

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

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IN REPLY REFER TO:

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(93-153-L)(LCD-7749)

May 6, 1993

OPINION OF THE CORPORATION COUNSEL

SUBJECT: May Special Police Officers or security officers perform their duties at multiple residential or commercial properties?

Vernon S. Gill
General Counsel
Metropolitan Police Department
Municipal Center
Room 4115
Washington, D.C. 20001

Dear Mr. Gill:

This is in reply to your request, received May 3, 1993, for our expedited views on the following questions:

1. Whether D.C. Code § 4-114 and the implementing regulations found at 6A DCMR § 1100 et seq. allow armed or unarmed Special Police Officers to perform "roving patrols" of residential and commercial properties?
2. Whether 17 DCMR Chapter 21 allows security officers to perform "roving patrols" of residential and commercial properties?

The issue has apparently arisen out of the following situation. At least one person and, we understand, at least one other private company have contracted with a number of residential and business property owners in one area to provide limited security protection for those properties. In one instance, the person applied for a commission as a Special Police Officer under 6A DCMR § 1105 to "protect the property of a number of persons or corporations in one general area." You

indicate that members of the Department have advised this person that the Department has interpreted this regulation as prohibiting a Special Police Officer from travelling over public space to patrol separately owned properties. You also note, however, that the Department has allowed some university or campus Special Police Officers to patrol buildings that are non-contiguous to main campus areas on the basis that the regulations provide for the patrolling of multiple buildings owned by a single person or corporation.

For reasons set forth below, the interpretation you describe does not withstand scrutiny.

OFFICE OF THE GENERAL INVESTIGATOR Discussion

The Act of March 3, 1899, 30 Stat. 1057 ch. 422, as codified in D.C. Code § 4-114, provides as follows:

~~SUBJECT: Special Police Officers~~
The Mayor [originally "Commissioners"] 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 [originally Commissioners]¹ may prescribe.

Pursuant to this law, the Board of Commissioners approved chapter 32 of the Police Manual of Rules and Regulations of the Police Department on August 19, 1948, as amended on March 8, 1949 (enclosure A). These regulations later were codified into chapter 11 of Title 6A of the DCMR (enclosure B).²

¹ Section 402(91) of Reorganization Plan No. 3 of 1967 transferred this rulemaking authority to the appointed District of Columbia Council. Section 711 of the Self-Government Act, D.C. Code § 1-211, transferred it to the elected Council of the District of Columbia.

² The origin of these regulations is discussed in memoranda from our Office dated September 14, 1990 and August 11, 1988. The codification in chapter 11, 6A DCMR, contains cross-reference errors and is organized differently than the original, as codified in chapter 32 of the Police Manual. We have marked corrected references on chapter 11, 6A DCMR, enclosure B.

Section 1001 of 6A DCMR, which is a codification of chapter 32, sec. 6, of the Police Manual, sets forth six categories of special police officers who may be appointed under the provisions of D.C. Code § 4-114. These are listed as subsections (a) through (f) of the old section 6 of the Manual and we have marked on enclosure B the corresponding sections in the DCMR.

These categories are special police officers to:

- (a) Protect the property of one person or corporation at one location.
- (b) Protect the property of one person or corporation located in various sections of the city.
- (c) Protect the property of a number of persons or corporations in one general area.
- (d) Work for one person or corporation to provide protection in the transport of money, securities etc.
- (e) Work for one person or corporation whose business it is to protect property of others principally by electrical alarm systems.
- (f) Protect property or interests of the District of Columbia.

In each case, the specific premises involved are to be listed on the face of the commission issued to the special police officer.

With respect to category (c), 6A DCMR §§ 1101.5 through 1101.7, when properly grouped together³ and properly cross-referenced, read as follows:

- 1101.5 Special police officers may be appointed under the provisions of D.C. Code § 4-114 (1981) to protect the property of a number of persons or corporations in one general area.
- 1101.6 The duties of the special police officers appointed pursuant to [§ 1101.5] shall consist largely of periodically checking doors, windows, etc., in the nature of a "watchman." The names and addresses of the persons and the location of the property under the charge of each to be protected shall

³ Compare with section 6(c) of ch. 30 of the Police Manual.

be specified upon the face of the commission issued to that special police officer.

1101.7 The property which any special police officer shall be appointed to protect pursuant to [§ 1101.5] shall be located within the geographical limits of one police district.

As can be seen from the above, these regulations explicitly authorize special police officers to be appointed under the provisions of D.C. Code § 4-114 to protect the property of a number of persons or corporations in one general area.

Other sections of these regulations expressly recognize that special police officers may travel between sites owned by different people. Section 8 of chapter 32, 6A DCMR § 1103.4, specifically provides as follows:

Firearms or other dangerous weapons carried by special police officers whose commissions extend to more than one person's or corporation's property, or more than one premises owned by one person or corporation, may be carried only when that special police officer is on actual duty in the area thereof or while traveling, without deviation, immediately before and immediately after the period of actual duty, between that area and the residence of that special police officer.

See also § 1103.1 ("or, in the case of a special police officer whose commission extends to more than one person's or corporation's property,")

Given the language of section 1101.5 to the effect that special police officers may be appointed to "protect the property of a number of persons or corporations in one general area," and of section 1103.4 that such officers may carry firearms "when on actual duty in the area" of such property, an interpretation that such officers may not travel over public space to patrol separately owned properties is without any legal foundation.

Moreover, if a person could not travel between one site and another, §§ 1101.5 through 1101.7 would be a nullity; no one would be able to do that which is authorized therein. Generally, courts will not interpret a law or regulation in a way that renders a provision useless. See, e.g., Tuten v. United States, 440 A.2d 1008, 1010 (1982), affirmed 460 U.S. 660 (1982) ("A statute should not be construed in such a way as to render certain provisions superfluous or insignificant."); F.T.C. v.

Manager, Retail Credit Co., Miami Branch Office, 169 U.S. App. D.C. 271, 515 F.2d 988, 993-995 (1975) ("The presumption against interpreting a statute in a way which renders it ineffective is hornbook law."). And courts would be particularly loath to do so here as the authorizing language is very specific. Id.⁴

With respect to that portion of your inquiry related to security officers, my conclusions are similar. However, we should first point out that security officers licensed under 17 DCMR ch. 21 (1990) have far less authority than special police officers. See Alston v. United States, 518 A.2d 439, 440 n.3 (D.C. 1986) (in footnote 3, the Court describes the two types of officers). While security officers licensed under 17 DCMR may be privately employed to, inter alia, prevent theft from and damage to real or personal property,⁵ they are not police officers and have only the powers of ordinary citizens.⁶ Thus they have no authority, solely because of licensure under 17 DCMR ch.21, to carry a deadly weapon in the course of employment. 17 DCMR § 2120.19(g). However, I see nothing in the regulations which would prevent security officers from performing the more limited functions they are authorized to perform at the property of a number of different owners.

Conclusion

In sum, special police officers or security officers, who otherwise comply with applicable regulations, may perform their

⁴ Nothing discussed above, however, should be interpreted as authorizing a special police officer to exercise his or her authority on public space. Except for special appointments in emergency circumstances which are not at issue here (see § 1100.4), a special police officer's authority is confined to the particular places or property which he or she is commissioned to protect. See §§ 1100.2 and 1103.1. Thus, except as provided in § 1103.5, special police officers have no special police powers on public space. See, e.g., United States v. Foster, 566 F. Supp. 1403 (D.D.C. 1983) (Metro police have no authority to arrest outside the scope of their authority); United States v. O'Brien, 116 WLR 2117 (D.C. Sup. Ct. 1988) (Capitol Police have no authority to arrest for a crime committed outside their jurisdiction).

⁵ See 17 DCMR § 2100.1.

⁶ Id. § 2111.1.

authorized duties at separately owned properties, and they may travel over public space to do so.

Sincerely,



John Payton
Corporation Counsel

Enclosures