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Opinion No. 06-146

Private College Security Guards and Proprietary Security Organizations

QUESTIONS

1. Should a private college that employs unarmed security guards be considered a "proprietary security organization" by the Department of Commerce and Insurance under Tenn. Code Ann. § 62-35-102?

2. Should unarmed security guards hired by private colleges be required to register with the Department of Commerce and Insurance under Title 62, Chapter 35 of the Tennessee Code Annotated?

OPINIONS

1. Yes. A private college that employs unarmed security guards comes within the definition of a proprietary security organization.

2. Yes. Unless one of the exemptions listed in Tenn. Code Ann. § 62-35-103 applies to the individual security guard, an unarmed security guard employed by a private college is required to register with the Department of Commerce and Insurance.

ANALYSIS

1. Under the Private Protective Services Licensing and Regulatory Act, a proprietary security organization is defined as "any person or department thereof which employs a security guard/officer solely for such person in an employer/employee relationship . . .." Tenn. Code Ann. § 62-35-102(10). For purposes of Title 62, Chapter 35, a person "means any individual, firm, association, company, partnership, corporation, nonprofit organization, institution or similar entity." Tenn. Code Ann. § 62-35-102 (6). Under Tennessee law, an entity that employs security guards is either a contract security company or a proprietary security organization. Tenn. Code. Ann. § 62-35-102. If the entity is in the business of providing security guards to another, then the entity is a contract security company. Tenn. Code Ann. § 62-35-102(6). If the entity employees security guards to provide for its own security, that is, for the purposes of protecting property and/or persons associated with the entity (employees, customers, etc.), then it is a proprietary security organization. Tenn. Code Ann. § 62-35-102(10). Therefore, a private college that employs unarmed security

guards to safeguard property or persons on its campus or at its facilities is a proprietary security organization.

2. Pursuant to the Private Protective Services Licensing and Regulatory Act, no individual may work as an unarmed security guard without having first obtained the appropriate registration card from the Commissioner of the Department of Commerce and Insurance, or the Commissioner's designee. Tenn. Code Ann. §§ 62-35-115(a); 62-35-134(a). Although there are a number of specific statutory exemptions from the requirements of the Private Protective Services Licensing and Regulatory Act, there is no specific exemption from the registration requirement for unarmed security guards employed by private colleges. Tenn. Code Ann. § 62-35-115(a); Tenn. Code Ann. § 62-35-103. Thus, unless one of the exemptions listed in Tenn. Code Ann. § 62-35-103 applies to the individual unarmed security guard, he or she is required to register with the Department of Commerce and Insurance.[1]

[1] Although there is no specific exemption that excludes unarmed security guards working at private colleges from the Act's registration requirement, there are two exemptions that may be of greater importance to some private colleges and universites in Tennessee than to most other entities. The Act exempts from its requirements security guards, who are "special deput[ies] appointed pursuant to § 8-8-212" and "special police officer[s] appointed by the chief of police in a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000) according to the 1990 federal census or any subsequent federal census." Tenn. Code Ann. § 62-35-103(a)(11). The Act also exempts "special police officer[s] appointed by a chief of police or by the sheriff in any county having a population of not less than one hundred fifty-three thousand (153,000) nor more than one hundred fifty-three thousand one hundred (153,100) according to the 2000 federal census or any subsequent census." Tenn. Code Ann. § 62-35-103(a)(14). A limited number of Tennessee's private colleges and universities are empowered to employ and commission police offiers, who have been appointed as special deputies or special police officers; thus, the aforementioned exemptions may be particularly important to these schools. Tenn. Code Ann. § 49-7-118(f)(1). Pursuant to Tenn. Code Ann. § 49-7-118(f)(1), "[p]rivate universities having an enrollment of at least nine thousand (9,000) students and nine thousand (9,000) or more employees, and located within counties having a metropolitan form of government" and "private universities or colleges accredited by the Southern Association of Colleges and Schools and located within a county with a population in excess of eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census" are empowered to "employ and commission police officers . . .." The private colleges and universities to which Tenn. Code Ann. § 49-7-118(f)(1) applies may only employ or commission a police officer if the "chief law enforcement officer of the metropolitan government or municipal law enforcement agency in which the private university or college is located has appointed the police officer a special deputy in accordance with § 8-8-212, or has appointed the police officer a special police officer." Tenn. Code Ann. § 49-7-118(f)(1). The registration requirement of the Private Protective Services Licensing and Regulatory Act would not apply to these special deputies or special police officers. Tenn. Code Ann. §§ 62-35-103(a)(11); (a)(14).

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