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SPRINGFIELD

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FILE NO. 82-032

MUNICIPALITIES:
Police Services by Private
Security Firm

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Dea Mr. Apa:

I have your letter in which you ask the following four questions:

(1) Do persons employed by a private security firm and used by municipalities to provide police services fall within the term "Peace officer" as defined in subsection 1(a) of "AN ACT in relation to firearms training for peace officers" (Ill. Rev. Stat. 1981, ch. 85, par. 515(a))?

(2) What constitutes a full-time law enforcement officer for the purposes of the Illinois Police Training Act (Ill. Rev. Stat. 1981, ch. 85, par. 501 et seq., as amended)?

(3) Would a person employed in two or more municipalities, for an aggregate total of more than 35

hours per week, be considered a full-time officer for the purposes of the Illinois Police Training Act?

(4) Who has the ultimate responsibility to train employees of a private security firm, who are either officers or employees of a municipality and who are subject to either the Illinois Police Training Act or "AN ACT in relation to firearms training for peace officers" (Ill. Rev. Stat. 1981, ch. 85, par. 515 et seq.)?

It is clear from your letter and the supplemental material submitted with it, that the principal issue presented is whether a municipality has the power to contract with a private security firm to provide police services for the municipality. For the reasons hereinafter stated, it is my opinion that a non-home-rule municipality does not have such power.

It is the duty of the State, and of the political subdivisions it creates, to preserve peace and order and to protect life, liberty and property. (Littel v. City of Peoria (1940), 374 Ill. 344, 347.) It has long been recognized that the duty conferred upon municipalities to protect the public and to exercise the police power delegated by the State carries with it the power to create and maintain a police force. See DuBois v. Gibbons (1954), 2 Ill. 2d 392, 410; City of Chicago v. O'Brien (1915), 268 Ill. 228, 231; Culver v. City of Streator (1889), 130 Ill. 238, 243; McPherson v. Village of Chebanse (1885), 114 Ill. 46, 49.

Section 11-1-1 of the Illinois Municipal Code (Ill. Rev. Stat. 1981, ch. 24, par. 11-1-1) provides:

> "The corporate authorities of each municipality may pass and enforce all necessary police ordinances."

Setion 11-1-2 of the Illinois Municipal Code (Ill. Rev. Stat. 1981, ch. 24, par. 11-1-2) provides:

> "The corporate authorities of each municipality may prescribe the duties and powers of all police officers."

Section 3-9-4 of the Illinois Municipal Code (Ill. Rev. Stat. 1981, ch. 24, par. 3-9-4) provides:

> "The mayor, alderman, president, trustees, marshal, deputy marshals, policemen, and watchmen, in municipalities, shall be conservators of the peace. All persons specified in this Section, or authorized by any ordinance, shall have power (1) to arrest or cause to be arrested, with or without process, all persons who break the peace, or are found violating any municipal ordinance or any criminal law of the State; (2) to commit arrested persons for examination; (3) if necessary, to detain arrested persons in custody over night or Sunday in any safe place, or until they can be brought before the proper court; and (4) to exercise all other powers as conservators of the peace that the corporate authorities may prescribe.
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> All warrants for the violation of municipal ordinances, or the State criminal law, to whomsoever directed, may be served and executed within the limits of a municipality by any policeman or marshal thereof. For this purpose policemen and marshals have all the common law and statutory power of sheriffs."

Together, these provisions provide ample authority for municipalities to create, maintain, and administer municipal police forces, and to confer upon municipal policemen the powers of a conservator of the peace. (See Cook County Police Ass'n v. City of Harvey (1972), 8 Ill. App. 3d 147, 149.) The power to create and administer a police force, and to prescribe the

powers and duties of municipal police officers does not, however, include the power to contract with a private security firm to furnish police services for the municipality.

Municipal corporations are creatures of statute created under the authority of the General Assembly and deriving their existence solely therefrom. (People v. Wood (1945), 391 Ill. 237, 243.) Municipal corporations in Illinois have no inherent powers. (City of Chicago Heights v. Western Union (1950), 406 Ill. 428, 433.) Rather, non-home-rule municipalities possess only such powers as are expressly granted to them by the constitution or by law (Ill. Const. 1970, art. VII, § 7), or necessarily implied in or incident to the powers granted. (Klever Karpet Kleaners v. Chicago (1926), 323 Ill. 368, 373.) Necessarily implied powers are those which are essential to the accomplishment of the objects and purpose of the powers expressly granted -- not simply convenient but indispensable. Merrill v. City of Wheaton (1942), 379 Ill. 504, 508-09. Non-home-rule municipalities are granted no express constitutional or statutory power to contract with private security firms to perform police functions for the municipality, nor is such power necessarily implied in the power granted to municipalities to create and maintain a municipal police force.

The question arises as to whether a contract with a private firm for the performance of police services is

authorized by section 10(a) of article VII of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VII, § 10(a)), which provides as follows:

> "(a) Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities." (Emphasis added.)

While the language underscored above is seemingly broad in scope, it is my opinion, for the reasons set forth below, that such language does not permit a municipality to contract away to non-governmental entities those governmental powers granted to such municipality by the State.

In Littel v. City of Peoria (1940), 374 Ill. 344, 347, the court held that municipal law enforcement powers are governmental rather than proprietary in nature:

> " * * *
>
> Under our form of government the duty rests upon the State to preserve peace and order and protect life, liberty and property. This duty extends throughout the State and into every political subdivision thereof. From such duty there flows the power of the State to prescribe, by legislative enactment, the means by which peace and order shall be maintained and the fundamental rights protected. In Board of Trustees v. Comrs. of Lincoln Park, 282 Ill.

> 348, it was said: 'The maintenance or preservation of good order is primarily a public and governmental function. It is the purpose of all organized government, and is delegated by a State to a smaller embraced municipality only that it may be more effectively exercised. No organized municipality could exist and exercise its functions without being subservient to the police of the State of its creation.' The State in the exercise of such power may, for convenience of enforcement, impose a duty upon municipalities to assume a part of this burden of State government, and when a municipality is acting pursuant to such legislative direction it is engaged in a governmental function as an agency of the State government.
>
> * * * "

Further, it has been held that the police regulations of a city are not made or enforced in the interest of the city in its corporate capacity, but in the interest of the public. Culver v. City of Streator (1889), 130 Ill. 238, 245.

It is the common law rule that governmental, legislative, or discretionary powers granted to a municipality by the State may not be delegated to any agent or person absent specific authority for such delegation. (See People v. Clean Street Co. (1907), 225 Ill. 470, 479; City of Chicago v. Stratton (1896), 162 Ill. 494, 499; City of East St. Louis v. Wehrung (1869), 50 Ill. 28, 31.) In Board of Education v. Cahokia Dist. Council No. 58 (1981), 93 Ill. App. 3d 376, 378, the court held that this common law rule has been accepted and incorporated into the second sentence of section 10(a) of article VII of the Illinois Constitution of 1970, and therefore:

" * * *

> * * * As school districts are given certain express and implied powers by the School Code of 1961 (Ill. Rev. Stat. 1979, ch. 122, par. 1-1 et seq.), any attempt to alienate those powers by contracting them away would dilute the effect of the Code and would be 'prohibited by law'.
>
> * * * "

(Emphasis added.)

The same conclusion is required with regard to the alienation by contract of governmental powers granted to non-home-rule municipalities by the Illinois Municipal Code (Ill. Rev. Stat. 1981, ch. 24, par. 1-1-1 et seq.).

As discussed above, the Illinois Municipal Code grants to the corporate authorities of all municipalities the power to enact necessary police ordinances and to create and maintain a municipal police force. In certain municipalities the power to regulate examinations, appointments, and removals of policemen is vested in a civil service commission (Ill. Rev. Stat. 1981, ch. 24, par. 10-1-1 et seq.) or in a board of fire and police commissioners. (Ill. Rev. Stat. 1981, ch. 24, par. 10-2.2-1 et seq.) The power to administer a municipal police force involves the exercise of official discretion (Cook County Police Ass'n v. City of Harvey (1972), 8 Ill. App. 3d 147, 149), and therefore may be neither delegated nor surrendered by contract to another.

It is clear that a contract by which a municipality engages a private security firm to perform police functions for

the municipality will result in the delegation to the private firm of governmental powers vested in and exercisable by the corporate authorities of the municipality or by a statutorily authorized subsidiary board or commission. Any contract which acts to delegate such powers to a non-governmental entity or to surrender discretion granted to a municipality by statute, is "prohibited by law" within the meaning of secion 10(a) of article VII of the Illinois Constitution of 1970. See, Board of Education v. Cahokia Dist. Council No. 58 (1981), 93 Ill. App. 3d 376, 378.

A contract by which a municipality attempts to transfer a governmental power to a non-governmental entity is, of course, materially different from an intergovernmental co-operation agreement executed pursuant to the first sentence of section 10(a) of article VII of the Constitution between two units of government possessing comparable powers. It is clear from the language of subsection 10(a) that the framers intended units of local government to have broad powers to associate and contract with the State or its agencies. (See, 1980 Ill. Att'y Gen. Op. 60.) An activity which is not specifically prohibited by law or ordinance involving a function or power which the "supplying" unit has the general power to exercise, may be the subject of an intergovernmental agreement or contract. (Ill. Rev. Stat. 1981, ch. 127, par. 743; 1980 Ill. Att'y Gen. Op. 60; 1976 Ill. Att'y Gen. Op. 303.)

Under the provisions of section 10 of article VII of the Illinois Constitution of 1970 and section 1 et seq. of the Intergovernmental Cooperation Act (Ill. Rev. stat. 1981, ch. 127, par. 741 et seq., as amended), a city or village may contract with a county for the county to provide police protection in the city or village. (1980 Ill. Att'y Gen. Op. 60.) Municipalities may also enter into intergovernmental cooperation agreements to provide police services to other municipalities. (1974 Ill. Att'y Gen. Op. 60.) Such agreements constitute the transfer or sharing of a power possessed by each unit of local government, as authorized by the Constitution, rather than a delegation of a governmental power to a non-governmental entity. While the former is permissible under the first sentence of section 10(a) of article VII of the Illinois Constitution of 1970, the latter is prohibited under the second sentence thereof.

With respect to the status of employees of a private security firm in the area of law enforcement, the case of People v. Perry (1975), 27 Ill. App. 3d 230, is helpful. It was held in Perry that, in instances in which a municipal corporation might be authorized by statute to contract with a private security firm to furnish the services of security guards, the security guards were not "peace officers" as defined in section 2-13 of the Criminal Code of 1961 (Ill. Rev. Stat. 1981, ch. 38, par. 2-13). It was stated therein:

" * * *

> * * * The State thus concludes that Jones and Ballentine, employed by the CHA [Chicago Housing Authority] through Wells Fargo, were in 'public employment' and 'vested by law with a duty to maintain order,' and consequently, were peace officers within the meaning of section 2-13.
>
> While the State's argument is certainly persuasive that the CHA has the authority to hire security guards, we cannot agree that by virtue of that employment, they become peace officers within the meaning of section 2-13. For the State's argument is premised on two grounds, (1) public employment, and (2) a limited duty to maintain order, that were rejected in Arrington v. City of Chicago, 45 Ill. 2d 316, 259 N.E.2d 22. In Arrington, jail guards employed by the city of Chicago at the House of Correction attacked a State statute claiming that it unreasonably discriminated between peace officers and themselves. The court rejected such an analysis, stating:
>
> > '[A peace officer] has the duty to maintain public order wherever he may be; his duties are not confined to a specific time and place as are those of a prison guard * * *.
> >
> > Jail guards are not peace officers, and they have no general powers to arrest or maintain order.' (45 Ill. 2d 316, 318.)
>
> Thus, despite the fact that the jail guards were publicly employed the court concluded that because of their limited duty to maintain order, they were not peace officers within the meaning of section 2-13. Certainly, private security guards, even though employed by a municipal corporation, have no greater claim to peace officer status. See Doherty v. Lester (1957), 4 Misc. 2d 741, 159 N.Y.S.2d 219; In re License of Niehoff (Pa. 1956), 9 D. & C.2d 410." (Emphasis added.) (People v. Perry (1975), 27 Ill. App. 3d 230, 234.)

Because the security guards employed by the Chicago Housing Authority through Wells Fargo, a private security firm, were

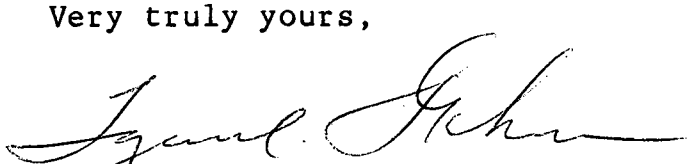
not peace officers, their power to arrest was limited to the power possessed by private persons:

> "Arrest by Private Person. Any person may arrest another when he has reasonable grounds to believe that an offense other than an ordinance violation is being committed." (Emphasis added.) (Ill. Rev. Stat. 1981, ch. 38, par. 107-3.)

Thus, a private security guard employed to furnish police services for a municipality pursuant to a contract with a private security firm could not be given the powers granted to peace officers in general, or municipal policemen specifically. An employee of a private security firm could not be granted the power to arrest a person for the violation of a municipal ordinance. I cannot conclude that non-home-rule municipalities are authorized to contract with a private security firm to provide police services, when such municipalities lack the authority to confer upon employees of the security firm even the most fundamental law enforcement power possessed by municipal policemen -- the power to enforce the municipalities' own penal ordinances.

On the basis of the above discussion, it is my opinion that a non-home-rule municipality does not have the power to contract with a private security firm to provide police services in the municipality. Since a non-home-rule municipality does not have such power, it will not be necessary to address your other questions.

Very truly yours,



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