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May 15, 1979

ATTORNEY GENERAL OPINION NO. 79- 88

Mayor Pete Klassen
City of Whitewater
Whitewater, Kansas 67154

Mr. Harold D. Taylor
City Councilman
City of Wellsville
Wellsville, Kansas 66002

Re: Cities and Municipalities--Law Enforcement Officers--
Employment and Powers

Synopsis: Personnel of a private security agency are not law enforcement officers within the meaning of the Kansas Code of Criminal Procedure or the Code of Procedure for Municipal Courts. The enforcement powers of such personnel are limited to the authority vested in private persons for the enforcement of state laws and city ordinances.

* * *

Dear Gentlemen:

You inquire whether your cities may legally contract with a private security agency in order to provide general police protection within the corporate limits of your municipality. The appointment powers of the governing body of cities of the third class are set out in K.S.A. 15-204 which provides:

"The mayor, with the consent of the council, may appoint, at the first regular meeting of the governing body in May of each year, the

following city officers, to wit: A municipal judge of the municipal court, a clerk, a treasurer, a marshal-chief of police, policemen, street commissioner, and such other officers as deemed necessary; and may retain a licensed professional engineer to act in the capacity of city engineer for specifically defined duties. The duties and pay of the various officers provided for in this section shall be regulated by ordinance. A majority of all the members of the council may remove any such officer; or, for good cause, the mayor may remove any such officer, with the consent of the council."

Although the foregoing statute does not expressly prohibit the governing body from contracting with a private security agency for the purpose of police protection, it is our opinion that such a contract would be a somewhat meaningless exercise of the city's contractual authority, in light of the limited authority vested in a private security agency. The Code of Procedure for Municipal Courts contained in K.S.A. 12-4101 et. seq. defines the term "law enforcement officer," and subsequent statutes in the code establish the powers and duties of such officers. K.S.A. 12-4113(j) states:

"Law enforcement officer' means any person who by virtue of office or public employment is vested by law with a duty to maintain public order and to make arrests for violations of the laws of the state of Kansas or ordinances of any municipality thereof."
[Emphasis supplied.]

It is our opinion that this definition, particularly the emphasized portion, precludes private security agency personnel from the status of "law enforcement officer." Since these personnel are employed by the private agency and not the city, it is clear that they are not vested by law with a duty to maintain public order and make arrests by virtue of their office or public employment. This determination severely restricts any conceivable merit in a contract such as the one you have described and renders a number of the contract provisions virtually impossible to perform.

More specifically, since private security agency personnel are not law enforcement officers, they are not authorized to issue notices to appear (K.S.A. 12-4204), serve warrants or notices to appear (K.S.A. 12-4203), detain persons for violations of city ordinances (K.S.A. 12-4211), or arrest persons for violations of city ordinances (K.S.A. 12-4212). In all respects, private security agency personnel are merely private persons within the meaning of the Code of Procedure

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for Municipal Courts, and their enforcement powers are limited to those powers granted to all persons.

In our opinion, a private person may enforce city ordinances only by filing a written complaint with the municipal court pursuant to K.S.A. 12-4202. Any resulting notice to appear or warrant must be served by a law enforcement officer or, in limited circumstances, by the clerk of the municipal court (K.S.A. 12-4207 and 12-4210); therefore, private security agency personnel would not have legal authority to serve notices to appear or warrants resulting from their written complaints.

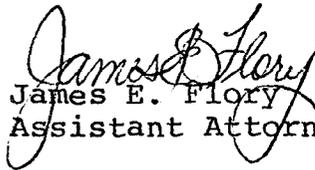
In light of the foregoing, it is clear that the ability to enforce city ordinances by private security agency personnel is extremely limited. The power vested in private persons for enforcement of state laws is set out in K.S.A. 22-2403 and is a broader grant of arrest authority. Even regarding state laws, however, authority to issue notices to appear and execute warrants is vested exclusively in law enforcement officers (K.S.A. 8-2106, 22-2305, 22-2408).

In conclusion, it is our opinion that private security agency personnel are not law enforcement officers within the meaning of K.S.A. 12-4113(j), and that the enforcement powers of such personnel are limited to the powers of private persons regarding the enforcement of city ordinances and state statutes. Consequently, we believe that the private security agencies could not legally provide the degree of police protection alluded to in the contracts submitted with your inquiries.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



James E. Flory
Assistant Attorney General

RTS:TDH:JEF:sjw