

Opinion No. 2013-091

August 1, 2013

The Honorable Henry “Hank” Wilkins, IV
State Representative
717 West 2nd Avenue
Pine Bluff, AR 71601-4001

Dear Representative Wilkins:

I am responding to your request for my expedited opinion on the following questions:

1. May a school district be a “private company” that employs commissioned security officers pursuant to A.C.A. 17-40-201, *et seq.*, and the regulations promulgated by the Arkansas Board of Private Investigators and Private Security Agencies?
2. If the answer to question one is “yes”:
 - (a) Will the school district and its employees be entitled to sovereign immunity for actions taken pursuant to the license?
 - (b) Must the school obtain bonding as other private security companies do?
 - (c) May the school district earn money for the activities of their employees who act as security guards when not on campus, since the state says they are now “private companies” and, if so, can the state reduce their foundation funding in an amount equal to what they bill when they are acting as a security company rather than a school district?

(d) Do Department of Education regulations prohibit students in public schools from being taught by private security guards instead of licensed teachers? Can an individual be both at one and the same time?

3. If the Board does not have authority to issues these licenses:

(a) Does any law prohibit teachers, bus drivers, and others from carrying firearms on school grounds?

(b) Can those persons avoid prosecution for breaking those laws on the grounds that they held security guard licenses that were invalid?

You report by way of background your understanding that various school districts¹ “have been declared by the [Arkansas Board of Private Investigators and Private Security Agencies] to be ‘private companies’ and that they may be granted licenses to be both school districts and private security companies.”

Given your concern that the impending fall semester of the school year is approaching, you have requested that I promptly address these questions. In recognition of this deadline, I have marshaled this office’s resources as available to oblige your request. I will note, however, that the following discussion is somewhat more abbreviated than it would have been had these time constraints not applied.

RESPONSE

¹ You list the following districts as designated “private companies”:

Ashdown Public School District
Clarksville School District
Concord School District
Cutter Morning Star School District
Fort Smith Public School District
Lake Hamilton School District
Lee County School District #1
Little Rock School District
Nettleton Public Schools (Jonesboro)
Poyen Public Schools
Pulaski County Special School District
Westside Consolidated School District #5 (Jonesboro)

In my opinion, the answer to your first question is “no.” The chapter of the Code here at issue authorizes the licensing of private businesses to provide armed security to clients. It does not authorize the licensing of a political subdivision such as a school district, which is neither in itself “private” nor authorized to establish a separate “private” identity. Simply put, the Code in my opinion does not authorize either licensing a school district as a guard company or classifying it as a private business authorized to employ its own teachers as armed guards.

Given this response, your second question is moot. With respect to the first part of your third question, various statutes restrict the recited school district employees from carrying firearms on school grounds. With respect to the second part of this question, it lies solely within the discretion of a prosecutor to determine whether or how to proceed against an individual who, in reliance on an invalidly issued commission, has violated the laws prohibiting the carrying of firearms on school grounds. I will not presume to anticipate or second-guess the exercise of that discretion.

This opinion does not address questions regarding school districts contracting with properly licensed private security companies or school resource officers. Also, certainly, the General Assembly would be the proper entity to retain, repeal or modify the current laws prohibiting school employees from carrying firearms on school property, such power not residing with the Arkansas Board of Private Investigators and Private Security Agencies.

Question 1: May a school district be a “private company” that employs “commissioned security officers” pursuant to Ark. Code Ann. § 17-40-201 et seq. and the regulations promulgated by the Arkansas Board of Private Investigators and Private Security Agencies?

In my opinion, the answer to this question is “no.”

Your question relates to the authority of school-district employees to carry weapons in schools pursuant to title 17, chapter 40 of the Arkansas Code,² which authorizes the registration and commissioning of armed security officers by the Arkansas Board of Private Investigators and Private Security Agencies (the “Board”).³

² A.C.A. §§ 17-40-101 through -354 (Repl. 2010), as amended by Acts 2013, No. 1475.

You seem to be asking whether a school district might be licensed as its own “security services contractor,”⁴ providing itself school security services through school district employees that also function as “private security officers”⁵ commissioned by the Board to carry weapons and employed by the district in its role as a “guard company.”⁶

The Code chapter at issue defines the term “guard company” as follows:

“Guard company” means any person engaging in the business of providing or undertaking to provide a private watchman, guard, or street patrol service on a contractual basis for another person. . . .⁷

³ See A.C.A. § 17-40-335 (imposing a requirement that security officers covered by the chapter by “commissioned”). The Code defines the term “commissioned security officer” as follows: “‘Commissioned security officer’ means any private security officer to whom a security officer commission has been issued by the board.” A.C.A. § 17-40-102(10). The term “private security officer” as used in this definition in turn denotes the following: “‘Private security officer’ means any person employed by a security services contractor or the security department of a private business to perform the duties of a security guard, security watchman, security patrolman, or armored car guard.” *Id.* at subsection (21).

⁴ The term “security services contractor” means “any guard company or armored car company.” *Id.* at subsection (26).

⁵ As indicated above, the term “private security officer” means “any individual employed by a security services contractor or the security department of a private business to perform the duties of a security guard, security watchman, security patrolman, or armored car guard.” *Id.* at subsection (21).

⁶ The requirement that a guard company be licensed is set forth at A.C.A. § 17-40-305 (Repl. 2010). Employees of licensees that serve as security agents must be registered with the Board. A.C.A. § 17-40-325. In order to carry weapons, such employees must further be commissioned as security officers. A.C.A. § 17-40-335(1).

⁷ A.C.A. § 17-40-102(12) (Repl. 2010). A “guard company” thus defined is authorized to perform “one (1) or more of the following or similar functions”:

- (A) Prevention of intrusion, entry, larceny vandalism, abuse, fire, or trespass on private property;
- (B) Prevention, observation, or detection of any unauthorized activity on private property;
- (C) Control, regulation, or direction of the flow or movements of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to assure the protection of property; or
- (D) Protection of individuals from bodily harm.

A “guard company” under this definition is a private company engaged in the business of providing protection services to clients "for another person" – a restriction that can be rephrased as meaning that an entity qualifying as a “guard company” is only permitted to provide security services for someone "other than itself." If a school district were indeed functioning as a “guard company,” then, it would be organized to provide services to any and all “customers” purely for the purpose of generating income – a private business motivation that is self-evidently anathema to a school district’s purely public functions.

Accordingly, I do not read this chapter as authorizing the licensing of school districts as guard companies that might by virtue of that designation employ their own teachers and other employees as armed commissioned security officers.

In my opinion, a school district similarly could not arm its employees on the theory that it was a private business under the Code authorized to establish its own security department. The availability of this option to an unlicensed, truly private business is reflected in the following statute:

Although under the provisions of this chapter *the security department of a private business* that hires or employs an individual in the capacity of a private security officer to possess a firearm in the course and scope of his or her duties is required to make application for a security officer commission for the individual according to the provisions of this chapter,^{8]} the security department of a private business shall not be required to make application to the Arkansas Board of Private Investigators and Private Security Agencies for any license under this chapter.⁹

The term “security department of a private business” is defined in this chapter as follows:

“Security department of a private business” means *the security department of any person* if the security department has as its

Id.

⁸ This requirement is set forth at A.C.A. § 17-40-337(b).

⁹ A.C.A. § 17-40-103(b) (Repl. 2010), as amended by Acts 2013, No. 1475 (emphasis added).

general purpose the protection and security of its own property and grounds and if it does not offer or provide security services to any other person.¹⁰

The term “person,” in turn, denotes the following:

“Person” means an individual, firm, association, company, partnership, corporation, nonprofit organization, institution, or similar entity.¹¹

Under standard principles of statutory construction, I must interpret the meaning of this defined term within the context in which it is used.¹² As used in this chapter, which is unremittingly focused upon individuals and organizations operating as private businesses outside of a “public” sphere,¹³ I consider the term “person” in this definition as restricted in meaning to a point that cannot accommodate a classically public entity such as a school district. A public school district, as the designation itself implies, is a profoundly public, rather than private, entity. Indeed, the Arkansas Supreme Court has recognized a school district as public to the point of qualifying as a “political subdivision” of the state.¹⁴ I therefore cannot subscribe to any reading of this chapter under which a school district might qualify as a “private business.” Again, I do not read this chapter as applying to school districts, meaning that school employees could not be commissioned under this chapter’s authority as armed school guards.

Question 2: If the answer to question one is “yes”:

(a) Will the school district and its employees be entitled to sovereign immunity for actions taken pursuant to the license?

¹⁰ A.C.A. § 17-40-102(24) (emphasis added).

¹¹ *Id.* at subsection (19).

¹² Under the doctrine of *noscitur a sociis*, which literally translates to “it is known from its associates,” a word’s meaning may be clarified or determined by consideration of accompanying words. *Boston v. State*, 330 Ark. 99, 952 S.W.2d 671 (1997).

¹³ Hence the Board’s denomination as the Arkansas Board of *Private* Investigators and *Private* Security Agencies.

¹⁴ See *Dermott Special School District v. Johnson*, 343 Ark. 90, 95, 32 S.W.3d 477 (2000).

(b) Must the school obtain bonding as other private security companies do?

(c) May the school district earn money for the activities of their employees who act as security guards when not on campus, since the state says they are now “private companies” and, if so, can the state reduce their foundation funding in an amount equal to what they bill when they are acting as a security company rather than a school district?

This question is moot in light of my response to your first question.

Question 3: If the Board does not have authority to issues these licenses:

(a) Does any law prohibit teachers, bus drivers, and others from carrying firearms on school grounds?

(b) Can those persons avoid prosecution for breaking those laws on the grounds that they held security guard licenses that were invalid?

As suggested in my response to your first question, I do not believe the Board is authorized under the chapter of the Code at issue to license a school district and commission its employees to act as gun-bearing security officers.

With respect to the first of the two subparts of the present question, several statutes would appear applicable to prohibit “teachers, bus drivers, and others from carrying firearms on school grounds.” The first of these provides in pertinent part:

No person in this state shall possess a firearm:

(A) Upon the developed property of a public or private school, K-12;

(B) In or upon any school bus; or

(C) At a designated bus stop as identified on the route list published by a school district each year.¹⁵

This statute exempts, *inter alia*, law enforcement officers and those assisting law enforcement officers on request, as well as “a registered commissioned security guard acting in the course and scope of his or her duties.”¹⁶ For reasons discussed above, I do not read the last of these excepted categories as including an employee of a school district.¹⁷

Of further potential application is a statute that provides as follows:

No license to carry a concealed handgun issued pursuant to this subchapter authorizes any person to carry a concealed handgun into:

* * *

(14) A school¹⁸

With respect to the second subpart of the present question, I cannot opine regarding what might or might not be a prosecutor’s decision to file charges against a school district employee who has been erroneously registered and commissioned to serve as an armed security officer on school district property. Any such charging decision clearly falls within the prosecutor’s discretion, and I will not speculate regarding the propriety or manner of proceeding against an offender holding an improperly issued commission.

Assistant Attorney General Jack Druff prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

¹⁵ A.C.A. § 5-73-119(b)(1) (Repl. 2005).

¹⁶ *Id.* at subsections (e)(2); (e)(4), as amended by Acts 2013, No. 746, § 1; and (e)(6).

¹⁷ See response to question one, *supra*.

¹⁸ A.C.A. § 5-73-306(14), as amended by Acts 2013, No. 226, § 3.