

STATE OF TENNESSEE

OFFICE OF THE
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Opinion No. 12-77

Part-time Officers as Licensed Security Guards

QUESTIONS

1. Is a “part-time police officer/deputy,” “temporary police officer/deputy,” “reserve police officer/deputy” or “auxiliary police officer deputy” required to have an armed security guard license in order to receive compensation for providing services as a guard, patrol, or watchperson?
2. What authority does a “part-time police officer/deputy,” “temporary police officer/deputy,” “reserve police officer/deputy” or “auxiliary police officer deputy” have while receiving compensation for directing traffic, or providing services as a guard, patrol, or watchperson?
3. Can a “part-time police officer/deputy,” “temporary police officer/deputy,” “reserve police officer/deputy” or “auxiliary police officer deputy,” while receiving compensation for directing traffic or providing services as a guard, patrol, or watchperson, wear his or her departmental uniform at places other than where he or she is retained to provide such services?
4. When a law enforcement officer is employed by a private company or a security company to direct traffic on a public street or road, can this officer direct traffic outside of the primary jurisdiction where he or she is employed as a law enforcement officer and, if so, how is the officer to direct traffic under such circumstances?

OPINIONS

1. Yes. Only full-time, sworn police officers are exempted from obtaining an armed security guard license. Part-time, non-commissioned officers must comply with provisions of the Private Protective Services Licensing and Regulatory Act, codified at Tenn. Code Ann. § 62-35-101 to -142, in order to receive compensation for providing services as a guard, patrol, or watchperson.
2. While receiving compensation for acting as a security guard or directing traffic, a “part-time police officer/deputy,” “temporary police officer/deputy,” “reserve police officer/deputy” or “auxiliary police officer deputy” has the authority of a licensed security officer, any authority conferred by the agency employing the officer for security or traffic duty,

the authority vested in the officer by his respective government employer, and any rights of a private person.

3. No. Tenn. Code Ann. § 62-35-127 expressly prohibits any person, while performing the function of a security guard, from wearing any badge, insignia, shield, patch or pattern that indicates that the person is a sworn peace officer, or contains the word “police” except as expressly allowed by Tenn. Code Ann. § 62-35-141. The exception provided by Tenn. Code Ann. § 62-35-141 only applies to full-time, certified officers in designated Tennessee counties.

4. Tenn. Code Ann. § 62-35-103(a)(15)(B) authorizes commissioned, uniformed police officers, state troopers and/or sheriff deputies to direct traffic on any public roadway located within Tennessee regardless of such officer’s primary jurisdiction. Traffic is to be directed in accordance with the parameters outlined by Tenn. Code Ann. § 62-35-103(a)(15)(B).

ANALYSIS

1. The Private Protective Services Licensing and Regulatory Act (“Act”), codified as Tenn. Code Ann. § 62-35-101 to -142, governs the licensing and conduct of “contract security companies.” The term “contract security company” is broadly defined as “any person engaging in the business of providing or undertaking to provide a security guard and patrol service on a contractual basis for another person.” Tenn. Code Ann. § 62-35-102(6). “Person” is likewise broadly defined to include “any individual, firm, association, company, partnership, corporation, nonprofit organization, institution or similar entity.” Tenn. Code Ann. § 62-35-102(8). Thus part-time, non-commissioned officers must comply with provisions of the Act in order to receive compensation for services as a guard, patrol, or watchperson. *See* Tenn. Code Ann. § 62-35-104.

The Act does distinguish between full-time and part-time officers.¹ Specifically, Tenn. Code Ann. § 62-35-103(7) exempts from the Act full-time sworn peace officers who are receiving compensation for services as a guard, patrol or watchperson under a contract with a private business that is properly licensed by the State. *See also* Tenn. Comp. R. & Regs. 078-5-2.03. The Act contains no similar exemption for part-time sworn peace officers. The omission of

¹ The provisions of the Tennessee Code governing the employment and training of police officers defines part-time officers as follows:

“Part-time police officer,” “temporary police officer,” “reserve police officer,” or “auxiliary police officer” means any person employed by any municipality or any political subdivision of the state of Tennessee whose primary responsibility is to support the full-time police officer in the prevention and detection of crime, apprehension of offenders, and assisting in the prosecution of offenders for appropriate remuneration in measure with specifically assigned duties or job description. Part-time police officers shall work not more than twenty (20) hours per week, for a total of not more than one hundred (100) hours per month. Any police officer who works in excess of the maximum hours as specified in this subdivision (3) shall be reclassified to a full-time status and must meet all requirements for standards and training as mandated under the law and peace officer standards and training commission rules.

Tenn. Code Ann. § 38-8-101(3).

part-time officers from the list of persons under Tenn. Code Ann. § 62-35-103 who are exempt from the licensing and registration requirements of the Act indicates that the General Assembly intended to require part-time officers to comply with the requirements set forth in the Act as a condition for receiving compensation for employment as a guard, patrol or watchman and for being permitted to carry firearms while on the job. *See Carver v. Citizens Utilities Co.*, 954 S.W.2d 34, 35 (Tenn. 1997) (recognizing the general rule of statutory construction “that the mention of one subject in a statute means the exclusion of other subjects that are not mentioned.”)²

2. While receiving compensation for acting as a security guard or directing traffic, a “part-time police officer/deputy,” “temporary police officer/deputy,” “reserve police officer/deputy” or “auxiliary police officer/deputy” has the authority granted under the Act to a licensed security officer, the authority vested in the officer by his respective government employer, any general authority conferred by the agency employing the officer for security or traffic duty, and any rights of a private person. The primary role of part-time police officers is to support full-time police officers in the prevention and detection of crime, apprehension of offenders, and assisting in the prosecution of offenders for appropriate remuneration in accordance with specifically assigned duties or job description. *See* Tenn. Code Ann. § 38-8-101(3). In *White v. Revco Discount Drug Centers, Inc.*, 33 S.W.3d 713, 723 (Tenn. 2000), the Tennessee Supreme Court observed that, in a case addressing the employer’s liability for torts committed by off-duty police officers employed as security guards, “special officers usually only have the complete authority and powers of regular officers to the extent allowed by the special commission” from his or her government employer.³ Furthermore, law enforcement officers generally only have authority within their respective jurisdictions.⁴ The employing agency also has the power to determine the authority and duties of a part-time police officer retained to

² The Act’s exclusion of part-time officers from this exemption is reasonable considering the extensive training required of full-time sworn peace officers that is not required of part-time officers. A full-time officer must be commissioned and attend a Basic Law Enforcement Training Course. Tenn. Comp. R. & Regs. 1110-02-.01(1). The Training Course requires officers to attend a minimum of 400 hours of instruction and study. Tenn. Comp. R. & Regs. 1110-07-.01(1)(a). Among other courses, such training includes a minimum of 40 hours of firearms training, 75 hours of patrol procedures, and 50 hours of criminal and constitutional law and procedures. Tenn. Comp. R. & Regs. 1110-07-.01(1)(b)(1-14). In contrast, part-time officers are required to meet all of the pre-employment requirements set forth in Tenn. Code Ann. § 38-8-106, but are not required to be commissioned. Part-time officers are only required to attend 80 hours of training in whatever duties they are required to perform by the employing agency. Tenn. Comp. R. & Regs. 1110-8-.03. Furthermore, under Tennessee law, full-time police officers may carry firearms at all times and in all places within Tennessee, on duty or off duty. Tenn. Code Ann. § 39-17-1350. Part-time or reserve officers may only carry firearms if they are commissioned and have been authorized in writing by the chief law enforcement officer of their jurisdiction. *Id.*

³ *Compare* City of Goodlettsville Municipal Code of Ordinances, § 6-203, located at <http://www.cityofgoodlettsville.org> (reserve officers for the City of Goodlettsville have the authority to exercise police powers only when ordered to do so by the chief of police or the city manager) *with* City of Hendersonville Municipal Code § 6-203, located at <http://www.hvilletn.org> (reserve officers for the City of Hendersonville have full police powers while on duty, but cannot carry firearms in any event except when directed to do so by the chief of police).

⁴For example, under Tennessee law a sheriff’s authority includes patrolling the roads within the boundaries of the county, see Tenn. Code Ann. § 8-8-213, and the authority of police officers in all incorporated towns and cities extends one mile from the corporate limits of such town. Tenn. Code Ann. § 6-54-301.

provide security or direct traffic, and that authority can vary from agency to agency. *See id.* at 724. Finally, a part-time police officer employed as a security guard or to direct traffic has the authority conferred by the Act, *see* Tenn. Code Ann. §§ 62-35-102, -104 & -125, and that of a private person, which includes the power to make an arrest pursuant to Tenn. Code Ann. § 40-7-101. *See generally* Op. Tenn. Att’y Gen. 03-018 (Feb. 19, 2003) (outlining arrest authority of security guards).

3. While receiving compensation for services as a guard, patrol, or watchperson, part-time officers are prohibited from wearing their primary jurisdiction’s uniform. Tenn. Code Ann. § 62-35-127 expressly prohibits any person, while performing the function of a security guard, from wearing any badge, insignia, shield, patch or pattern that indicates that the person is a sworn peace officer or contains the word “police.” Tenn. Code Ann. § 62-35-141(b) provides a limited exception to this prohibition by expressly authorizing, within certain counties, certified full-time sworn peace officers to wear their primary jurisdiction’s uniform if the jurisdiction has authorized its officers to do so while providing security outside of the officer’s primary jurisdiction.⁵ Therefore, part-time law enforcement officers working as a security guard may not identify themselves as law enforcement officers by wearing the uniform of their primary jurisdiction.

4. Law enforcement officers, when employed by a private company to provide traffic control, have the authority to direct traffic outside of their primary jurisdiction. Tenn. Code Ann. § 62-35-103(15) exempts from compliance with the Act companies that provide certified law enforcement officers to others exclusively for traffic control purposes and authorizes under certain circumstances commissioned, uniformed police officers, state troopers and/or sheriff deputies, regardless of primary jurisdiction, to direct traffic upon any public roadway located in Tennessee. This statute specifically states that the Act does not apply to:

(A) A company using or providing certified law enforcement officers to others exclusively for traffic control purposes within temporary work zones located in the public right-of-way and established in accordance with the manual on uniform traffic control devices (MUTCD); provided, however, that any department providing the law enforcement officers may require the company to have on staff a traffic control supervisor or a traffic engineer in order to insure compliance with the MUTCD and may also require the company to demonstrate proof of liability insurance; or

(B) Commissioned, uniformed police officers, state troopers and/or sheriff deputies, upon departmental approval, are authorized, regardless of primary jurisdiction, to direct traffic in departmental approved uniforms or utilizing other governmental equipment, as may be required, in temporary work zones or for incident management purposes, to meet the needs of and control all road uses, whether motorists, bicyclists, or pedestrians, within the highway, including persons with disabilities in accordance with the Americans with Disabilities Act

⁵As of this date, only Davidson and Rutherford counties are included within the provisions of Tenn. Code Ann. § 62-35-141(c).

of 1990 (ADA), Title II, Paragraph 35.130, upon any public roadway located within the state.

Tenn. Code Ann. § 62-35-103(15) (A) & (B).⁶

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⁶ In Op. Tenn. Att’y Gen. 03-022 (Feb. 25, 2003) this Office implicitly opined that even off duty police officers employed as licensed security officers could not direct traffic on public roads, and that the power to direct traffic on public roads was vested solely with police officers working in their official capacity. This opinion has been preempted by the General Assembly’s subsequent amendment of Tenn. Code Ann. § 62-35-101(15). Chapter 661 of the 2004 Tennessee Public Acts added subsection (B) to Tenn. Code Ann. § 62-35-101(15), quoted above, which specifically authorizes commissioned officers to direct traffic upon any public roadway. 2004 Tenn. Pub. Acts, ch. 661.