

N.D.A.G. Letter to Swanson (Nov. 3, 1987)

November 3, 1987

Mr. Howard D. Swanson
Grand Forks City Attorney
P.O. Box 1950
Grand Forks, ND 58206

Dear Mr. Swanson:

Thank you for your letter dated October 28, 1987, in which you inquire as to the application of N.D. Admin. Code § 10-03-03-14(5). You have indicated in your letter that patrol officers, by police department directive, do not have access to police department records. As a result, you ask whether a patrol officer would be permitted to accept a position as a security guard for a shopping mall.

N.D. Admin. Code § 10-03-03-14(5) provides:

5. No person providing private security services nor an employee of a private security agency, including the holder of a private security agency license, may be employed full or part time in any capacity wherein such person has any police type powers or access to any official law enforcement records.

This section establishes two restrictions upon the ability of a person employed by a law enforcement agency to provide private security services. You have noted the first restriction which prohibits such a person from providing the security services if that person has access to any official law enforcement records. In addition to this restriction, that section also prohibits any person who has "any police type powers" from providing private security services. Based upon the language of this rule, even if a patrol officer did not have access to any official law enforcement records, that officer still could not provide private security services since the officer does possess "police type powers" when that officer is employed full or part time in a law enforcement capacity.

It does not appear that N.D. Admin. Code § 10-03-03-14(5) imposes the law enforcement record access restriction to only those records of the agency which employs the officer. A law enforcement officer of this state has access to other official law enforcement records by virtue of his or her employment. For instance, a law enforcement officer may have access to National Crime Information Center information, information from federal agencies such as the Federal Bureau of Investigation, Secret Service, or the Marshal's Service, or various state agencies including the North Dakota Bureau of Criminal Investigation and the North Dakota Highway Patrol. In addition, an officer may also have access to records of a sheriff's department and records maintained by the law enforcement agencies of other states, cities, or counties.

It is my understanding that this provision has been a part of the Administrative Code governing investigative and security services for many years. As in the case of all administrative rules of this office, I am receptive to a request for changes of those rules if a need for a change does arise. At this time, I do not know of any other requests for changes in administrative rules and no hearings on proposed rule changes have been scheduled or proposed to be scheduled. If a formal request is made for amendment of this rule, the proposed amendment would be presented in any statewide public hearings on amendments to the Administrative Code.

It is my understanding that the rule in question was originally adopted to prevent abuse of the use of official law enforcement records. It was believed that a law enforcement officer with access to these records and of which are not accessible to the general public could abuse access privileges to gain an economic advantage by virtue of his or her position as a law enforcement officer. Preventing law enforcement officials from also engaging in private security and investigative work would also limit those situations wherein the law enforcement officer would be faced with a potential conflict of interest problem. It is possible that a law enforcement officer, who also conducts private investigative or security work, may be confronted with situations in which his or her client or the client's interest would be involved in decisions made by the law enforcement officer in his or her law enforcement capacity. I could foresee situations wherein an officer would be required to perform his or her duties in a manner contrary to that of the investigative or security client.

Since a person providing private security services may not possess any police type powers as a result of full or part time employment with a law enforcement agency, the fact that patrol officers do not have access to their own department's records will not authorize those officers to engage in private security services.

I hope that I have adequately responded to your inquiry.

Sincerely,

Nicholas J. Spaeth

cv