81-14

JAMES E. TIERNEY
ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

February 4, 1981

Honorable R. Donald Twitchell
Honorable Karen L. Brown
House of Representative
State House
Augusta, Maine 04333

Dear Representatives Twitchell and Brown:

This will respond to your inquiries in which you seek our opinion regarding the following question:

> "Whether a deputy sheriff who, on an off-duty and part-time basis, is privately employed as a security guard, may be compensated directly by the private employer or whether the deputy sheriff must pay such compensation to the county treasurer and then seek reimbursement from him?"

For the reasons discussed later in this opinion, it is our conclusion that, in the circumstances described above, a deputy sheriff may receive and retain compensation directly from the private employer.

Prior to discussing your precise question, we believe it is important to discuss the authority of deputy sheriffs to perform private security guard work during their off-duty hours. Moreover, we will also briefly discuss the provisions of the "Private Security Guard Act" (32 M.R.S.A. §§3761 to 3783) and the application of that Act to deputy sheriffs. We do this because we have been advised that there is a considerable amount of confusion concerning these issues among the county sheriffs departments.

- I -

Our research has not uncovered any provision of State law which expressly addresses the question of whether a public law enforcement officer may be privately employed as a security guard during his off-duty hours.[1] Nevertheless, it has been

---

1. We would point out, however, that the language of

generally recognized by the courts, including the Supreme Judicial Court of Maine, that, in the absence of a prohibition imposed by statute or local ordinance and with the consent of the governmental employer, a public law enforcement officer may engage in outside employment as a private security guard during his off-duty hours, and may do so while in uniform. See Neallus v. Hutchinson Amusement Co., 126 Me. 469, 471, 139 A. 671, 672 (1927) citing Hirst v. Fitchburg & L. St. Ry. Co., 196 Mass. 354, 82 N.E. 10 (1907). See also National Labor Relations Bd. v. Jones and Laughlin Steel Corp., 331 U.S. 416, 429 (1947); Seymoure v. Director General of Railroads, 290 F.291, 295-96 (D.C. App. 1923); Kunsir v. Pressed Steel Car Co., 201 F.146, 150-51 (S.D.N.Y. 1912); Carmello v. Miller, Mo.App., 569 S.W. 2d 365, 367 (1978). See generally Liability of Private Employer of Police Officer for Latter's Negligence or other Misconduct, 55 A.L.R. 1197, 1198-99 (1928), and cases cited therein.

An examination of these judicial decisions reveals quite clearly that in order for a police officer to be privately employed as a security guard during his off-duty hours, he must first obtain the consent of his governmental employer. Moreover, the Legislature or individual municipalities and county governments are free to adopt ordinances or regulations circumscribing the outside employment of its law enforcement officers. See Croft v. Lambert, 228 Or.76, 357 P.2d 513 (1960); Isola v. Borough of Belmar, 34 N.J. Super. 544, 112 A.2d 738 (1955); Bell v. District Court of Holyoke, 314 Mass. 622, 51 N.E. 2d 328 (1943). See generally, Annotation, Public Employee-Outside Occupation, 88 A.L.R. 2d 1235 (1963). Finally, even in the absence of a statute or municipal ordinance forbidding outside employment, a law enforcement agency may establish departmental rules and regulations prohibiting or limiting a law enforcement officer from engaging in private security guard work. See Hofbauer v. Board of Police Commissioners, 133 N.J.L. 293, 44 A.2d 80 (1945); Flood v. Kennedy, 26 Misc. 2d 172, 211 N.Y.S. 2d 488, aff'd, 16 App. Div. 2d 768, 228 N.Y.S.2c 461 (1961); Cox v. McNamara, 8 Or. App. 242, 493 P.2d 54 (1971), cert. denied, 409 U.S. 882 (1972). See also Eaton County Sheriffs Assoc. v. Smith, 37 Mich. App. 427, 195 N.W.2d 12 (1971). See generally Annotation, Police or Firemen - Outside Occupation, 150 A.L.R. 128 (1944).

In view of the foregoing, it is our opinion that a public law enforcement officer, including a deputy sheriff,

---

32 M.R.S.A. §3782(1)(1978) suggests, at least implicitly, that such private employment by law enforcement officers is permissible. 32 M.R.S.A. §3782(1)(1978), which is part of the "Private Security Guard Act," is discussed in greater detail infra.

may be privately employed as a security guard during his off-duty hours and while in uniform, provided his governmental employer has consented to such employment[2] and there are no ordinances or regulations prohibiting it.

- II -

Having concluded that a deputy sheriff may, subject to certain conditions, be privately employed as a security guard during his off-duty hours, it is now possible to address your original question concerning whether a deputy sheriff may receive compensation directly from the private employer for such off-duty work. It is our understanding that your question has been prompted as a result of the language in 30 M.R.S.A. §2(4)(B)(1978) which provides in pertinent part:

> "All fees and charges of whatever nature which may be payable to any deputy sheriff shall be payable by him to the county treasurer for the use and benefit of the county, except that deputies not on a salary or per diem basis may receive and retain fees for the service of criminal or civil process."

In the context of your opinion requests, our task is to determine whether the Legislature intended 30 M.R.S.A. §2(4)(B)(1978) to apply to compensation payable to a deputy sheriff while privately employed as a security guard on an off-duty basis. Whenever we are called upon to interpret the language of a statute, our paramount responsibility is to ascertain and give effect to the Legislature's intent. See, e.g., Concord General Mutual Ins. Co. v. Patrons - Oxford Mutual Ins. Co., Me., 411 A.2d 1017, 1020 (1980); Paradis v. Webber Hospital, Me., 409 A.2d 672, 675 (1979). As a general rule, a statute is to be interpreted in accordance with the plain meaning of the language which the Legislature used. See, e.g., Vance v. Speakman, Me., 409 A.2d 1307, 1310 (1979); State v. Fleming, Me., 377 A.2d 448 (1977). See also 1 M.R.S.A. §72(3)(1979). Moreover, the language of a particular statute should be construed in light of other related statutes. See, e.g., Town of Arundel v. Swain, Me., 374 A.2d 317 (1977); Finks v. Maine State Highway Comm'n., Me., 328 A.2d 791 (1974).

---

2. It might be suggested that since the salaries of full-time deputy sheriffs are computed on the basis of a 7 day work week, the Legislature has indicated that full-time deputies are "on duty" 24 hours a day, 7 days a week. See 30 M.R.S.A. §958(1)(1980-1981 Supp.). While we need not definitively interpret section 958, we do not construe it as requiring full-time deputies to be "on duty" all the time. Consequently, we do not believe 30 M.R.S.A. §958(1)(1980-1981 Supp.) prohibits a full-time deputy sheriff from engaging in private security guard work during his "off-duty" hours.

Our reading of the language of 30 M.R.S.A. §2(4)(B) leads us to conclude that the Legislature only intended that statute to apply to those "fees and charges" which a deputy sheriff may receive while acting in his official capacity as a deputy. In this connection, we would observe that 30 M.R.S.A. §1051(1978) establishes the "fees and charges" which the county sheriffs and their deputies are required to collect for the service of various types of legal documents and papers. For example, section 1051 establishes the amount of the fees which the sheriff and his deputies are to collect for the service of civil process. Furthermore, 30 M.R.S.A. §1051(11) provides that "[i]n addition to the fees so charged for service, travel shall be charged for each mile actually traveled at the same rate at which state employees are reimbursed..." When viewed in relation to 30 M.R.S.A. §1051(1978), which sets the "fees and charges" to be collected by sheriffs and their deputies for the service of process, we do not believe that 30 M.R.S.A. §2(4)(B)(1978) was intended to preclude a Deputy Sheriff from retaining compensation earned during his off-duty hours as a private security guard.

We believe our conclusion finds additional support in the legislative history of 30 M.R.S.A. §2(4)(B). See, e.g., Schwanda v. Bonney, Me., 418 A.2d 163, 166 (1980); Town of South Berwick v. White, Me., 412 A.2d 1225, 1226 (1979). Historically, both the sheriff and his deputies were permitted to retain fees and charges for the service of civil process.[3] See 30 M.R.S.A. §§1052 and 1053 (1978). Moreover, prior to 1962, deputy sheriffs were permitted to receive and retain fees and charges for the service of criminal process. R.S. 1954, c.89, §150. See also City of Bangor v. County Commissioners, 87 Me. 294, 297, 32 A.903 (1895). On the other hand, the sheriff himself was not permitted to retain fees for the service of criminal process. See R.S. 1954, c.89, §149.

In 1959, however, the Legislature enacted Chapter 372, §7 of the Public Laws of 1959, the last paragraph of which was the forerunner of the present version of 30 M.R.S.A. §2(4). It provided, in pertinent part, that

---

3. With respect to fees collected by the sheriff, 30 M.R.S.A. §1053 provided that "[i]f such fees are in excess of the amount of salary then due the sheriff, he shall pay said excess to the county treasurer...." Of course, sheriffs are no longer permitted to retain any fees or charges. 30 M.R.S.A. §2(4)(A)(1978).

> "[a]fter January 1, 1962 all fees and charges of whatever nature...which may be payable to any county officer, shall be payable by them to the county treasurer for the use and benefit of the county, but preserving the right of sheriffs and their deputies to receive fees for service of civil process...."

By virtue of P.L. 1959, c.372, §7 the Legislature required that all fees and charges received by county officers were to be turned over to the county, with the exception that sheriffs and deputies could continue to retain fees for the service of civil process. With respect to deputy sheriffs, the one effect P.L. 1959, c.372, §7 had was to prohibit them from keeping fees for the service of criminal process. In 1961 the Legislature inserted the provision authorizing deputy sheriffs, not on a salary or per diem basis, to receive and retain fees for the service of criminal process.[4] See P.L. 1961, c.286.

The legislative debate surrounding the enactment of that portion of P.L. 1959, c.372, §7 quoted above does not indicate that the Legislature ever contemplated that that statute would apply to compensation received by a deputy sheriff while privately employed as a security guard during his off-duty hours. Rather, what little debate there was indicates that the Legislature intended that the last paragraph of Chapter 372, §7 would apply to deputy sheriffs only to the extent of depriving them of fees for the service of criminal process. See 2 Leg.Rec. 2287 (House, June 3, 1959)(remarks of Mr. Jalbert); 2 Leg. Rec. 2411-12 (Senate, June 9, 1959)(remarks of Mr. Wyman).

With respect to the right of sheriffs and their deputies to receive and retain fees for the service of civil process, the law remained the same until 1977. See, e.g., P.L. 1973, c.724 §4; P.L. 1975, c.383, §26; P.L. 1975, c.735, §22. By Chapter 67, §3 of the Public Laws of 1977, the Legislature amended 30 M.R.S.A. §2(4)(B)(1978) to read as it presently does.[5] The effect of section 2(4)(B) was to impose a blanket prohibition on all deputy sheriffs, other than those not on a salary or per diem basis, from retaining any fees or charges "which may be payable" to them, including fees for the service of civil process which they had previously been permitted to keep. Our examination of the legislative history of P.L. 1977, c.67, §3 reveals that the Legislature did not intend to preclude a deputy sheriff from receiving and retaining compensation for private security guard work performed during his off-duty hours. On the contrary, we

---

4. 30 M.R.S.A. §2(4)(B)(1978) presently provides that "[f]ees chargeable by deputies not on salary or per diem for service of criminal process shall be approved by the respective district attorneys and paid by the respective county treasurers."

5. 30 M.R.S.A. §2(4)(B)(1978) is quoted, in relevant part, on page 3, supra.

believe that 30 M.R.S.A. §2(4)(B), as enacted by P.L. 1977, c.67, §3, was intended to forbid deputies, other than those not on a salary or per diem basis, from retaining any fees or charges which are payable to them for performing functions as deputy sheriffs and was not designed to apply to compensation derived from private employment.

Chapter 67 of the Public Laws of 1977 was the product of the study report on the salaries of county officers prepared by the Committee on Local and County Government pursuant to H.P. 1477. In the section of the report dealing with the salaries of the county sheriffs, the Committee addressed the issue of whether sheriffs and their deputies should continue to retain fees for the service of civil process. In its report, the Committee observed that, under prior law, "Sheriffs may retain any civil fees collected by them, which can add significantly to their compensation." See Report of Local & County Government Committee: Study on County Officers Salaries at 22 (December 20, 1976). The Committee Report also pointed out, however, that

> "...these forms of ...compensation are erratically distributed among the counties, and the time spent in serving civil process detracts from the time the Sheriff has available for his law enforcement duties. As all Sheriffs are full-time law enforcement officers and many considered themselves on duty 24 hours a day..., it seemed proper to return the fees earned on county time to the county. Thus, the Committee recommends that all civil process fees earned by the Sheriff be turned over to the county treasury. As a logical extension of this recommendation, the Committee also recommends that all civil process fees earned by full-time Deputy Sheriffs also be turned over to the county."

Id.

The Study Report prepared by the Committee on Local and County Government does not indicate that there was any intention that deputy sheriffs would be required to turn over to the county treasury compensation earned during off-duty hours as a private security guard.[6] As part of its report, the Committee

---

6. We would also observe that the Committee's reference to sheriffs being "on duty" 24 hours a day was simply a recognition of the fact that some sheriffs considered themselves to be "on duty" all the time and was not intended as a statement that there is a legal requirement that sheriffs be "on duty" 24 hours a day.

submitted draft legislation which became L.D. 62 (H.P. 72) being "An Act to Revise the Salaries of County Officers." The "Statement of Fact" accompanying L.D. 62 recited that one of its purposes was to

> "[r]equire [ ] that all fees received by the sheriffs and all full-time deputies, including civil process fees, are to be turned over to the county treasury."

The bill was referred to the Committee on Local and County Government which issued an "ought to pass" report in a new draft (L.D. 435)(H.P. 371). During the enacting process, the bill was amended in several respects not relevant here and was sent back to the Committee on Local and County Government which again issued an "ought to pass" report in a new draft (L.D. 752)(H.P. 738).[7]

There was a considerable amount of debate in both Houses of the Legislature concerning the fact that L.D. 752 would require the sheriff and his deputies to pay all fees and charges to the county treasury. See I Leg. Rec. 142-43 (House, February 16, 1977)(remarks of Messrs. Henderson and Berry); I Leg. Rec. 256 (Senate, March 10, 1977)(remarks of Mr. Collins); I Leg. Rec. 327-28 (Senate, March 22, 1977)(remarks of Mr. Jackson). Nothing in that debate evidences an intention on the part of the Legislature to change the common law rule permitting law enforcement officers, including deputy sheriffs, to engage in private security guard work during their off-duty hours. Moreover, nothing in the legislative record even remotely suggests that the Legislature intended L.D. 752 to apply to compensation received by a deputy sheriff for private security guard work performed during off-duty hours. On the contrary, the legislative debate of relevance to us focused entirely on the fact that L.D. 752 would require deputies to relinquish all fees and charges which, by law, are payable to them for performing duties as deputy sheriffs.[8]

Based upon our analysis of the legislative history of 30 M.R.S.A. §2(4)(B)(1978), it is our conclusion that deputy sheriffs may receive and retain compensation directly from a private employer for services performed as a private security guard during their off-duty hours.

---

7. The "Statement of Fact" accompanying L.D. 752 (H.P. 738) stated that "...this bill has the same purpose and intent as that of L.D. 62."

8. L.D. 752 was passed by both the House and the Senate, but was vetoed by Governor Longley. The Legislature, however, failed to sustain the Governor's veto and L.D. 752 became law as Chapter 67, P.L. 1977.

We should point out that our conclusion is not altered by the fact that in 1978 the Legislature failed to enact an amendment to 30 M.R.S.A. §2(4)(B) which would have explicitly authorized deputy sheriffs to receive and retain compensation for private security guard work. During the Second Regular Session of the 108th Legislature, Senator Jackson of Cumberland presented L.D. 2075 (S.P. 371), being "An Act to Clarify County Law Enforcement." Section 2 of that bill would have amended 30 M.R.S.A. §2(4)(B) to read as follows:

> "All fees and charges of whatever nature which may be payable to any deputy sheriff shall be payable by him to the county treasurer for the use and benefit of the county, except that deputies:
> (1) Not on a salary or per diem basis may receive and retain fees for the service of criminal or civil process; and
> (2) During off-duty hours and vacations, as designated by the sheriff, may receive and retain compensation for services that are not part of their regular duties, even though the services are performed in uniform."

The "Statement of Fact" accompanying L.D. 2075 recited that "[t]he purpose of this bill is to clarify the major changes made in county law enforcement during the first regular session.... Section 2 of the bill allows deputy sheriffs to retain compensation earned during off-duty and vacation hours. This will allow deputies to perform 'private' law enforcement type duties, such as providing security and traffic control at sports events or fairs."

L.D. 2075 was referred to the Committee on Local and County Government which issued an "ought to pass" report with Committee Amendment "A" (S-493). The Committee amendment eliminated all of section 2 from L.D. 2075, and the "Statement of Fact" accompanying the amendment merely stated that "[t]his amendment deletes section 2 of the bill." As amended by Committee amendment "A", and other amendments not relevant here, L.D. 2075 was enacted as Chapter 650 of the Public Laws of 1977.

One might argue that the failure of the Legislature to enact L.D. 2075 as originally drafted reflects a legislative intent that deputy sheriffs were not to be permitted to receive and retain compensation for off-duty private security guard work. We do not find such an argument persuasive. Initially, it must be recognized that L.D. 2075 was designed to clarify, not to make substantive changes in, the laws relating to county law enforcement. Most importantly, however, the legislative history of L.D. 2075 provides absolutely no guidance as to why section 2 of the bill was deleted. Under such circumstances, we do not believe that the failure to enact section 2 of L.D. 2075 is relevant in determining what the Legislature intended when it enacted 30 M.R.S.A. §2(4)(B) in the first place. See generally, C. Sands, 2A Sutherland Statutory Construction §48.18 at 224-25 (4th ed., 1973).

- III -

Finally, we believe it is appropriate for us to briefly discuss the provisions of the "Private Security Guard Act" (hereinafter referred to as the "Act"), and its relevance to deputy sheriffs. By virtue of Chapter 508 of the Public Laws of 1977 the Legislature created 32 M.R.S.A. §§3761 to 3783, which represents a comprehensive law regulating the employment and conduct of private security guards. Initially, the Act requires that any person who wishes to engage in the business of a "contract security company"[9] first obtain a license from the Commissioner of Public Safety. 32 M.R.S.A. §3765 (1978). The Act also sets out the qualifications necessary for obtaining a license and the powers and duties of the Commissioner of Public Safety is issuing or denying such licenses. 32 M.R.S.A. §§3767, 3768, 3769, 3778 (1978).

The Act also prohibits certain conduct by a licensee or by persons employed as private security guards. For example, 32 M.R.S.A. §3777(1)(1978) provides that a uniformed private security guard may wear a handgun only if it is "worn in a holster in an open and fully-exposed manner." Subsection (2) of section 3777 prohibits a private security guard from wearing any badge, insignia or other device which tends to indicate that he is a "sworn police officer" or which contains the words "police" or the equivalent thereof. Thus, while a private security guard may wear a uniform, he may not wear one which tends to identify him as a law enforcement officer. 30 M.R.S.A. §3777 (3)(1978) further prohibits a private security guard from using a vehicle displaying the words "police" or "law enforcement officer" or which may indicate that the vehicle belongs to a public law enforcement agency. 32 M.R.S.A. §3779(2)(1978) makes it a Class D crime for any person employed as a private security guard to engage in certain conduct including the making of "any statement which would reasonably cause another person to believe that he is a sworn peace officer or other offical of this state or of any of its political subdivisions or agency of the Federal Government." See 32 M.R.S.A. §3779(2)(B)(1978). Finally, 32 M.R.S.A. §3780 (1978) makes it a Class D crime for a licensee or any of its employees to engage in certain specific conduct in connection with or during a strike or labor dispute.

When the 108th Legislature was considering the "Private Security Guard Act," it also recognized that the regulations it was proposing to create could have an impact upon those law enforcement officers who engage in private security guard work during their off-duty hours. See II Leg. Rec.2042-43 (House, June 27, 1977)(remarks of Messrs. Burns and Marshall). Consequently, the Legislature adopted an amendment to the private security guard bill[10] which eventually became 32 M.R.S.A. §3782(1)(1978) and which provides:

---

9. A "contract security company" is defined as "any organization engaged in the business of providing, or which undertakes to provide, a security guard as defined in this section on a contractual basis for another person." 32 M.R.S.A. §3761(4)(1978).

10. The "Private Security Guard Act" originated as L.D.

"This chapter [54] shall not apply to any of the following:

1. Any person currently employed as a state, county or local law enforcement officer, or any constable, either full time or part time, provided a bond in the amount of $10,000 is issued to the appointing authority of the officer or constable and provided the employment of the officer or constable as a security guard is on a part-time and off-duty basis;"[11]

32 M.R.S.A. §3782(1)(1978) exempts law enforcement officers, including deputy sheriffs, from the regulatory provisions of the "Private Security Guard Act" provided they comply with the bonding requirement and provided further that their employment as a private security guard is on an off-duty and part-time basis. Thus, section 3782(1) appears to reflect a legislative recognition of the common law rule, discussed in greater detail in Part I of this opinion, that law enforcement officers may engage in private security guard work during their off-duty hours and while in uniform. If a deputy sheriff fails to comply with the requirements of section 3782(1), he is not entitled to the exemption that statute confers and, consequently, he would be subject to the other provisions of the "Private Security Guard Act."

We wish to emphasize that 32 M.R.S.A. §3782(1)(1978) merely creates an exemption for deputy sheriffs from the other provisions of the "Private Security Guard Act." It does not limit the authority of the appropriate county officials to adopt rules and regulations prohibiting or limiting such outside employment.

I hope this information is helpful to you. Please feel free to call upon me if I can be of further assistance.

Sincerely,

JAMES E. TIERNEY
Attorney General

JET:sm

---

260 (H.P. 199) and was referred to the Committee on Legal Affairs which issued an "ought to pass" report in a new draft (L.D. 1889)(H.P. 1741). The amendment which created the blanket exemptions in 32 M.R.S.A. §3782 (1978) was presented by Representative Burns of Anson as House Amendment "E" (H.872).

11. 32 M.R.S.A. §3782(2)(1978) provides that "[a]ny proprietary security organization" is also exempted from the provisions of Chapter 54, i.e., the "Private Security Guard Act." A "propriety security organization" is defined as "any organization or department of that organization which provides full-time security guards, as defined in this section, solely for itself." 32 M.R.S.A. §3761(9)(1978).