

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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October 24, 2000

Opinion No. 00-166

Secondary employment of law enforcement officers by private security company

QUESTIONS

1. May law enforcement officers engage in secondary employment through a licensed security company outside of the jurisdiction in which they are employed? If so, may they represent themselves as law enforcement officers?

2. If the answer to number one is yes, may a law enforcement officer working for a security company outside of his/her jurisdiction identify himself/herself as a law enforcement officer in a non-departmental issued uniform?

OPINIONS

1. Yes. Any person, including a sworn peace officer regardless of jurisdiction, who meets the statutory qualifications and requirements of Tenn. Code Ann. §§ 62-35-115 and -117 may act as a security guard for a licensed contract security company. However, pursuant to Tenn. Code Ann. §62-35-134(c)(5), it is unlawful for a private security guard knowingly to make any statement which would reasonably cause another person to believe that such security guard/officer functions as a sworn peace officer or other government official.

2. No. State law prohibits private security guards employed by a contract security company from wearing police-style uniforms unless the uniform has affixed to the outermost garment a badge or insignia distinct in design from any law enforcement agency in this state. Tenn. Code Ann. §62-35-128. Private security guards are further prohibited from displaying any badge, insignia, shield, patch or pattern which indicates or tends to indicate that such person is a sworn peace officer, contains the word "police" or its equivalent, or is similar in wording to any law enforcement agency in this state. Tenn. Code Ann. §62-35-127.

ANALYSIS

1. State law does not prohibit law enforcement officers from engaging in secondary employment through a licensed security company outside of the jurisdiction in which they are employed. The qualifications and training requirements to perform the duties of a security guard/officer are set forth under Tenn. Code Ann. §§62-35-117 and 62-35-118. As to the basic qualifications under Tenn. Code Ann. §62-35-117, the statute makes no distinction between law enforcement personnel and private citizen applicants. And the Tennessee Court of Criminal Appeals has held in *State v. Horace Durham*, Putnam County, C.C.A. No. 01C01-9503-CC-00056 (Tenn. Crim. App., filed November 16, 1995, at Nashville), that a “police officer does not give up the right to act as a private citizen when he is off duty or out of his jurisdiction.”

In addition, licensing of contract security companies and individual security guards, armed or unarmed, is a state function through the office of the Commissioner of Commerce and Insurance. Pursuant to Tenn. Code Ann. §62-35-121, no company or individual seeking registration as a private security guard “shall be required to obtain any authorization, permit, or license from or to pay any other fee or post a bond in any municipality, county or other political subdivision of this state to engage in any business or activity regulated by [Tenn. Code Ann. §§62-35-101 *et seq.*].”

Therefore, it is the opinion of this office that any person, including a sworn peace officer regardless of jurisdiction, who meets the statutory qualifications and requirements of Tenn. Code Ann. §§ 62-35-115 and -117 may act as a security guard for a licensed contract security company.

With regard to a law enforcement officer “representing” himself/herself as a sworn peace officer in the course of his or her employment by a private security company, the Private Protective Services Licensing and Regulatory Act, Tenn. Code Ann. §§62-35-101 *et seq.*, specifically prohibits individual security guards from holding themselves out as law enforcement officers of a governmental entity while engaged in private employment by a contract security company. For example, private security guards may not display any insignia, badge or other pattern that tends to indicate that such person is a sworn peace officer or wear any police-style uniform unless it is clearly distinct from any law enforcement agency of this state. Tenn. Code Ann. §§62-35-127, -128. Further, pursuant to Tenn. Code Ann. §62-35-134(c)(5), it is unlawful for a private security guard knowingly to make any statement which would reasonably cause another person to believe that such security guard/officer functions as a sworn peace officer or other government official.

Therefore, it is the opinion of this office that although state law does not preclude law enforcement personnel from engaging in private employment as a security guard with a contract security company, the officer may not represent himself/ herself as a law enforcement officer while engaged in such private employment.

2. A law enforcement officer working for a contract security company may not identify himself/herself as a law enforcement officer through a non-departmental issued police-style uniform. Tenn. Code Ann. §62-35-127 expressly prohibits any person, while performing the function of a security guard for a contract security company, from wearing or displaying any badge, insignia, shield, patch or pattern

which indicates or tends to indicate that such person is a sworn peace officer, contains the word “police” or its equivalent, or is similar in wording to any law enforcement agency in this state.

Further, Tenn. Code Ann. §62-35-128 provides:

“No security guard/officer shall wear any military or police-style uniform, except for rainwear or other foul-weather clothing, unless such uniform has:

(1) Affixed over the left breast pocket on the outermost garment and on any car a badge or insignia distinct in design from that utilized by any law enforcement agency in this state, unless the licensed security officer is in plain clothes; and

(2) Affixed over the right breast pocket on the outermost garment a name plate or tape with the name of the security guard/officer on it, unless the licensed security officer is in plain clothes.”

The clear intent of the statute is to prohibit private security guards from wearing uniforms or other insignia that may lead the public to believe that they are acting as sworn peace officers of any law enforcement agency in this state or are in any way affiliated with a government law enforcement agency. Therefore, it is the opinion of this office that a law enforcement officer working for a security company, regardless of the jurisdiction of the officer, may not identify himself/herself as a law enforcement officer by wearing police-style uniform that does not clearly identify the individual as a private security company employee.

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