

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

JUDICIARY SQUARE

441 FOURTH ST. N.W.

WASHINGTON, D. C. 20001



IN REPLY REFER TO:

March 15, 1995

L&O:RND:TFB:lf
(AL-94-454) (x-ref:93-153;
89-211; 83-371)

Terence J. Keeney, Deputy Chief
Superior Court Division
U.S. Attorney's Office
555 4th Street N.W.
Washington, D.C. 20001

OPINION OF THE CORPORATION COUNSEL

Re: May the District grant licenses as special police officers to the employees of a private company that guards Federal property?

Dear Mr. Keeney:

This is in reply to the request of your Office, dated September 12, 1994, that this Office reconsider its prior opinions on the issuance of special police officer licenses for contract security guards of the Federal government.

The Act of March 3, 1899, 30 Stat. 1057, ch. 422, D.C. Code § 4-114 (1994), provides:

The Mayor of the District of Columbia, on application of any corporation or individual, or in his own discretion, may appoint special policemen for duty in connection with the property of, or under the charge of, such corporation or individual; said special policemen to be paid wholly by the corporation or person on whose account their appointments are made, and to be subject to such general regulations as the Council of the District of Columbia may prescribe.

In an opinion dated July 2, 1948, the Corporation Counsel concluded that this statute did not authorize the District to issue commissions to security guards employed by the United States government to guard the Library of Congress. He noted

that the phrase "any corporation or individual" did not appear intended to include the United States government or its agencies. He went on to say:

It is, accordingly, the opinion of this office that the Commissioners do not have authority to appoint special policemen to guard the Library of Congress or any other government building containing property belonging to the United States Government or in the custody of the United States Government, and no authority to appoint special policemen who are to be paid solely by the United States.

On May 28, 1975, the Corporation Counsel issued an opinion dealing specifically with the application of this statute and its implementing regulation¹ to contract security guards on Federal property. He concluded:

The regulation, read as a whole, was not in my view intended to cover security matters of the Federal Government, or those security officers who are charged with the responsibility of protecting Federal property. Such officers may not obtain special police commissions under Section 4-115, D.C. Code, since that statute would not authorize the issuance of commissions to individuals protecting Federal property. Cf. Opinion of Corporation Counsel of July 2, 1948 (Library of Congress).

The position of the District toward security guards assigned to protect Federal property has continued to be one of complete non-interference with the performance of Federal functions: the District does not license such personnel, nor does it require them to be licensed in order to carry firearms in the performance of their duties, under the District's Firearms Control Regulations Act, D.C. Law 1-85, D.C. Code § 6-2301 et seq. See, e.g., memorandum of this Office, dated September 26, 1983.

However, while such security guards have no problem with this Office or with the District government, they do have a problem with the Office of the United States Attorney for the District of Columbia, which enforces the firearms prohibitions of the Act of July 8, 1932, 47 Stat. 650, ch. 465, D.C. Code § 22-3201 et seq. Your Office is of the view that such security

¹ The implementing regulation simply repeats the relevant words of the statute. See 6A DCMR § 1100.1.

guards are not exempt from those prohibitions when carrying weapons between protected properties, but that they would be exempt if they were licensed as special police officers. Hence, the request of your Office that we reconsider our prior opinions.

It is my opinion that the prior opinions of this Office were over-broad, and that a company (whether a corporation or an individual sole proprietorship) with a contract to guard Federal property may, if it chooses, apply to the District to appoint persons in its employ as special police officers. The only statutory interpretation in our prior opinions was to the effect that the language allowing a "corporation or individual" to apply for licenses was not broad enough to cover the United States government or its agencies; such a statutory interpretation is wholly consistent with allowing a private company which happens to have charge of protecting Federal property to apply for licenses. There is certainly no explicit prohibition in the statute or its implementing regulation against the District granting licenses to the employees of such companies that otherwise fall squarely within the wording of the statute.

In these circumstances the District cannot justify denying licenses on the policy grounds of deferral to Federal authority, since the Federal government has asked that the District grant licenses, and the District has never asserted that such licenses are necessary in order to protect Federal property. These circumstances distinguish such cases as Universal Interpretive Shuttle Corp. v. Washington Metropolitan Area Transit Commission, 393 U.S. 186 (1968), and its progeny. In that case, WMATC sued to enjoin a concessionaire, acting under contract with the Secretary of the Interior, from conducting tours of the Mall without a certificate of convenience and necessity from WMATC. The Supreme Court ruled:

Congress ... established the WMATC to regulate the mass transit of commuters and workers. A system of minibuses, proceeding in a circular route around the Mall at less than 10 miles per hour, and stopping from time to time to describe the sights before disgorging most passengers where it picked them up, serves quite a different function.... The Secretary has long had exclusive control of the Mall and ample power to develop it for these purposes. We hold that the WMATC has not been empowered to impose its own regulatory requirements on the same subject matter. 393 U.S. 193-194.

In the present circumstances, the statute clearly allows corporations and individuals who have charge of property to apply to the District to have their employees appointed as special

police officers. And the District is not attempting to impose regulatory requirements on contractors that protect Federal property; it is only allowing contractors who protect Federal property to apply for appointment of their employees where both the contractors and their employees qualify.

Accordingly, the District may grant special police officer licenses to the employees of a company which has charge of protecting Federal property, where the company chooses to apply for such licenses.

By copy of this letter, I am informing the General Counsel of the Metropolitan Police Department of this opinion.

Sincerely,



Garland Pinkston, Jr.
Acting Corporation Counsel

cc: Vernon Gill, Esquire
General Counsel
Metropolitan Police Department