



ALAN WILSON  
ATTORNEY GENERAL

January 15, 2014

Saundra Rhodes, Chief  
Horry County Police Department  
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Conway, S.C. 29526

Dr. Cynthia Elsberry  
Superintendent, Horry County School District  
P.O. Box 260005  
Conway, S.C. 29528

Dear Chief Rhodes and Dr. Elsberry,

You both seek an opinion of this Office as to whether the Horry County School District (the "District") may use either Adult Uniformed Security Guards or State Constables to direct traffic on and around school property. By way of background, the request letter provides:

The Horry County Police Department and the Horry County School District recognize that there are excessive traffic issues and delays at several schools within Horry County where vehicles entering and exiting schools become congested during the drop-off and pick-up hours, often disrupting the travels of members of the public who have no business with the particular school.

At one time, the School District addressed this issue with the use of Adult Uniformed Security Guards; however, the School District does not currently use such security guards for directing traffic due to differing opinions on their legal authority to perform the function.

The Horry County Police Department provides officers for school security pursuant to a contract. One of the aspects of the contract is that the assigned Class I officer acting as a School Resource Officer (SRO) does not maintain a predictable schedule while patrolling the school property; it is preferred that the SRO not be in the individual directing traffic in the public roadways near the school, as security is their primary tasking.

With the above in mind, the request letter specifically presents the following questions:

- 1) Can the [District] resume the use of Adult Uniformed Security Guards to direct traffic on school properties, at the school-related intersections, and on the public roadways affected by school-generated traffic?
- 2) Can State Constables be used to direct school traffic on and around the school property without being accompanied by a Class I Police Officer certified in the State of South Carolina?
- 3) Can State Constables be paid for directing traffic at the schools if they can be used?

#### Law/Analysis

There are only a couple of statutory provisions concerning uniformed school crossing guards. One provision in Title 59 of the S.C. Code concerning education states:

No person **charged with the responsibility of assisting school children to cross streets near schools** shall engage in such activity unless he is attired with some type of garment or equipment that can be clearly seen by the driver of an approaching motor vehicle. The school district official of each school district who is responsible for supervising such personnel shall be responsible for seeing that such persons within his district are furnished with the articles required by this section.

§ 59-63-60 (emphasis added).

The other provision is part of the Uniform Act Regulating Traffic on Highways (the "UTA"), §§ 56-5-10 et seq., and provides:

No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer, fireman or **uniformed adult school crossing guard invested by law with authority to direct, control or regulate traffic.**

§ 56-5-740 (emphasis added).

While we are aware of no South Carolina case specifically discussing either statutory section, prior opinions of this Office have generally addressed § 56-5-740. In a 1983 opinion, we were asked whether a school crossing guard's instruction to a driver to pull over to the side of the road to let her children out constituted the "lawful order or direction" of a school guard for purposes of § 56-5-740. Op. S.C. Att'y Gen., 1983 WL 181701 (Jan. 5, 1983). We responded as follows:

**[We are] generally unfamiliar with any state statute giving a school crossing guard the authority to cause drivers to stop for purposes of being instructed where children are to be let out of cars.**

As to your more general question of what constitutes lawful orders or directions of a school guard, ... there must be some specific authority duly enacted which may be relied upon as the basis for such order or direction or the guard must be especially vested with authority to require an individual to refrain from doing what is otherwise lawful. As to the latter part of such statement, **[we are] generally unfamiliar with any state statutes vesting school crossing guards with such authority or, in fact, any authority to direct, control, or regulate traffic.**

Id. (emphasis added); see also § 56-5-420 (defining "police officer" for purposes of UTA as "[e]very officer authorized to direct or regulate traffic or to make arrests for violations of vehicular and traffic laws ....").

However, in a subsequent opinion addressing the question of "whether a school crossing guard is authorized to order compliance with traffic laws," we stated:

It is apparent that Section 56-5-740 provides uniformed adult school crossing guards with the authority to "direct, control or regulate traffic." Therefore, to avoid a violation of such provision, there must be compliance with any lawful order or direction of a crossing guard.

Op. S.C. Att'y Gen., 1989 WL 406178 (Sept. 5, 1989).

While there appears to be some conflict in the above opinions as to the authority, or lack thereof, of uniformed adult crossing guards to direct, control, or regulate traffic, we believe the conclusions of each can be read together so as to achieve one logical, coherent result. As indicated in the September 5, 1989 opinion, uniformed adult crossing guards have at least some lawful authority as to the control or direction of traffic pursuant to § 56-5-740. Consistent with the plain language of § 59-63-60, however, any such authority is limited to "assisting school children to cross streets near schools." Thus, as indicated in the January 5, 1983 opinion, the authority of a uniformed adult crossing guard to direct or control traffic does not extend to instructing drivers as to where to stop for the purpose of dropping children off at school. Accordingly, we believe it can reasonably be stated that the authority of a uniformed adult crossing guard to direct or control traffic is limited to ordering vehicles to stop so that children can safely cross the street when walking to or from school. Such crossing guards do not have the authority to direct or control traffic on public roadways near schools for the purpose of reducing traffic congestion caused by vehicles dropping children off or picking them up from school.

As to the questions concerning the potential use of state constables to direct or control traffic around schools, we note that State constables are appointed by the Governor pursuant to § 23-1-60. As we noted in a prior opinion, such appointments are made without compensation. Op. S.C. Att'y Gen., 2012 WL 440545 (Jan. 6, 2012). We also advised that pursuant to executive orders issued by the Governor, "no person shall be appointed a constable except in accordance with the policies and procedures adopted by SLED." Id. Furthermore, we stated that "SLED has regulatory authority over all commissioned state constables." Id.

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Consistent with the above, the authority granted a state constable is generally within the discretion of SLED. We have been advised by SLED that an advanced state constable may be used for the control or regulation of traffic if express authorization to do so is given by the Chief of SLED and certain conditions are complied with. Generally, such conditions include the supervision of a certified law enforcement officer. The degree of supervision required (e.g., the requirement that a certified law enforcement officer actually accompany the state constable or the requirement that the constable simply have radio contact with a nearby officer) is also within the discretion of the Chief of SLED. This is consistent with the policies and procedures adopted by SLED which provides that an advanced state constable may perform law enforcement activities if, *inter alia*, such activities have been specifically approved by SLED and the constable is acting "under the supervision of and in proximate contact with a fulltime on-duty law enforcement officer."<sup>1</sup> These policies also reaffirm that "[s]tate constables may not accept payment for services," but may only accept reimbursement for out-of-pocket expenses.

#### Conclusion

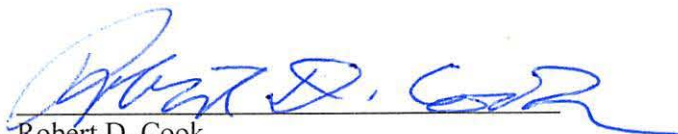
It is the opinion of this Office that the authority of adult uniformed crossing guards to direct or control traffic is limited to ordering vehicles on public roadways to stop so that children walking to or from school may safely cross the street. Such crossing guards do not have the authority to direct or control traffic on public roadways near a school for the purpose for the purpose of reducing traffic congestion, and thus should not be used for such purposes. Whether a state constable may be used to direct traffic on public roadways near a school for the purpose of reducing traffic congestion and the requisite degree of supervision any such constable must receive from a certified law enforcement officer are matters within the discretion of the Chief of SLED. Thus, we must defer to SLED on any questions concerning such matters. In any event, prior opinions of this Office as well as the policies and procedures adopted by SLED indicate a state constable may not be paid or compensated for their services.

Sincerely,



Harrison D. Brant  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General

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<sup>1</sup> The policies and procedures concerning advanced state constables are available at <http://www.sled.sc.gov/Constables.aspx?MenuID=Constables> under "Advanced Requirements."