



ALAN WILSON
ATTORNEY GENERAL

December 4, 2023

Andrew Parchuk
Lake Warden
Startex-Jackson-Wellford-Duncan Water District
200 Lyman Lodge Rd.
Lyman, SC 29365

Dear Mr. Parchuk:

We received your letter requesting an opinion of this Office concerning the Startex-Jackson-Wellford-Duncan Water District (“SJWD Water District”). In your letter, you explain the SJWD Water District is planning to establish a department of public safety as permitted under section 6-11-340 of the South Carolina Code. Additionally, you informed us that you are a Class I officer and the other lake warden will be a commissioned Class I officer. Specially, you ask whether in relation to section 6-1-340(C) you and the other commissioned lake warden “would be able to pull people over for traffic violations that cause a severe risk to public safety on our properties such as reckless driving or DUIs?” You also ask what “types of crimes we would be able to investigate?”

Law/Analysis

The Legislature adopted section 6-11-340 of the South Carolina Code (2004) after the September 11 terrorist attacks. This provision gives special purpose districts the authority to establish their own public safety departments to protect and police their facilities. In subsection (A) of this provision, the Legislature expressed its intent regarding this provision, stating:

(A) The General Assembly finds that the public interest requires the safeguarding and protection of facilities owned by special purpose districts, such as water treatment plants, water storage tanks, wastewater treatment plants, pumping stations, and natural gas storage facilities. The health, safety, and protection of human life is dependent, in part, upon these facilities being properly protected from attack by terrorists or others seeking to disrupt the proper operation of facilities.

S.C. Code Ann. § 6-11-340(A). As such, the Legislature authorized the establishment of public safety department in subsection (C):

(C) Each special purpose district is authorized to establish a public safety department to protect and police the facilities owned by the district under such reasonable rules and regulations as the district may from time to time promulgate. The district may appoint and commission as many public safety officers as necessary for the proper security, general welfare, and convenience of the facilities. The public safety officers must be vested with all powers and duties conferred by law upon constables in addition to duties imposed upon them by the governing body of the district. The jurisdiction of these public safety officers is limited to the property of the special purpose district and the streets and roads through and contiguous to the property, except that these officers may not make an incidental arrest of a person for, or issue a ticket for, a traffic violation.

S.C. Code Ann. § 6-11-340(C).

Pursuant to section 6-11-340(C), appointed and commissioned public safety officers have “all powers and duties conferred by law upon constables in addition to duties imposed upon them by the governing body of the district.” In a 2018 opinion, we described the powers of State constables stating:

This Office, citing the decision of the South Carolina Supreme Court in State v. Luster, 178 S.C. 199, 182 S.E. 427 (1935), has often concluded that State constables [[commissioned pursuant to § 23-1-60] possess the authority of regularly commissioned peace officers, including the power of arrest. See, e.g., Op. S.C. Att’y Gen., January 25, 1996 (1996 WL 82898). In Luster, the Court stated:

[t]he trial judge held, and so instructed the jury, that Miliam, under the Commission given him by the Governor, was a peace officer of the State, and as such officer had the right and authority to arrest anywhere without a warrant any person committing a misdemeanor in his presence. This charge or holding, was unquestionably correct and was applicable under the facts of the case.

Id., 182 S.E. at 429. Thus, 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. Att’y Gen., 2013 WL 1695512 (April 4, 2013) (emphasis added).

Op. Att’y Gen., 2018 WL 6587186 (S.C.A.G. Nov. 28, 2018).

Accordingly, as the Legislature gave public safety officers appointed pursuant to section 6-11-340 the authority of a constable, they are authorized to enforce all the laws of the State. However, in section 6-11-340(C) the Legislature limited this authority specifying the jurisdiction of these officers is “limited to the property of the special purpose district and the streets and roads through and contiguous to the property.” Additionally, these officers are prohibited from making “incidental arrest of a person for, or issue a ticket for, a traffic violation.” Therefore, if the incident occurs within the officers’ jurisdiction and does not involve a traffic violation, we believe they would have the authority to investigate and enforce any other provision of state law. We note this interpretation appears consistent with the Legislature’s stated purpose of creating these public safety departments to guard special purpose district facilities from potential terrorist attacks. See McClanahan v. Richland Cnty. Council, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002) (“All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.”).

In your letter, you specifically inquire as to whether lake wardens can pull people over for traffic violations and detain them until other officers with the authority to enforce such laws arrive to issue a ticket or whether Lake Wardens can issue warnings for these violations. We believe such actions would be inconsistent with both the intent of the legislation and the authority given to these officers by the Legislature. The Legislature intended for these officers to protect facilities, not enforce traffic laws. As such, the Legislature specifically excluded the authority to issue tickets or make arrest for traffic violations. Without authority to enforce traffic violations, such officers also do not have the authority to detain individuals for such violations. See State v. McAteer, 340 S.C. 644, 646, 532 S.E.2d 865, 866 (2000) (noting since a municipal police officer was outside the municipality’s city limits, he had no authority to detain an individual he suspected was driving under the influence); Op. Att’y Gen., 2012 WL 1561867 (S.C.A.G. Apr. 19, 2012) (stating “a Class 3 officer, or an administrative code officer, is similarly without statutory authority to detain a suspect until another officer arrives because the detention, itself, is an arrest.”). Therefore, we do not believe lake wardens have authority to issue warnings or detain individuals for traffic violations.

Conclusion

After September 11, 2001, the Legislature adopted section 6-11-340 of the South Carolina Code giving authority to special purposes districts to create public safety departments and commission public safety officers to protect their facilities. The Legislature vested these public safety officers with “all powers and duties conferred by law upon constables in addition to duties imposed upon them by the governing body of the district.” S.C. Code Ann. § 6-11-340(C). Therefore, we believe these public safety officers would have the authority, as do constables, to enforce all provisions of State law. However, their jurisdiction is limited to “the property of the special purpose district and the streets and roads through and contiguous to the property” and they may not “make an incidental arrest of a person for, or issue a ticket for, a traffic violation.” An officer who does not

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have the authority to arrest a person for a particular offense also does not have the authority to detain an individual for that offense. Op. Att'y Gen., 2000 WL 655478 (S.C.A.G. Apr. 14, 2000). As these public safety officers are without authority to arrest a person for or issue a ticket for a traffic violation, we believe they are similarly without authority to detain a person for such a violation or issue a warning regarding such a violation.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General