S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
425 Fifth Avenue North
NASHVILLE, TENNESSEE 37243-0497

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Opinion No. 03-132

Effect of the Private Protective Services Licensing and Regulatory Act on employment of private security guards on public property.

QUESTION

Can private security guards be employed to protect public property according to the Private Protective Services Licensing and Regulatory Act, Tenn. Code Ann. § 62-35-101 et seq.?

OPINION

Yes. The Private Protective Services Licensing and Regulatory Act ("Act") does not prohibit employment of private security guards to protect public property.

ANALYSIS

The Act defines a security guard or officer as "an individual employed by a contract security company or a proprietary security organization whose primary duty is to perform any function of a security guard and patrol service . . . ."[1] The definitions section of the Act outlines some of the services these guards or officers provide:

> (16) "Security guard and patrol service" means protection of persons and/or property from criminal activities, including, *but not limited to*:
>
> (A) Prevention and/or detection of intrusion, unauthorized entry, larceny, vandalism, abuse, fire or trespass on private property;
>
> (B) Prevention, observation or detection of any unauthorized activity on private property;
>
> (C) Enforce rules, regulations or local or state laws on private property;
>
> (D) Control, regulation or direction of the flow or movements of the public, whether by vehicle or otherwise on private property; or
>
> (E) Street patrol service;[2]

[1]Tenn. Code Ann. § 62-35-102(15).

[2]Tenn. Code Ann. § 62-35-102(16) (emphasis added).

The primary rule in interpreting a statute is to ascertain and to give the fullest possible effect to the General Assembly's intention and purpose as reflected in the statute's language. Courts avoid construing a statute in a way that goes beyond or unduly restricts the statute's intended purpose.[3]

The courts assume that, when the General Assembly passed the statute, it chose its words deliberately and meant what it said. Thus, courts give the statute's words their natural and ordinary meaning unless their context requires otherwise. They also examine the words in context, within the same provision and as a part of the whole.[4] The interpretation must make sense and fit with the entire statute and the statute's general purpose.[5]

Reading the Act as a whole suggests that private security guards may be employed in many capacities not specifically defined in the list. The Act notes that the services provided by private security guards include "but [are] not limited to" those listed in the Act.[6] And the Act does not prohibit employment of private security guards to protect public property.[7] The statute's general purpose is to outline licensing requirements for security guards and security companies, and to specify to which guards and companies those requirements apply. The statute's purpose is not to limit the type of entities to which private security guards may provide services.

The Act does not need to be amended to allow private security guards to be employed to protect public property. State, local and federal governments are free to contract with private entities to provide services such as security.[8] A private security guard assigned by a contract security company to provide services to local, state or federal government is not a "government officer or employee performing official duties."[9] Security officers working in that capacity are still employees of the private security company and must meet the licensing requirements of the Act.[10]

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[3]*See State v. Medicine Bird Black Bear White Eagle*, 63 S.W.3d 734, 754-55 (Tenn. App. 2001).

[4]*Id.*

[5]*Id.*

[6]Tenn. Code Ann. § 62-35-102(16).

[7]Tenn. Code Ann. § 62-35-134.

[8]See, for example, Tenn. Code Ann. § 12-4-109, which outlines the process the state government must employ when procuring "personal services, professional services, and consultant services . . . ."

[9]Tenn. Code Ann. § 62-35-103(a)(1), discussed in Op. Tenn. Atty. Gen. 03-022 (Feb. 25, 2003) (copy attached).

[10]*Id.*

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

KEVIN STEILING
Deputy Attorney General

Requested by:

The Honorable Mae Beavers
State Senator
War Memorial Building
Suite 320
Nashville, TN 37243-0223