

STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 03-148

Authority of State Licensed Security Officers

QUESTIONS

1. May a state licensed security officer working under contract for a hotel/motel, where the property is posted, and verbal and written policy is that no guest or unauthorized persons not on the room lease/rental agreement must leave after a posted time, check rooms to verify trespassers are not present?
2. May a state licensed security officer, after knocking on the hotel/motel room door and the door is opened make an arrest of local or state law violations observed by the security officer inside the room?
3. May a state licensed security officer, after knocking on the hotel/motel room door and the door is opened make entry into the room based upon the security officer recognizing the smell/odor of crack cocaine, marijuana or other illegal contraband?
4. May a state licensed security officer make a search of a hotel/motel room where persons in the room opened the door after the security officer recognizes the smell/odor of crack cocaine, marijuana or other illegal contraband?
5. May a state licensed security officer search persons and vehicles entering private property or on private property where the property is clearly and properly posted that persons and vehicles are subject to search at any time while on the property?
6. May a state licensed security officer make an arrest if while during the search of the vehicle, the security officer finds illegal contraband or other illegal activity?
7. Is a state licensed security officer acting as an agent of the property under the landlord tenant act if they are under contract by the persons in control of the property with the authority to hire security companies?

OPINIONS

1. Yes. A security guard may, by statute, prevent and/or detect trespass on private property, in addition to enforcing rules and regulations on private property.

2. Yes. A security guard may make a citizen's arrest for a public offense committed in his or her presence.
3. Yes. A security guard may enforce rules, regulations or local or state laws on private property.
4. Yes. A security guard may enforce rules, regulations or local or state laws on private property. However, the search may subject the guard or employer to liability.
5. Yes. A security guard may enforce rules and regulations on private property. However, the search may subject the guard or employer to liability.
6. Yes. A security guard may make a citizen's arrest for a public offense committed in his or her presence.
7. Under some circumstances, a security officer under contract with a business is considered an agent of the business; thus creating liability to the business for the actions of the guard.

ANALYSIS

1. Tenn. Code Ann. §62-35-103(16) authorizes security guards to protect persons and 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." Accordingly, a security officer is authorized to detect trespassers.
2. Licensed security officers may make an arrest as private citizens as authorized under Tennessee law. Tenn. Code Ann. §40-7-101 (2002). "It is basic statutory law in this state that a private person may arrest another individual for an offense committed in the presence of the arresting individual, or for a felony not committed in his presence." *State v. Smith*, 695 S.W.2d 954, 959 (Tenn. 1985). Furthermore, security guards are authorized by statute to enforce state and local laws on private property. Tenn. Code Ann. §62-35-103(16)(C).
3. A security guard may enter the room and make an arrest for a public offense committed in his or her presence. Tenn. Code Ann. §40-7-109 (2002). Further, the guard is authorized by statute to prevent and detect unauthorized activity on private property. Tenn. Code Ann. §62-35-103(16). Accordingly, in connection with these duties, the guard may enter the room to prevent and detect the use of illegal drugs.
4. A private person, including a security guard, who performs a search does so at his or her own risk. Probable cause to believe an offense was committed will not justify an arrest by a private person if in fact no offense was committed. *Martin v. Castner-Knott Dry Goods, Co.*, 181

S.W.2d 638, 642 (Tenn. App. 1944). Thus, a search incident to an improper arrest may subject a private person, and possibly his or her employer, to liability. *Id.*; *White v. Revco Disc. Drug Centers, Inc.*, 33 S.W.3d 713, 722 (Tenn. 1995). *See also* Tenn. Op. Atty Gen. No. 03-018 (copy attached).

5. See Question 4. *See also* Tenn. Op. Atty Gen. No. 03-018 (copy attached).

6. See Question 2. *See also* Tenn. Op. Atty Gen. No. 03-018 (copy attached).

7. Tennessee courts have recognized that “under some circumstances, a business owner may be liable for personal injuries caused by a security guard, even if the security guard is an independent contractor. *See Pryor v. Southbrook Mall Assocs.*, No. 02A01-9709-CV-00217, 1998 WL 802005, at *4 (Tenn. Ct. App. Nov. 18, 1998). The Court reasoned that a business owner has a duty to keep the business premises in a safe condition, and a security guard who acts unlawfully violates that duty, even if he is an independent contractor. *See id.*” *Derrick Webb v. Marvell Collier*, No. W1999-01682-COA-R3-CV, 2001 WL 589140, at *2 (Tenn. Ct. App. May 30, 2001) (copies attached). Therefore, depending on the circumstances, the security officer may be considered an agent of the person in control of the property.

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