

TEXAS DEPARTMENT OF PUBLIC SAFETY

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FEB 11 2010

OPINION COMMITTEE

FILE # ML-46337-10

ID. # 46337

February 2, 2010

The Honorable Greg Abbott
Attorney General of Texas
ATTN: Opinion Committee
Supreme Court Building
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0862-GA

RE: Whether the exemption for repossession agents provided in §1702.324(b)(3) of the Texas Occupations Code applies only to the provision of investigative services by such agents or is instead applicable to all services currently regulated under the Private Security Act, including locksmith services.

Dear Attorney General Abbott:

Chapter 1702 of the Occupations Code, the Private Security Act (Act), implements a regulatory scheme covering a range of security-related services such as private investigation, alarm installation and locksmiths. Upon its adoption in 1969, the predecessor to the Private Security Act was administered by the Texas Board of Private Investigators and Private Security Agencies.¹ In 1999, that agency was renamed the Texas Commission on Private Security.² In 2003, the functions of the Texas Commission on Private Security were transferred to the Department of Public Safety (Department). The Private Security Act is now administered by the Private Security Board under the auspices of the Texas Public Safety Commission.³

As originally adopted, the predecessor to the Act exempted from its provisions, "the legal owner of property which has been sold under a conditional sales agreement or a mortgagee under the term of a chattel mortgage."⁴ This exemption eventually became §1702.324(b)(3) of the Occupations Code, which provides, "This chapter does not apply to a person engaged exclusively in the business of repossessing property that is secured by a mortgage or other security interest."

Historically, this exemption has been viewed as permitting repossession agents to engage in certain investigative activities, such as locating individuals holding secured property, which are integral to the repossession of property but also within the ambit of the Private Security Act. It

¹ Acts, 61st Leg., Chap. 610, §2(1) (1969).

² Acts, 76th Leg., Chap. 974, Sec. 2 (1999).

³ Acts, 78th Leg., 3rd C.S., Chap. 10, Sec. 2.02 (2003).

⁴ Acts, 61st Leg., Chap. 610, Sec. 14(a)(6) (1969).

has now been suggested that §1702.324(b)(3) is a broad exemption that permits repossession agents to engage in any of the activities covered by the Private Security Act, and in particular activities otherwise limited to locksmiths, without being subject to the Act's regulatory provisions.

The historical view that the exemption for repossession agents is a narrow one, limited to strictly investigative activities, is predicated on the fact that it was originally enacted as part of a statute which was narrowly focused on private investigators and private security activities. In addition, at the time the exemption was adopted in its current form, locksmiths were also specifically exempted from the Act's regulatory provisions.⁵ Although the current statute covers a broader range of activities, the view that the exemption should still be narrowly construed is buttressed by the Legislature's amendment of §1702.324 in 2007, to include the following provision:

(c) The exemptions provided by Subsection (b) apply only to a person described in that subsection while the person is performing services directly related to and dependent on the provision of the exempted service that does not otherwise require licensing under this chapter. The exemptions do not apply to activities or services that are independent of the service or profession that is the basis for the exemption.

Acts, 80th Leg. (R.S.), Chap. 906, §16 (2007). While investigative services are clearly directly related to repossession activities, the Department does not believe other activities subject to the Act, including, but not limited to, locksmith services, alarm installation services, and private security services, are directly related to, or necessary for, the successful repossession of property.

The Department respectfully requests your opinion as to whether §1702.324 exempts repossession agents from regulation when they are engaged in any of the activities otherwise covered by the Private Security Act or only when they are engaged in investigative activities that are essential to their repossession efforts.

Sincerely,



Steven C. McCraw
Director

SCM:SP:PS

cc: Lieutenant Governor David Dewhurst

⁵ The locksmith exemption was enacted in 1977 (Acts, 65th Leg., Chap. 746, §3 (1977)) and repealed in 2003, when locksmiths were required to be registered (Acts, 78th Leg. (R.S.), Chap. 936, §8 and §13 (2003)).