

Opinion No. 70-87

November 17, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Mr. Tom Wiley Superintendent Albuquerque Public Schools Albuquerque, N.M.
87103

QUESTIONS

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The Albuquerque Public School system contemplates organizing a number of its employees into a security and patrol force to guard school buildings and property. This force would be made up of regular full-time employees of the school system. Would such a security force:

(A) be subject to the provisions of the Private Investigators Act, Sections 67-33-13, **et seq.**, N.M.S.A., 1953 Comp. (1969 Supp.); or

(B) be subject to state statutes and city ordinances governing the carrying and concealment of deadly weapons?

CONCLUSIONS

A. No.

B. Yes. See Analysis.

OPINION

{*149} ANALYSIS

In 1965, the Twenty-Seventh Legislature determined that merchant patrols, private patrol operators, and private investigators should be licensed and regulated by the Office of the Attorney General. The Private Investigators Act, **supra**, establishes a comprehensive licensing plan and empowers the Attorney General to supervise and regulate licensees, but it also grants certain types of security forces specific exemption from the Act's provisions. Section 67-33-10 of the Act declares:

67-33-10. Persons exempted. -- This {*150} act (67-33-1 to 67-33-49) does not apply to:

A. A person employed exclusively and regularly by one [1] employer in connection with the affairs of such employer only and where there exists an employer-employee relationship.

B. An officer or employee of the United States of America or of this state or the political subdivision thereof while such officer or employee is engaged in the performance of his official duties.

C. A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

D. A charitable philanthropic society or association duly incorporated under the laws of this state which is organized and maintained for the public good and not for private profit.

E. A person engaged exclusively in a profession licensed by a board of this state.

F. A licensed collection agency or an employee thereof while acting within the scope of his employment while making an investigation of the location of a debtor or his property.

G. Admitted insurers and agents and insurance brokers licensed by the state performing duties in connection with insurance transactions by them.

H. Any institution subject to the jurisdiction of the commissioner of banking of the state of New Mexico or the comptroller of currency of the United States.

It will be observed that the terms of paragraphs (A) and (B) apply to the present situation; we are informed that the proposed security force would be composed of **regular full-time employees** of the school system. Implicit in the description of these individuals as **employees** is the fact that their operations would be conducted under the supervision and guidance of school authorities. Moreover, paragraph (B) permits exemption of employees of political subdivisions of the State. It is well-settled that, for purposes such as this, school districts and local school boards are political subdivisions of the State. Section 77-1-2(J), N.M.S.A., 1953 Comp.; see also **McWhorter v. Board of Education**, 63 N.M. 421, 320 P.2d 1025 (1958); **State ex rel. Hannah v. Armijo**, 37 N.M. 423, 24 P.2d 274 (1933); Opinion of the Attorney General No. 69-16, issued February 27, 1969; Opinion of the Attorney General No. 64-6, issued January 21, 1964.

The effect of paragraphs (A) and (B), **supra**, is to exempt the contemplated security force from the operation of the Private Investigators Act. We wish to emphasize, however, that the effect of paragraph (A) is completely void if any of the security force employees are part-time workers who hold other jobs with different employers. Likewise, the effect of paragraph (B) depends on the security force members' being under the supervision and guidance of school authorities while performing their duties. See Bureau of Private Investigators, Office of the Attorney General Rules and Regulations, Regulation XI. Naturally, whatever authority to patrol and protect property may be conferred on the force's members ends when they leave work each day; no member may use his uniform, badge, or other emblems of authority in performing private security work on a part-time basis for personal clients.

Both the State of New Mexico and the City of Albuquerque have enacted statutes and ordinances governing the use of deadly weapons. While this office does not undertake to interpret the terms of ALBUQUERQUE, NEW MEXICO CRIMINAL CODE Section 9(c) (1964), it is noted that the Section is in all material respects identical to Section 40A-7-2, N.M.S.A., 1953 Comp., which provides:

40A-7-2. Unlawful carrying of a deadly weapon. -- Unlawful carrying of a deadly weapon consists of carrying a concealed loaded firearm or any other type of deadly weapon anywhere, except in the following cases:

A. In the person's residence or on real property belonging to him as owner, lessee, tenant or licensee;

{*151} B. In a private automobile or other private means of conveyance for lawful protection of the person's or another's person or property, while traveling; or

C. By a peace officer in the lawful discharge of his duties. Nothing in this section shall be construed to prevent the carrying of any unloaded firearm.

Whoever commits unlawful carrying of a deadly weapon is guilty of a petty misdemeanor.

At another point in the New Mexico Criminal Code, the term "peace officer" is defined. Section 40A-1-13(C) states:

C. "Peace Officer" means any public official or public officer vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes;

This office has considered the application of the definition to varying situations, and it seems clear that the use of the term in describing the planned security officers would be improper. Opinion of the Attorney General No. 63-107, issued August 20, 1963. Since neither this exemption nor the others contained in the statute apply to the security force, it is the view of this office that the state statutes restricting the possession and use of deadly weapons applies, and that the planned security force must operate in compliance with those statutes.

The Attorney General is authorized to render formal and official opinions only to those public officials set forth in Section 4-3-2 D, N.M.S.A., 1953 Compilation. Necessarily, therefore, the foregoing is not to be considered an official opinion of the Attorney General but is an informal and unofficial expression of view given with the desire to be helpful to you.

By: Richard J. Smith

Assistant Attorney General