

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

August 21, 2015

Opinion No. 15-64

License for Church Congregations Using Volunteer Members for Security Purposes

Question 1

May a local congregation of a church use members of that congregation to act as a security team for the church without complying with the licensure and notification requirements of the Private Protective Services Licensing and Regulatory Act if the members of the security team are unarmed, unpaid volunteers?

Opinion 1

Yes. If the security team consists of unpaid volunteer church members, neither the church nor its local congregation would be “engaging in the business of providing . . . a security guard and patrol service on a contractual basis for another person,” Tenn. Code Ann. § 62-35-102(6), nor would they be “employ[ing] a security guard/officer solely for the [church] in an employer/employee relationship,” Tenn. Code Ann. § 62-35-102(10). Thus, neither the church nor its local congregation would be a “contract security company” or a “proprietary security organization” as defined in Tenn. Code Ann. § 62-35-102(6) and (10) and, therefore, they would not be subject to the Act’s licensing or notification requirements.

Question 2

Would the opinion in response to Question 1 be different if the members of the local congregation acting as a security team on a non-paid, volunteer basis are armed and have weapons permits?

Opinion 2

No. Whether the security team is armed or unarmed is immaterial to the analysis of whether the church or its local congregation is a “contract security company” or a “proprietary security organization.”

ANALYSIS

This request concerns the applicability of the licensing and notification requirements of the Private Protective Services Licensing and Regulatory Act, Tenn. Code Ann. §§ 62-35-101, *et seq.* (the “Act”), when unpaid volunteer church members serve as a security team for the church or one of its local congregations.

1. Pursuant to the Act, “it is unlawful for any person to act as a contract security company without having first obtained a license from” the Commissioner of Commerce and Insurance. Tenn. Code Ann. § 62-35-104. A “contract security company” is 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” includes individuals and entities such as nonprofit organizations and institutions. Tenn. Code Ann. § 62-35-102(8).

When members of a church or its local congregation volunteer to provide security services to the church or its local congregation without remuneration, the licensing requirement does not apply because neither the church nor the local congregation is engaged in the business of providing security services on a contractual basis for another person. Since the members are acting as unpaid volunteers, there is no business activity taking place, there is no contractual relationship, and the church or congregation is at most providing the security services to itself, not to “another” person. Thus, neither the church nor its local congregation is a “contract security company” within the purview of the Act. Accordingly, under these circumstances, the Act does not require the church or its local congregation to be licensed as a “contract security company.”

It is also “unlawful for any person to act as a proprietary security organization without first having notified the commissioner in writing.” Tenn. Code Ann. § 62-35-123(a). A “proprietary security organization” is defined as “any person or department of the organization that employs a security guard/officer solely for the person in an employer/employee relationship.” Employees receive payment for their services. A person who offers to perform a job as a volunteer, without pay, in order to “help out” is not an employee. *Hill v. King*, 663 S.W.2d 435, 440-442 (Tenn. Ct. App. 1983) *perm. app. denied*, Dec. 19, 1983; *Garner v. Reed*, 856 S.W.2d 698, 700 (Tenn. 1993). Thus, church members who provide security services without pay and as volunteers are not employees of the church or the local congregation and, as a result, neither the church nor its local congregation is a “proprietary security organization” within the purview of the Act. Accordingly, neither the church nor its local congregation would be required to notify the Commissioner that it is acting as a “proprietary security organization.”

2. For the reasons explained above, neither the church nor its local congregation would be required to be licensed as a “contract security company” or to provide notification as a “proprietary security organization” when members of the church act as a security team for the church or a local congregation on a voluntary, unpaid basis. Whether the volunteer, unpaid security team is armed or unarmed has no bearing under the Act on the status of the church or its local congregation as a contract security company or proprietary security organization. Thus, the analysis remains the same, even if the security team members are armed. No provision of the Act would require the church or its congregation to be licensed or to provide notification merely because the unpaid volunteer church members on the security team were carrying weapons as permitted by, and in compliance with, otherwise applicable law.

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