



ALAN WILSON
ATTORNEY GENERAL

March 21, 2012

Mark Keel, Chief
State Law Enforcement Division
P.O. Box 21398
Columbia, SC 29221-1398

Dear Chief Keel:

We received your request for an opinion of this office regarding the authority of a registered private security officer employed in an enclosed and/or gated residential enclave to pursue and stop vehicles, and detain and issue uniform traffic tickets or administrative traffic tickets to violators on streets within the enclave. You present the following questions to our attention:

1. Does a properly registered private security officer have lawful authority, limited or unlimited, under statutory law and SLED regulations to pursue, stop, detain and issue a Uniform Traffic Ticket ("UTT") or administrative traffic ticket notice to a violator, on private roads, when the roads are enrolled pursuant to the South Carolina Uniform Act Regulating Traffic ("UART")?
2. When properly licensed, a security guard has the same authority as a deputy sheriff on the property he is hired to protect. As it relates to enforcing traffic laws, does he have the option of writing a homeowners association administrative ticket or must the UTT be utilized for all offenses charged by a security guard?

Law/Analysis

The authority and regulation of registered private security guards is provided for in S.C. Code Ann. §40-17-10 *et seq.* Pursuant thereto, a security guard possesses the power of arrest upon the property he is employed to guard or patrol. Generally, a registered private security officer is granted the same arrest authority as a deputy sheriff. See §40-18-110.¹ Accordingly, we have concluded that a registered private security officer is a law enforcement officer on private property on which he is employed for purposes of issuing a UTT pursuant to §56-7-10. See Ops. S.C. Atty. Gen., February 22, 2005; October

¹Section 40-18-110 provides:

[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.

15, 2004; May 23, 1995; August 30, 2001; April 30, 1987. That provision authorizes a UTT to be used by law enforcement officers for traffic offenses and certain other offenses.

The UART states in pertinent part in §56-5-6310:

[t]he provisions of this chapter, comprising the Uniform Act Regulating Traffic on the highways in this State, shall be applicable to private roads if the owner, including any corporation or homeowners' association holding title to community roads and excluding those only holding easements over such roads, shall file a written consent stating that the undersigned is the owner of the private roads shown on an attached plat and consents to the application of the provisions of this chapter for purposes of highway safety on such private roads. . . . Such filing shall not constitute a dedication to the public of such roads nor shall it constitute permission by the owner for the public to use such roads. The written consent shall become effective thirty days from the date it is filed with the clerk of court or register of deeds. [Emphasis added].

Section 56-5-6310 is quite specific in stating that the provisions shall be applicable to private roads. Therefore, any statutory traffic violation set forth in Chapter 5 of Title 56 is applicable to private roads when there is consent by the owner to the application of the provisions of this Chapter to such private roads. This office has previously determined that a registered private security officer may issue a UTT for a statutory traffic violation on private roads which are properly brought under the UART.² See Op. S.C. Atty. Gen., August 30, 2001; August 1, 1978. Further, this office has consistently advised that the UTT should only be used in those instances provided for in Title 56, such as “traffic offenses described or defined in Title 56, any offense specifically listed in §56-7-10 and any case where an offense is committed in the presence of a law enforcement officer and the punishment is within the jurisdiction of magistrate’s court and municipal court pursuant to §56-7-15.” Op. S.C. Atty. Gen., August 30, 2001. This remains the opinion of this office.

We note the opinion of this office dated February 22, 2005, where we discussed whether a registered private security officer within a private neighborhood which has filed written consent pursuant to §56-5-6310 may issue citations to minors for driving a motor vehicle in violation of the provisions of Chapter 1 of Title 56 dealing with licensing requirements, or Chapter 3 of Title 56 dealing with insurance requirements. The requester also made reference to Chapter 10 of Title 56, which addresses uninsured vehicles subject to registration. We determined that these provisions were only applicable to vehicles driven on “highways,” *i.e.*, publicly maintained roads. We advised that §56-5-6310 only authorizes offenses set forth in Chapter 5 of Title 56 to be applicable to private roads. We thus concluded that a registered private security officer within a private neighborhood which has consented to the applicability of the UART to its private roads would not be authorized to issue citations for violations of §§56-1-21,

²For purposes of this opinion, we assume the proper filings and postings pursuant to §56-5-6310 have been accomplished by the homeowners’ association. Otherwise, a private security officer would not be authorized to issue a UTT for a traffic violation on private property not properly enrolled in the UART. See Op. S.C. Atty. Gen., August 30, 2001.

56-3-110, and 56-10-520 dealing with requirements under such provisions for a driver's license and the registration and insurance requirements of motor vehicles.

We reiterate today, however, that "the question of whether specific property is public or private is . . . irrelevant as to certain traffic offenses." See Ops. S.C. Atty. Gen., February 22, 2005; October 2, 1985. In an opinion dated August 14, 1992, we stated that "[w]e have determined that Section 23-1-15 would have no effect on a traffic offense in which the commission on public property is not an element, such that certain traffic offenses may be committed and are enforceable on private property regardless of whether the property is posted." See Ops. S.C. Atty. Gen., May 21, 1980; September 29, 1975. For example, the offense of driving under the influence may be committed on private property even though it is not posted, because operation of a motor vehicle on a public highway is not a required element of the offense. See Ops. S.C. Atty. Gen., October 15, 2004; April 22, 1985. As set forth in State v. Allen, 314 S.C. 539, 431 S.E.2d 563, 564 (1993), ". . . Section 56-5-2930 by its terms is not limited to public highways but applies anywhere within our State boundaries." See also Ops. S.C. Atty. Gen., January 18, 1988 [the offense of reckless homicide may be committed on private property]; December 23, 1974 [the offense of reckless driving applies to private property]; May 21, 1980 [a violation of the handicapped parking provision may occur on private property which is not posted because presence on a public highway is not an element of the offense]. Therefore, as to any offense where the language of the statute setting forth the offense does not require that the offense be committed on a public highway or street, posting of the private property would not be necessary for the commission and enforcement of the act.

In the opinion of this office dated February 22, 2005, we further stated that:

[p]ursuant to Section 56-5-6320, termination of consent of the applicability of the [UART] to private roads may be made pursuant to such provision. However, Section 56-5-6330 states that "[t]he termination shall not affect those portions of this chapter which apply to private roads irrespective of the provisions of this article." Therefore, as to any offense where the language of the statute fails to sets forth any requirement that the offense be committed on a public highway or street, termination of consent to the applicability of the [UART] would not prevent the enforcement of such offense on a private road.

To further address your question, we note that in an opinion dated February 25, 1978, we addressed whether registered private security officers could issue a UTT for violations of regulations of a private shopping mall. We stated:

[a]s to whether the security guards could ticket vehicles for violating mall regulations such as improper parking, etc., I know of no state statutory authority which may be construed as authorizing the issuance of a summons for such purposes. Security guards, inasmuch as they are vested with the same authority and power as sheriffs, are authorized to issue uniform traffic tickets in those circumstances permitted by Section 40-17-130 [now §40-18-110]. However, such tickets may not be used to cite for the violation of a regulation promulgated by a private institution, such as a shopping mall.

In our September, 2004 opinion, we discussed a proposal by a private housing development corporation to implement a private citation system so that the corporation could assess fines for violations of its covenants, some of which would be similar or parallel to the UART. Under the proposal, a motorist pulled over while driving on the private property would either receive a UTT or a private citation, at the discretion of the registered private security officer. For non-traffic matters, the property owner would receive a covenant violation notice from the security officer for violation of the covenants of the corporation. We referred to the August, 2001 opinion referenced above, which indicated that:

[p]ursuant to S.C. Code Ann. Section 40-18-110, a properly registered security officer “may arrest a person violating or charged with violating a criminal statute of this State” . . . In no circumstance would a security guard be authorized to perform a custodial arrest pursuant to a violation of a private traffic policy promulgated by a homeowners’ association. Whether a security guard would have the authority to issue a non-custodial penalty notice for a violation of a private traffic policy would most likely be dependent on the nature of the homeowners’ association agreement or related covenants, membership in the association or some contractual provision, such as a rental agreement, which would tie the alleged violator to the agreement and covenants.

That opinion further stated:

. . . the ability of a property or homeowners’ association to assess and collect fines and penalties for violations occurring on private property would probably depend on the nature of the homeowners’ association’s agreement and whether the violator was a member of the association or in a position contractually which would bind the violator to the terms of the agreement. . . . While a property owners’ association may be able to assess and collect such fines and penalties, such action would be strictly a private matter between the association and the violator. No person acting under his/her authority as a state law enforcement officer could enforce such and no state criminal court . . . would have jurisdiction over actions pursuant to the alleged violations and fines.

The August, 2001 opinion also indicated that a registered private security officer may not issue a UTT for a violation of a private traffic policy. The opinion emphasized that:

. . . a private security officer is not authorized to make a custodial arrest nor issue a uniform traffic ticket for a violation of a private traffic policy only. The authority to issue a private penalty notice would come from the homeowners’ association agreement and not state traffic laws.

The September, 2004 opinion concluded that, while a registered private security officer has the authority to enforce a private sanction if the homeowners’ association agreement provides for such, the authority for such strictly arises from the homeowners’ agreement or covenants, and it would not in any manner arise from the statutory authority vested pursuant to §40-18-110. In assessing these “private fines

or penalties,” we stated that the registered private security officer “would not be utilizing any powers granted him by Section 40-18-110.”

Significantly, we refer to §56-7-10, which states:

[t]here will be a uniform traffic ticket used by all law enforcement officers in arrests for traffic offenses and for the following additional offenses. . .

No other ticket may be used for these offenses. The service of the uniform traffic ticket shall vest all traffic, recorders', and magistrates' courts with jurisdiction to hear and to dispose of the charge for which the ticket was issued and served. . . . [Emphasis added].

Consistent with this provision, we have advised that law enforcement officers are required to use the UTT when citing for violations dealing with traffic offenses set forth therein. Registered private security officers utilizing powers granted them pursuant to §40-18-110 would also be required to use the UTT when citing for violations dealing with traffic offenses set forth in §56-7-10. *A fortiori*, registered private security officers may not issue a homeowners' association administrative ticket in lieu of a UTT for these statutory traffic offenses.

By way of illustration, in an opinion of this office dated June 15, 2011, we discussed the authority of a municipality to substitute a local ordinance summons instead of issuing a UTT for a speeding violation. City police officers were offering drivers stopped for speeding a choice: either accept the UTT “with points on your license,” or be given a local ordinance ticket “with no points” and a fine. Pursuant to §56-7-10, we advised that law enforcement officers must use a UTT for the speeding violation. We thus concluded that, although municipalities may use an ordinance summons to enforce its ordinances, no municipal ordinance regulating the use of motor vehicles on the public roads of this State could be enforced using a municipal ordinance summons. We advised that cities must use the UTT when citing for violations dealing with traffic offenses. See also Ops. S.C. Atty. Gen., November 14, 2006 [a municipal police officer may not substitute the UTT for speeding and instead utilize a “town ticket” citing the municipality’s “careless operation law”]; October 15, 2003 [a municipal ordinance pertaining to traffic or motor vehicle offenses, such as careless operation of a vehicle, must be cited using a UTT].

We have previously warned that, pursuant to §56-7-40:

[a]ny person intentionally violating the provisions of §56-7-10 . . . shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than two hundred fifty dollars nor more than fifteen hundred dollars or imprisoned for not more than six months, or both, for each ticket unaccounted for, or each use of a non-uniform ticket, or each failure to timely forward the Department of Motor Vehicles records copy or audit copy of a ticket. If the failure to account for a ticket, or the use of a non-uniform ticket, or the failure to timely forward the Department records or audit copy of the ticket is inadvertent or unintentional, such misuse shall be triable in magistrate’s court and upon conviction shall be punishable by a fine of not more than one hundred

dollars. Any person charged with failing to timely forward the results of the annual inventory shall be tried in magistrate's court and upon conviction shall be fined not more than one hundred dollars.

See Ops. S.C. Atty. Gen., November 14, 2006; August 3, 1992.

Conclusion

Under §56-5-6310, the provisions of Chapter 5 of Title 56 are applicable to private roads when there is consent by the owner to the application of the provisions of this Chapter to such private roads. Pursuant to §40-18-110, a registered private security officer is granted the same arrest authority as a deputy sheriff on private property on which he is employed. Accordingly, a registered private security officer is a law enforcement officer for purposes of issuing a UTT for violations enumerated in §56-7-10 on private roads which are properly brought under the UAT. This provision authorizes a UTT to be used by law enforcement officers for traffic offenses and certain other offenses. The registered private security officer must use a UTT when citing for violations enumerated in §56-7-10. A homeowners' association administrative ticket may not be substituted for a UTT by a registered private security officer for these statutory traffic offenses. Moreover, a registered private security officer may not issue a UTT for a violation of a private traffic policy of the homeowners' association, since such a violation would fit none of the categories set forth in §56-7-10.³

If you have any questions, please advise.

Very truly yours,



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Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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³A registered private security officer has the authority to enforce a private sanction if the homeowners' association agreement provides for such, but the authority for such strictly arises from the homeowners' agreement or covenants. Such action is strictly a private matter between the homeowners' association and the violator. No registered private security officer acting under his authority pursuant to §40-18-110 may enforce such a private sanction, and no State criminal court (municipal, magistrate's or general sessions) would have jurisdiction over actions pursuant to an alleged violation and fines set forth by the homeowners' association.