

MAINE STATE LEGISLATURE

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February 8, 1974

Honorable Kenneth M. Curtis
Governor
State House
Augusta, Maine 04330

Dear Governor Curtis:

This replies to your memorandum of January 15, 1974, seeking an opinion as to the licensing requirements of Chapter 55-A, Title 32 M.R.S.A., relative to persons being hired by private businesses to perform the functions of a private watch, guard, or patrolman.

32 M.R.S.A. § 3803, sub-§ 4 provides the following pertinent definition:

"'Watch, guard or patrol agency' means the business of watch, guard or patrol agency, including the furnishing, for hire or reward, of watchmen, guards, private patrolmen or other persons to protect persons or property, to prevent the theft or the unlawful taking of goods, wares or merchandise, or the misappropriation or concealment thereof of money, bonds, stocks, notes or other valuable documents, papers or articles of value, or to procure the return thereof, whether or not other functions or services are also performed for hire or reward, or other persons are employed to assist therein."

32 M.R.S.A. § 3804 imposes the following licensing requirement for such an "agency":

"No person, firm, corporation or other legal entity shall engage in, advertise or hold himself out as being engaged in, nor solicit . . . the business of watch, guard or patrol agency, notwithstanding the name or title used in describing such business, unless licensed for such purpose as provided in section 3806."

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Your first question reads:

"May police officers hire out as watch, guards and patrolmen to private businesses during their off-duty hours without being licensed by the State?"

The answer to that question is negative, subject to the following explanation. The statute does not require that an individual, private watchman, guard or patrolman must be licensed if he is employed by a licensed agency. An individual must be licensed if he engages in the business of a watch, guard or patrol agency, the relationship being of a contractual nature.

We take this to mean that if an individual engages in, advertises or holds himself out as being engaged in or solicits the business of watch, guard or patrol agency then he must be licensed.

Your second question reads:

"May industrial and commercial firms hire personnel for watch, guard and patrol services who are not licensed by the State?"

The answer to that question is affirmative. The prohibition in the statute is against one who would "engage in, advertise or hold himself out as being engaged in . . . [or] . . . solicit . . . the business of watch, guard or patrol agency . . ." The statute does not prohibit an industrial or commercial firm from employing someone who is not duly licensed, and assigning that person to watch, guard or patrol duties for the employer, the relationship being one of employer-employee.

The Legislature has not prohibited off-duty work, in general, by police officers, nor has it prohibited them from the business of watch, guard or patrol agency. Accordingly, unless he is prohibited by his contract with the municipality from engaging in such off-duty activity, he can do so without a license by the State, provided he is working for a licensed agency, or is in the relationship of an employee of an employer for whom he is performing the duties of a watch, guard or patrol person.

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If I can be of any further aid to you in this matter,
please advise me.

Yours very truly,

JON A. LUND
Attorney General

JAL/jwp