann. § 23-7-50 (Supp. 2001); see also S.C. Code Ann. § 58-13-910 (Supp. 2001) (governor authorized to “certify” special officers or constables for the protection of common carriers).

350 S.C. at 296-97, 566 S.E.2d at 526. This Office has similarly commented regarding state constable jurisdiction as follows:

[A] State constable clearly possesses statewide law enforcement authority as a peace officer. The Court has stated that constables perform all the duties of law enforcement officers and, in particular, “a constable stands on the same footing as a sheriff.” State v. Franklin, 80 S.C. 332, 338, 60 S.E. 953, 955 (1908). Therefore, a State constable whose commission has not been limited by the issuing authority, would generally be authorized to enforce all the laws of South Carolina anywhere in the State.

Op. S.C. Atty. Gen., 2013 WL 1695512, at *2 (April 4, 2013). While Section 58-13-920 grants special officers or constables “all the powers, duties and responsibilities of deputy sheriffs and other police officers,” their commissions are limited to the duration of their employment with a railway or other common carrier. The statute contains no jurisdictional limitation such as the Richardson Court described regarding the “Savannah River” constables in Section 23-7-40. Therefore, it is this Office’s opinion that a court would likely find special officers or constables possess statewide jurisdiction.

Because special officers or constables possess the “all the powers, duties and responsibilities of deputy sheriffs and other police officers” and statewide jurisdiction, it is this Office’s opinion that a court would likely hold a municipality may contract with special officers’ and constables’ departments for law enforcement services, just as a deputy sheriff could. However, such special officers or constables may only be so employed during the course of their commissions; i.e. during the course of employment with a railroad or common carrier. Moreover, because Section 58-13-910 clarifies that special officers or constables who are certified solely under the full faith and credit doctrine do not have a state commission, such

special officers and constables would not be eligible to provide law enforcement services to a municipality.

Conclusion

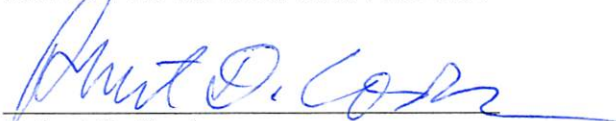
It is this Office's opinion that a special officer or constable commissioned in South Carolina, as provided in Article 13, Chapter 13 of Title 58, may be hired to work in a part-time capacity for a municipal police department, just as a deputy sheriff could. This Office has consistently opined that Section 5-7-110 allows a municipality to contract with a sheriff's department for law enforcement services. See Ops. S.C. Atty. Gen., 2006 WL 2849806 (September 29, 2006) ("[T]he Town could consider allowing deputy sheriffs to 'moonlight' and provide law enforcement services to the Town"); 1992 WL 575673 (November 6, 1992) ("[A] sheriff could offer contract law enforcement services to a municipality."). S.C. Code Ann. § 58-13-920 grants special officers or constables "all the powers, duties and responsibilities of deputy sheriffs and other police officers," and their commissions are only limited to the duration of their employment with a railway or other common carrier. Because special officers or constables commissions are not jurisdictionally limited, it is this Office's opinion that special officers or constables have statewide jurisdiction. See Op. S.C. Atty. Gen., 2013 WL 1695512, at *2 (April 4, 2013) ("[A] State constable whose commission has not been limited by the issuing authority, would generally be authorized to enforce all the laws of South Carolina anywhere in the State."). Therefore, it is this Office's opinion that a court would likely find a special officer or constable commissioned in South Carolina may be hired to work in a part-time capacity for a municipal police department. However, such special officers or constables may only be so employed during the course of their commissions; i.e. during the course of employment with a railroad or common carrier. Moreover, because Section 58-13-910 clarifies that special officers or constables who are certified solely under the full faith and credit doctrine do not have a state commission, such special officers or constables would not be eligible to provide law enforcement services to a municipality.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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