

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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NASHVILLE, TENNESSEE 37243-0497

November 17, 2003

Opinion No. 03-149

Authority of State Certified Security Officer

QUESTIONS

1. Does a state certified security officer, unarmed or armed, have the right to stop a person on the property they are hired to protect for questioning if reasonable suspicion is present that the person is involved in unauthorized activity on the property?

2. Does a state certified security officer, unarmed or armed, have the right to stop a person in a vehicle on the property they are hired to protect for trespassing or any other law violation that occurs in their view?

3. Does a state certified security officer, unarmed or armed, have the right to detain a person for questioning on the property they are hired to protect if that person has given the security officer reason to stop, detain or question the person by their actions?

OPINIONS

1. Yes. A state certified security officer may stop a person in order to prevent and/or detect unauthorized activity on private property.

2. Yes. A state certified security officer may stop a person in a vehicle to enforce rules, regulations or local or state laws on private property.

3. Depending on the circumstances, the security officer may be able to detain an individual. By statute, a merchant or merchant's employee may detain a person under certain circumstances based on a belief that the person has committed theft or is attempting to commit theft. The officer may also detain a person to make a citizen's arrest.

ANALYSIS

1. Under Tenn. Code Ann. §62-35-102(16)(B), “[s]ecurity guard and patrol service” means protection of persons and/or property from criminal activities, including, but not limited to: (B) Prevention, observation or detection of any unauthorized activity on private property; . . .” The Tennessee Supreme Court has recognized that “private security guards are authorized to enforce

local and state laws, and to protect persons and property against general criminal activities, irrespective of whether the guard is a private citizen or an off-duty officer.” *White v. Revco Disc. Drug Centers, Inc.*, 33 S.W.3d 713, 720 (Tenn. 2000). Accordingly, if the security officer has a reasonable belief that unauthorized activity is taking place on the property, the officer may stop the person.

2. Tenn. Code Ann. §62-35-102(16)(A) authorizes a security guard to protect property from criminal activity, including, but not limited to “[p]revention and/or detection of intrusion, unauthorized entry, larceny, vandalism, abuse, fire or trespass on private property; . . .” Subsection 16(C) authorizes security guards to enforce state and local laws on private property. Therefore, the security guard is authorized to stop a vehicle for trespassing, or any other violation of law, by statute. In addition, licensed security officers may make an arrest as private citizens as authorized under Tennessee law. Tenn. Code Ann. §40-7-101 (2002).

3. Depending on the circumstances, a security officer may detain a person pending further investigation into a theft or attempted theft from a merchant. Tenn. Code Ann. §40-7-116(a). Further, as noted, a security guard is authorized by statute to protect persons and/or property from criminal activities. To the extent that the detention is necessary to this function, a security officer may detain an individual. Further, as this Office has stated in Tenn. Op. Atty. Gen. No. 03-018 (copy attached), the “detention becomes an arrest when the arresting individual performs any act that indicates an intention to take the person into custody and subjects the person arrested to the actual control and will of the person making an arrest.”

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