



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
 ATTORNEY GENERAL

September 28, 2004

The Honorable Scott H. Richardson
 Senator, District No.46
 52 North Calibogue Cay
 Hilton Head Island, South Carolina 29928

Dear Senator Richardson:

In a letter to this office you referenced the situation involving the Palmetto Dunes Resort ("Palmetto Dunes") on Hilton Head Island. The developer of Palmetto Dunes, Greenwood Development Corporation ("Greenwood"), operates a private security company ("PD Security") to guard certain properties owned by Greenwood within Palmetto Dunes. You indicated that Greenwood has filed an affidavit of consent pursuant to S.C. Code Ann. Section 56-5-6310 (Supp. 2003) subjecting the roadways to the jurisdiction of the State Uniform Act Regulating Traffic.

You indicated that Greenwood is considering amending its restrictive covenants which are applicable to Palmetto Dunes in order to implement a private citation system so that Greenwood can assess fines for violations of its covenants, some of which will be similar or parallel to the State Uniform Act Regulating Traffic. Under such a system, a motorist driving within Palmetto Dunes who is pulled over for a moving violation would either receive a uniform traffic ticket or a private citation at the PD security guard's discretion. In addition, for nontraffic matters the property owner would receive a covenant violation notice from the PD security officer for violations of the Palmetto Dunes Covenants.

You have referenced a prior opinion of this office dated August 30, 2001 which commented on the authority of a private security guard with regard to enforcement of policies promulgated by a private homeowner's association. Referencing such, you have raised several questions. In your first question you state

"The language of the August 30, 2001 opinion letter seems to state that a security guard would have the authority to issue a fine for a private traffic policy if the homeowner's association documents provided for such. I would like to confirm my understanding that a security guard could in fact have such authority, pursuant to the covenants, and that such would not be in conflict with his/her statutory authority vested pursuant to 40-18-110 of the South Carolina Code.

Pursuant to S.C. Code Ann. Section 40-18-110 (Supp. 2003)

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.

The August, 2001 opinion referenced above indicated that:

Pursuant 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 homeowner's 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 homeowner's 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.

The opinion further states:

...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 opinion also indicated that a private security guard should not issue a uniform traffic ticket for a violation of a private traffic policy. The opinion further 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.

Consistent with such, a security guard would have the authority to enforce a private sanction if the homeowner's association agreement provided for such. However, the authority for such would strictly arise from the homeowners' agreement or covenants and would not in any manner arise from the statutory authority vested pursuant to Section 40-18-110. In assessing such "private fines or penalties", the security guard would not be utilizing any powers granted him by Section 40-18-110. I see no conflict with Section 40-18-110 in the security guard enforcing a private sanction as long as that guard does not utilize any of the powers granted by Section 40-18-110.

You next referenced that SLED Regulation 73-40(17) provides that "Security Patrol cars shall utilize emergency lights that are amber in color." Such provision further states that

If a Security Agency feels blue or red emergency lights are necessary on their patrol vehicles, the following is required:

- (a) Owner of the property which the security agency is patrolling shall comply with all provisions of the South Carolina Uniform Act Regulating Traffic to Private Roads.
- (b) Copies of all written approvals governed by the provisions of the Act given above shall be filed with SLED.
- (c) Security agency shall make application to the Division for Uniform Traffic Summons Books.
- (d) Emergency blue or red lights shall be removed or concealed when security patrol car is not on said property which security agency is patrolling.

The August, 2001 opinion indicated that "(i)t appears that...(by such regulation)...SLED contemplated that blue lights would be necessary for a private security vehicle to make traffic stops on private roads...(registered pursuant to the State Uniform Act Regulating Traffic (UART))...and issue uniform traffic tickets for such violations." Consistent with such, the opinion had concluded that a security guard could only issue a uniform traffic ticket for a statutory traffic violation on private roads properly under the UART and could not issue such a ticket for a traffic violation on private property not enrolled in the UART.

You indicate that PD Security has determined that pursuant to such regulation, blue or red emergency lights are necessary on their patrol vehicles. Assuming the additional requirements under such regulation have been satisfied, you asked whether PD security officers are violating such regulation by stopping a motorist to issue a private citation for violation of a private traffic policy.

S.C. Code Ann. Section 56-5-4700 (Supp. 2003) states that "(i)t shall be unlawful for any person to possess or display on any vehicle any blue light that is visible from outside the vehicle except one used primarily for law enforcement purposes." Consistent with such, in my opinion PD security officers would be violating such statute and Regulation 73-40 in utilizing a blue light to stop

a motorist in order to issue a private citation for violations of a private traffic policy. Enforcement of such private traffic policy would not be a legitimate "law enforcement purpose" as contemplated by Section 56-5-4700. As noted in the prior opinion, no person acting under his authority as a state law enforcement officer could enforce such private sanctions. As to the use of red lights, Section 56-5-4700 authorizes the use of "alternately flashing red lights" on police vehicles when used as authorized emergency vehicles. Consistent with the prohibition of the use of blue lights in association with the enforcement of a private traffic policy, in my opinion, the use of flashing red lights on police vehicles would also be restricted to regular law enforcement duties and should not be used to enforce private sanctions.

You next asked whether assuming that the private covenants provide that Greenwood can issue a citation and fine for a violation of a private traffic policy, would a PD security officer be exceeding or violating his statutory authority pursuant to Section 40-18-110 in issuing such a private citation while the motorist is pulled over after being stopped by a PD security officer using a blue light displayed on the PD security vehicle. Consistent with the answer above, a blue light may be only displayed on a vehicle used primarily for law enforcement purposes. Again, as noted in the September, 2001 opinion, "no person acting under his/her authority as a state law enforcement officer could enforce...(a private traffic policy)." Therefore, in my opinion, enforcement of a private traffic policy is not a legitimate law enforcement purpose and a PD security officer should not utilize the law enforcement authority granted by Section 40-18-110 in enforcing such a private policy. This would include the prohibition to using a blue light in order to issue a private citation.

In your next question you asked whether a PD security officer would be exceeding his statutory authority in issuing a private citation after the motorist is pulled over after being stopped by the PD officer using a flashing amber light displayed on the PD security vehicle. The September, 2001 opinion referenced that "SLED contemplated that blue lights would be necessary for a private security vehicle to make traffic stops on private roads enrolled in the UART and issue uniform traffic tickets for such violations." It further states that

Whether the members of the...(homeowner's association)...have agreed to observe the authority of a yellow light appears to be a matter of that agreement. There appears to be, however, no state law which would impose a duty on a driver to stop for such.

As to your specific question regarding whether the PD security officer would be exceeding his statutory authority in issuing a private citation in such circumstances, I am unaware of any absolute prohibition to a security guard issuing a private citation after the motorist is pulled over after being stopped by the PD officer utilizing a flashing amber light on the PD security vehicle. However, as noted previously in the prior August, 2001 opinion,

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

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the nature of the homeowner's 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.

Again, as noted previously, the security guard in such circumstances may not utilize any of the law enforcement powers granted him by Section 40-18-110. Also, as noted previously, by Regulation 73-40, SLED contemplated that blue lights are necessary in order for a private security vehicle to make traffic stops on private roads that are enrolled in the UART and to issue traffic tickets for such violations.

In your last question you referenced that S.C. Code Ann. Sections 56-5-2360 and 56-5-7400 impose upon motorists the obligation to yield right of way and come to a stop upon the approach of an authorized emergency vehicle. You noted that Section 56-5-7400 (C) provides that it is unlawful to possess or display a blue light on any vehicle except one used primarily for law enforcement purposes. Referencing such, you asked whether a PD security officer's actions in issuing a private citation is consistent with the intent of Section 56-5-7400 (C). Again, as stated above, Section 56-5-4700 (C) states that "(i)t shall be unlawful for any person to possess or display on any vehicle any blue light that is visible from outside the vehicle except one used primarily for law enforcement purposes." Consistent with such, a PD security officer would be violating such provision and Regulation 73-40 in utilizing a blue light to stop a motorist in order to issue a private citation for violations of a private traffic policy. Enforcement of such private traffic policy would not be a legitimate law enforcement purpose as contemplated by Section 56-5-4700.

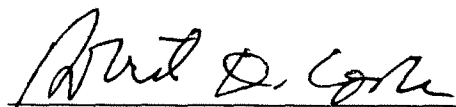
With kind regards, I am,

Very truly yours,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General