

TEXAS BOARD OF PRIVATE INVESTIGATORS
AND
PRIVATE SECURITY AGENCIES

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I.D.# 18842

Opinion Committee

The Honorable Dan Morales
Attorney General of Texas
Price Daniel Sr. Bldg., 8th Floor
209 W. 14th Street
14th & Lavaca
Austin, Texas

RD-488

RE: Peace Officer Exception under Section 3(a)(3) of the Act

Dear General Morales:

This is to request a legal opinion from your office concerning the extent to which full-time peace officers are exempt from the requirements of the Texas Board of Private Investigators and Private Security Agencies Act ("Act"), Article 4413(29bb), Tex. Rev. Civ. Stat.

Section 3(a)(3) of the Act provides as follows:

(a) This Act does not apply to:

(3) a person who has full-time employment as a peace officer as defined by Article 2.12, Code of Criminal Procedure, who receives compensation for private employment on an individual or an independent contractor basis as a patrolman, guard, or watchman if such person is:

- (A) employed in an employee-employer relationship; or
- (B) employed on an individual contractual basis;
- (C) not in the employ of another peace officer; and
- (D) not a reserve peace officer;

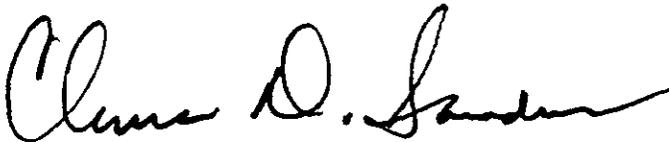
Our Board has interpreted this provision to mean that a full-time peace officer may receive part-time employment as a guard directly employed by the person or business entity that receives the guard services and such peace officer will be exempted from the provisions of the Act. If the peace officer is employed by an intermediary or intervening party such as a guard company which contracts with the security recipient, the Board has considered such employment to vitiate the employee-employer relationship or the employment on an individual basis required under section 3 (a)(3)(A) or (B). In such situations, the Board has held that the peace officer exception does not apply and required the peace officer to register with the Board as a noncommissioned security officer as required by the provisions of section 32(a) of the Act. In fact, the duty to register the peace officer falls on the contract guard company under Board rule 451.7.

Recently a contract guard company has contested our interpretation of section 3(a)(3) as it applies to full-time peace officers employed by the contract guard company, and our requirement that such peace officers be registered with the Board.

We request your office issue a legal opinion as to the applicability of section 3(a)(3) to employment of full-time peace officers as guards by contract guard companies when the entity receiving the guard services is not directly employing the peace officer.

Thank you for your consideration of our request.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Clema D. Sanders". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Clema D. Sanders
Executive Director

CDS/mr