

LETTER OPINION
94-L-262

October 6, 1994

Mr. Earle R. Myers, Jr.
Richland County State's Attorney
Law Enforcement Center
413 3rd Avenue North
Wahpeton, ND 58075

Dear Mr. Myers:

Thank you for your September 16, 1994, letter requesting an opinion on whether a private investigator or employee of a detective agency, or a person providing private security services or employee of a private security agency may become a licensed peace officer in the state of North Dakota. You further question whether the above individuals may work as a police officer, special officer, deputy sheriff, or special deputy sheriff.

N.D.C.C. ? 12-63-02 provides that "[a]n individual may not perform peace officer law enforcement duties in this state unless the individual is licensed" pursuant to N.D.C.C. ch. 12-63. Section 12-63-01(4) defines "peace officer" as "a public servant authorized by law or by government agency or branch to enforce the law and to conduct or engage in investigations of violations of the law." Section 12-63-03 specifically exempts from the requirements of chapter 12-63 a person who provides private investigative services, a person doing private security work, or any private security agency. N.D.C.C. ? 12-63-03(3), (4). Nothing in chapter 12-63 or N.D. Admin. Code art. 10-06, North Dakota Peace Officer Standards, prohibits peace officers from performing private investigative or security service.

Although North Dakota law does not prohibit peace officers from providing private investigative or security services, the North Dakota administrative rules do place certain prohibitions on individuals

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licensed to provide private investigative or security services. N.D. Admin. Code ? 93-02-01-07(5) provides:

No private investigator or employee of a detective agency, including the holder of a detective agency license, may be employed full time or part time in any capacity wherein such person has any police-type powers or access to any official law enforcement records.

N.D. Admin. Code ? 93-02-02-14(5) provides the same prohibition with regard to persons providing private security services or an employee of a private security agency.

The above sections establish two restrictions upon the ability of persons licensed to provide private investigative or security services. The first restriction prohibits an individual from being employed in any capacity wherein the person will have access to any official law enforcement records. In addition to this restriction, these sections also prohibit individuals licensed to provide private investigative or security services from being employed in any capacity wherein the person has any police-type powers. By definition, an individual employed as a "peace officer" possesses "police-type" powers. See N.D.C.C. ? 12-63-01(4). Accordingly, it would be a violation of the administrative code for an individual licensed to provide private investigative or security services to be employed as a peace officer. Such action would not constitute criminal conduct, but would be grounds for licensure action by the Private Investigative and Security Board. See N.D.C.C. ? 43-30-12 (violation of rules grounds for disciplinary action).

Although an individual licensed to provide private investigative or security services may not be employed as a peace officer, sections 93-02-01-07 and 93-02-02-14 do not prohibit such person from becoming a licensed peace officer or maintaining a peace officer license. By their express terms the above

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sections only prohibit employment "in any capacity wherein such person has any police-type powers or access to any official law enforcement records."

It appears that an individual licensed to provide private investigative or security services therefore must surrender his or her license prior to becoming employed as a peace officer. N.D. Admin. Code Title 93-02 does not appear to have a provision permitting licensees to go on inactive status. I further point out that N.D. Admin. Code ?? 93-02-01-07(6) and 93-02-02-14(6) prohibit individuals licensed to provide private investigative and security services from even soliciting "any commission or deputization that in any way involves the authority to use or employ, or the use or employment of, any police-type powers, except that of a special deputy sheriff or special police officer, and then, only in the case of an emergency or disaster and only for the immediate time of the emergency or disaster."

Enclosed for your information is a copy of a November 3, 1987, opinion issued by Attorney General Nicholas J. Spaeth to Grand Forks City Attorney Howard D. Swanson which addresses some of the policy reasons behind the prohibition outlined in N.D. Admin. Code ?? 93-02-01-07(5) and 93-02-02-14(5). Also enclosed for your information is a March 22, 1993, opinion I issued to the North Dakota Private Investigative and Security Board addressing whether section 93-02-02-14 prohibits law enforcement officers and city prosecutors from being principals in private security agencies.

N.D. Admin. Code Title 93-02 is promulgated by the North Dakota Private Investigative and Security Board, the state agency responsible for licensing and regulating persons providing private investigative and security services in the state of North Dakota. If you have any concerns or comments regarding Title 93-02, I suggest you contact the Board directly. You can contact the Board through its executive secretary, Francine Johnson, at P.O. Box 7026, Bismarck, North Dakota 58502-7026. The Board's number is (701) 222-3063.

Sincerely,

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Heidi Heitkamp
ATTORNEY GENERAL

dab/mh
Enclosures
cc: Private Investigative and Security Board