

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

April 11, 2017

Opinion No. 17-28

Employment of Law Enforcement Officers as Private Security Personnel

Question 1

Is a company that uses or provides only commissioned, uniformed law enforcement officers to direct traffic in temporary work zones required to be registered as a contract security company and/or a proprietary security organization?

Opinion 1

No. The registration requirements of the Private Protective Services Licensing and Regulatory Act (“Act”) do not apply to companies that use or provide certified law enforcement officers to others exclusively for traffic control purposes within temporary work zones. Tenn. Code Ann. § 62-35-103(a)(15)(A).

Question 2

If the answer to question 1 is “no,” what authority, if any, does the Commissioner have to require an unregistered company that employs law enforcement officers to direct traffic in a temporary work zone to produce a roster of its employees as proof that it is exempted from the Act pursuant Tenn. Code Ann. § 62-35-103?

Opinion 2

Since the Act “does not apply to” companies that employ law enforcement officers exclusively to direct traffic in temporary work zones, Tenn. Code Ann. § 62-35-103(a)(15)(A), the Commissioner has no authority to regulate or inspect or investigate them.

Question 3

Are law enforcement agencies considered a “person” as defined by Tenn. Code Ann. § 62-35-102(8)?

Opinion 3

No. A law enforcement agency is not a “person” as defined by the Act.

Question 4

If the answer to question 3 is “yes,” must law enforcement agencies that contract to provide law enforcement officers, as a matter of secondary employment, be licensed as a contract security company and/or a proprietary security organization?

Opinion 4

In light of Opinion 3, this question is now moot.

ANALYSIS

The Private Protective Services Licensing and Regulatory Act (“Act”), Tenn. Code Ann. § 62-35-101 *et seq.*, governs the registration, licensing, and conduct of “contract security companies” and “proprietary security organizations.” “Except as otherwise provided in this chapter, it is unlawful for any person to act as a contract security company without having first obtained a license from the commissioner.” Tenn. Code Ann. § 62-35-104. Likewise, it is 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 “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). 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.” Tenn. Code Ann. § 62-35-102(10). The Act defines a “person” as “any individual, firm, association, company, partnership, corporation, nonprofit organization, institution or similar entity.” Tenn. Code Ann. § 62-35-102(8). The Act lists persons who are exempt from its provisions. *See* Tenn. Code Ann. § 62-35-103. Unless specifically exempted by the Act, any person who provides security services to another for compensation or directly employs a security guard must comply with the applicable provisions of the Act.

The Act is administered and enforced by the Commissioner of Commerce and Insurance (“Commissioner”), who “may promulgate rules that are reasonably necessary to effectuate the purposes” of the Act. Tenn. Code Ann. § 62-35-129(a)-(b). The Commissioner may also “at all reasonable hours conduct inspections/investigations of contract security companies, proprietary security organizations and security officers/guards” to ensure compliance with the Act. Tenn. Code Ann. § 62-35-129(e). Additionally, the Commissioner is authorized to take disciplinary action against those who violate the Act. Tenn. Code Ann. § 62-35-130.

1. Registration of Companies Using or Providing Law Enforcement Officers to Direct Traffic

Companies that use or provide “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)” are

specifically exempted from the Act. Tenn. Code Ann. § 62-35-103(a)(15)(A). In other words, the legislature carved out an exception to the Commissioner’s regulatory authority for companies that employ or provide law enforcement officers to others exclusively to control traffic in temporary work zones. Even though these companies might otherwise be “contract security companies” or “proprietary security organizations” subject to regulation, they are nevertheless expressly exempt from the Act pursuant to Tenn. Code Ann. § 62-35-103(a)(15)(A).

2. Commissioner’s Authority to Regulate Unregistered Companies

The Commissioner has authority to administer and enforce the Act. *See* Tenn. Code Ann. § 62-35-129. In particular the commissioner may “conduct inspections/investigations of contract security companies, proprietary security organizations and security officers/guards to ensure compliance with this chapter.” Tenn. Code Ann. § 62-35-129(e).

But the Commissioner’s regulatory reach is limited to those persons subject to the Act’s provisions. Since the Act “does not apply to” companies that employ law enforcement officers exclusively to direct traffic in temporary work zones, Tenn. Code Ann. § 62-35-103(a)(15)(A), Tenn. Code Ann. § 62-35-129(e) does not apply to those companies, and, therefore, the Commissioner has no authority to regulate or inspect or investigate them. Allowing the Commissioner nevertheless to require these companies to produce a roster of their employees as to prove that they are entitled to the exemption would be contrary to the exempt status that the legislature intended.

3. Law Enforcement Agencies

The Act defines a “person” as “any individual, firm, association, company, partnership, corporation, nonprofit organization, institution or similar entity.” Tenn. Code Ann. § 62-35-102(8). “Ordinarily, absent legislation, neither the state, a political subdivision thereof, nor a municipal corporation, is a ‘person’ within the meaning of a statute using the term.” *Johnson City v. Cowles Commc’n, Inc.*, 477 S.W.2d 750, 753 (Tenn. 1972). Here, the legislature did not include the state or local government in the Act’s otherwise broad definition of a “person.” Nor do any of the types of entities listed necessarily encompass governmental agencies. Accordingly, a law enforcement agency, which is a division of state or local government, is not a “person” subject to the Act.

4. Registration Requirement for Law Enforcement Agencies

In light of Opinion 3, Question 4 is now moot.

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