

LETTER OPINION
93-L-111

March 22, 1993

Ms. Phyl Plunkett
North Dakota Private Investigation
& Security Board
P.O. Box 7026
Bismarck, ND 58507

Dear Ms. Plunkett:

Thank you for your February 5, 1993 letter requesting an opinion on whether N.D. Admin. Code ? 93-02-02-14 prohibits law enforcement officers and city prosecutors from being principals in private security agencies.

The above question is asked in the context of a law enforcement officer and city prosecutor who are part owners of a private security agency, but who "are not involved in the business." Your letter indicates that these part owners receive a portion of the agency's profits but do not draw a salary from the agency. Neither the law enforcement officer nor the city prosecutor is registered as a private security officer or has a private security license.

N.D.C.C. ? 43-30-05 provides that a person may not provide private security service without a license. Pursuant to N.D.C.C. ? 43-30-01, "private security service" means "furnishing for hire security officers or other persons to protect persons or property, or to prevent the theft or the unlawful taking of goods, wares, and merchandise, or to prevent the misappropriation or concealment of goods, wares, merchandise, money, bonds, stocks, chooses in action, notes, or other valuable documents or papers, or the business of performing the service of such security officer or other person for any of these purposes." (Emphasis added). N.D. Admin. Code ch. 93-02-02 indicates that there are three situations in which an individual or entity is providing private security services and must be registered or licensed.

N.D. Admin. Code ? 93-02-02-08 requires that any person providing private security services shall obtain a private security license from the board unless the person is registered as an employee of a licensed private security agency. An individual licensed pursuant to this section is directly performing the service of a security officer.

Section 93-02-02-09 addresses private security agency licensure of individuals or entities furnishing for hire security officers. This section provides that "[a]ny person hiring another person to perform private security services shall obtain a private security agency license." An individual licensed under this section does not necessarily perform private security service work, simply being in the business of

furnishing for hire security officers. This section requires that an individual who applies for a private security agency license must have a private security license. If it is a corporation or a partnership which is applying for a private security agency license, at least one of the corporate officers or partners must have a private security license.

N.D. Admin. Code ? 93-02-02-09, therefore, specifically contemplates that not all owners or partners in a private security agency will be licensed under N.D.C.C. ch. 43-30. The fact that owners or partners of the security agency are not required to be registered or licensed demonstrates that owners or partners of an agency are not deemed to be providing private security services simply because of their status as owners or partners. A similar conclusion could be reached under N.D. Admin. Code ch. 93-02-01 regarding private detective agencies. See N.D. Admin. Code ? 93-02-01-02.

Finally, anyone performing private security service work for a private security agency is required to be registered pursuant to N.D. Admin. Code ? 93-02-02-10. This section also provides that the private security agency is responsible for the activities "of its licensed or registered employees." N.D. Admin. Code ? 93-02-02-10(5).

N.D. Admin. Code ? 93-02-02-14 imposes certain prohibitions upon persons providing private security services and on employees of private security agencies. An employee of a private security agency "includes any person performing any private security services for a private security agency on a contractual basis." N.D. Admin. Code ? 93-02-02-10(3). The prohibitions found in section 93-02-02-14 are limited to persons providing private security services (the same individuals required to be licensed) or employees of private security agencies.

Because your letter states that the individuals in question are not employees of the agency, the prohibitions of section 93-02-02-14 only apply if they are providing private security services. It is a question of fact in any particular case whether an owner or principal is performing security services. However, in the present case your letter specifically states the principals "are not involved in the business." Because the individuals in question are not registered or licensed as security officers and do not perform security services, the prohibitions found in ? 93-02-02-14 do not apply to them.

It is therefore my opinion that N.D. Admin. Code ? 93-02-02-14 does not prohibit law enforcement officers or city prosecutors from being principals or owners in private security agencies if they are not registered or licensed as private security officers, do not provide private security service, and do not act as employees of the agency. On the other hand, if a principal or owner of a private security agency is registered or licensed as a private security officer, actually provides private security services (in which case the principal or owner should be licensed or registered), or acts as an employee of the private security agency, the prohibitions of

N.D. Admin. Code ? 93-02-02-14 apply.

The above conclusion is based on the current language of N.D. Admin. Code ? 93-02-02-14. If the Board determines as a matter of policy that the prohibitions should apply to all members of a partnership and all corporate officers of a corporation, the Board could amend its rules to include coverage of the above individuals.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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