

Replica of
OFFICE OF THE ATTORNEY GENERAL OF THE STATE
OF NEW JERSEY

September 27, 1978

Colonel Clinton L. Pagano
Superintendent
Division of State Police
Box 68
West Trenton, New Jersey 08625

FORMAL OPINION No. 11 - 1978

Dear Colonel Pagano:

In Formal Opinion No. 23 - 1977 we concluded that the statutory exemption from the Private Detective Act of 1939 for ". . . any officer or employee solely, exclusively and regularly employed" by an enumerated government agency was applicable only while municipal police officers perform police related activities for and on behalf of the municipality. The performance of police related activities by off duty policemen which are not under the supervision of a municipality, it was further concluded, would subject them to the requirements of the Private Detective Act to the same extent as would police related activities performed by any other person. As a result, we advised that off duty police officers who engage in activity regulated by this Act would be subject to the licensing requirements of the Act except to the extent commercial enterprises and similar private entities made arrangements directly with the employing municipality to use policemen during their off duty hours. Questions have subsequently arisen as to the meaning of that opinion and the interpretation of this Act as it bears on these activities of off duty municipal policemen. As a result, you have asked for clarification.

Initially, it is necessary to review the pertinent statutory provisions in order to determine the nature of the activities contemplated by the Legislature. *N.J.S.A. 45:19-10* makes it unlawful for an unlicensed person to "engage in the private detective business or as a private detective or investigator or advertise his . . . business to be a private detective business" without having first obtained a license to conduct such business from the Superintendent of State Police. The statutes further provide in *N.J.S.A. 45:19-11* that any person desiring to conduct a private detective business or the business of a private detective shall file an application with the Superintendent of State Police. The term "private detective business" is defined in *N.J.S.A. 45:19-9(a)* which states in pertinent part:

"The term 'private detective business' shall mean the business of conducting a private detective agency or for the purpose of making for hire or reward any investigation or investigations for the purpose of obtaining information with reference to any of the following matters, Also it shall mean *the furnishing for hire* or reward of watchmen or guards

or private patrolmen or other persons to protect persons or property, either real or personal, or for any other purpose whatsoever." (Emphasis supplied.)

The words of a statute are to be given their ordinary and well understood meaning. *Service Armament Co. v. Hyland*, 70 N.J. 550, 556 (1976). Therefore, in interpreting the above cited statutory language, it is apparent that those police related activities subject to licensure are those which may be fairly characterized as the conduct of a "business" or the "furnishing for hire or reward" of watchmen or guards or private patrolmen to protect persons or property. A business or the conduct of furnishing persons for hire is commonly understood in this context to refer to a "commercial enterprise for profit." Webster's Seventh New Collegiate Dictionary, P. 113. This interpretation has been reflected in analogous instances of government regulation. In *Sands v. Board of Examiners of Electrical Contractors*, 54 N.J. 484 (1969), the court was concerned with a regulatory statute dealing with those who engage in the "business as an electrical [*4] contractor for hire." The court held that it would be in disregard of the ordinary meaning of those terms to equate electrical work performed as incident to the sale of a private house with engaging in the business of electrical contracting for hire. The court concluded that the statutory language used was intended to reach the typical category of electricians who hire out either to general contractors or individual homeowners. This interpretation was also given to a statute which authorized municipalities to regulate the "business" of trailer camps in *Morris v. Elk Twp.*, 40 N.J. Super. 34 (Law Div. 1956). The placing of one trailer upon a parcel of vacant land would not subject the owner to municipal regulation, since the court characterized a "business" to be a "commercial enterprise for profit." These definitions of the pertinent statutory language reinforce that the present statute was designed by the Legislature to govern a regular business for profit as an independent contractor and not to deal with or affect the use of off duty policemen or any other person by a private commercial establishment to perform police related functions on an employment basis.

The general framework of the statute regulates only those who are conducting a business and holding themselves out generally for hire or to a class of the public to perform those functions. Indeed, the term "private detective business" expressly excludes any employees, investigator or investigators, solely, exclusively and regularly employed by any person, association or corporation insofar as their acts relate solely to the business of their respective employers. *N.J.S.A. 45:19-9(a)*. There is consequently a clear legislative indication to leave free of regulation those persons who act as employees of private commercial establishments to perform police related responsibilities for them at their request and under their direction.

The legislative history of the enactment of the Private Detective Act also supports this view. The statement on Assembly Bill No. A 185, later enacted as Laws of 1939, c. 369, stated that:

"The purpose of this act is to regulate the business of private detective and private detective agencies and to provide such regulations as will establish the business of private detectives on that high plane which will deserve the confidence and respect of the citizens of the State of New Jersey and at the same time protect all persons engaged in the business of

private detective against interlopers, racketeers and irresponsible persons who would use their business as private detective to cover up criminal activities and malicious impositions on the public."

The legislative focus was thus with the private detective, private watchman or private patrolman who holds himself out generally to accept public patronage or clientage for profit and to protect the members of the public with whom the detective may deal or otherwise be involved.

It is therefore clear that where arrangements are made with off duty municipal police or any other persons to perform police related activities for private commercial establishments as their employees on either a full or part time basis, those activities would not fall within the intendment of the Act.¹ Rather, the statute would be directed only to those instances where municipal policemen or other persons act as an independent contractor and advertise, hold themselves out, actively pursue and solicit a variety of police related opportunities on a regular basis for hire or profit.²

In summary, therefore, it is our opinion that regular members of a municipal police department during their off duty hours or any person may engage in police related activities for private persons or entities without being in violation of the Private Detective Act, so long as those activities do not constitute the business of a private detective or private security guard or watchman.

Very truly yours,

JOHN J. DEGNAN
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

¹ It should be pointed out that in any instance where a private commercial entity does not employ someone directly to perform initial related duties, it has the option, as expressed in our initial opinion (Formal Opinion No. 23- 1977), to make provision directly with a municipal police department to secure the services of a police officer for these purposes with remuneration paid through the municipality. Of course, this option is available only where a municipality is willing to participate in such an arrangement.

² It is suggested that the Superintendent of State Police promulgate appropriate rules and guidelines to further define the types or categories of police related activities contemplated by the Act.