



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 10, 1997

The Honorable Jerry Patterson
Chair, Veteran Affairs
& Military Installations Committee
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 97-111

Re: Authority of part-time peace officers
employed by a junior college district and related
question (ID# 39605)

Dear Senator Patterson:

On behalf of the chief of police of the San Jacinto College Police Department, you request an opinion from this office regarding the San Jacinto College District's practice of hiring peace officers on a part-time basis, and its practice of providing and charging for security for events held by others at San Jacinto College facilities.

San Jacinto College District (the "district") is a college district operating San Jacinto College (the "college"), a public junior college.¹ Your request letter indicates that the district maintains its own police department under section 51.203 of the Education Code. In addition to employing full-time peace officers, the district also hires off-duty police officers from other jurisdictions on a part-time basis to patrol the college campus and "work" special events. Thus, the first question your request raises is whether the part-time peace officers have the same powers as the district's full-time peace officers.

To determine the police powers of the part-time peace officers, we look at section 51.203 of the Education Code pursuant to which, you indicate, the district maintains its own police department.

¹See Educ. Code §§ 130.0011 (providing that public junior colleges shall be two-year institutions primarily serving their local taxing districts and service areas in the state), .031 (providing that junior colleges may be established as union, county, or joint-county junior college districts), .084 (junior college board of trustees governed in establishment, management and control of junior college by general law governing establishment, management and control of independent school districts insofar as general law is applicable), .197 (specifying territory included within San Jacinto College District's service area); *Shepherd v. San Jacinto Junior College Dist.*, 363 S.W.2d 742, 742 (Tex. 1962) (San Jacinto Junior College District organized as union junior college district under provisions of former V.T.C.S. art. 2815h, now codified at Educ. Code § 130.031).

Section 51.203 provides in relevant part as follows:

(a) The governing boards of each state² institution of higher education and public technical institute may *employ and commission peace officers* for the purpose of carrying out the provisions of this subchapter [E, Protection of Buildings and Grounds, of chapter 51 of the Education Code]. The primary jurisdiction of a peace officer commissioned under this section includes all counties in which property is owned, leased, rented, or otherwise under the control of the institution of higher education or public technical institute that employs the peace officer.

(b) Within a peace officer's primary jurisdiction, a peace officer commissioned under this section:

(1) is vested with all the powers, privileges, and immunities of peace officers;

(2) may, in accordance with Chapter 14, Code of Criminal Procedure, arrest without a warrant any person who violates a law of the state; and

(3) may enforce all traffic laws on streets and highways.

(c) Outside a peace officer's primary jurisdiction a peace officer commissioned under this section is vested with all the powers, privileges, and immunities of peace officers and may arrest any person who violates any law of the state if the peace officer:

(1) is summoned by another law enforcement agency to provide assistance;

(2) is assisting another law enforcement agency; or

(3) is otherwise performing his duties as a peace officer for the institution of higher education or public technical institute that employs the peace officer.

....

²You do not ask and we do not consider whether San Jacinto College is a "state" institution of higher education for the purposes of this section. See *supra* note 1; but see Act of April 25, 1967, 60th Leg., R.S., ch. 80, 1967 Tex. Gen. Laws 151, 151 (caption of subchapter E of chapter 51 as originally enacted) ("An Act providing for the protection, safety and welfare of students and employees of the respective governing boards and for the protection and policing of the buildings and grounds of the state institutions of higher education including public junior colleges of this state").

(e) Any person commissioned under this Act must be a certified police officer under the requirements of the Texas Commission on Law Enforcement Officers and Standards.³ [Footnotes and emphasis added.]

Section 51.203 empowers the governing board of a state institution of higher education to “employ and commission peace officers” to carry out the provisions of chapter 51, subchapter E of the Education Code.⁴ Any employment for campus security must comply with section 51.203 in the absence of other authority to employ security personnel. You do not indicate and we are unaware of any other such authority.

We first consider the relevant requirements imposed and powers granted by section 51.203 to campus peace officers. A person employed and commissioned under section 51.203 must be a certified police officer under the requirements of the Texas Commission on Law Enforcement Officer Standards and Education (“TCLEOSE”). Educ. Code § 51.203(e).⁵ An officer commissioned pursuant to section 51.203 is a “peace officer,” Code Crim. Proc. art. 2.12(8), and has the powers of a “peace officer,” set out in subsections (b) and (c) of section 51.203.⁶

Section 51.203 does not distinguish between the powers of a full-time peace officer and those of a part-time peace-officer. Accordingly, a part-time peace officer employed and commissioned consistent with section 51.203 has the same powers as a full-time peace officer. Furthermore, if employed and commissioned under this section, it is of no consequence that a peace officer is an off-duty police officer from a different jurisdiction insofar as his or her powers as a campus peace officer are concerned.⁷ Section 51.203 only requires that the officer must be a

³See Gov’t Code ch. 415 (Commission on Law Enforcement Officer Standards and Education).

⁴See *State v. Backus*, 881 S.W.2d 591, 592 (Tex. App.—Austin 1994, writ ref’d) (campus police officers commissioned for purpose of protecting buildings and grounds of state institutions of higher education).

⁵A commissioned officer must also take and file the oath required of peace officers and file a bond in the amount of \$1000 with the governor or his successor in office, with two or more sureties. Educ. Code § 51.203(d).

⁶See also *Preston v. State*, 700 S.W.2d 227, 229-30 (Tex. Crim. App. 1985) (commissioned campus peace officer’s authority to act as peace officer limited by terms of former version of section 51.203); see *Backus*, 881 S.W.2d at 592-93 (insofar as *Preston* purports to define territorial limits of campus police officer’s jurisdiction, superseded by 1987 amendments to statute) (holding now that university campus police officers authorized by section 51.203 to enforce traffic laws, make warrantless arrests for offenses committed in his presence, and otherwise carry out duties of peace officer anywhere in county or counties in which commissioning institution owns or controls property).

⁷A “commission” grants to a person the right to hold and discharge the duties of a particular office. See 7A WORDS & PHRASES 564 (1959) (“A commission grants the right to hold and discharge the duties of a certain office. *U.S. v. Planter*, 27 Fed. Cas. 544, 546”); BLACK’S LAW DICTIONARY 246 (5th ed. 1979) (a “commission” is “[a] warrant or authority or letters patent issuing from the government, or one of its departments, or a court, empowering a person or persons named to do certain acts, or to exercise the authority of an office (as in the case of an officer in the army or navy).”). Article XVI, section 40 of the Texas Constitution prohibits one person from holding or exercising more than one “civil office of emolument.” We assume that the off-duty police officers involved here are paid both by the other jurisdiction and by the district. However, article XVI, section 40 does not prohibit off-duty, full-time police officers

(continued...)

certified police officer who has met the TCLEOSE standards. Therefore, we conclude that part-time peace officers, off-duty from other jurisdictions, employed and commissioned pursuant to section 51.203 by the district have the same powers as the district's full-time peace officers.

We proceed to the second question raised by your request. You indicate that the district leases college facilities to other schools and outside organizations (collectively, the "organizations"). If requested, the district provides security for the organizations' events held in the leased facilities. The district charges the organizations twenty dollars an hour for each police officer providing the security. The district uses the part-time police officers to work these events and pays them only fifteen dollars an hour. You suggest that by doing this, the district makes a profit and avoids paying overtime to its own police officers.⁸ Your second question is whether the district is in violation of the Private Investigators and Private Security Agencies Act.⁹

The Private Investigators and Private Security Agencies Act, Texas Civil Statutes article 4413 (29bb) (the "act"), was originally enacted in 1969 to regulate the private security industry.¹⁰ In the act the legislature created the Texas Board of Private Investigators and Private Security Agencies, V.T.C.S. art. 4413(29bb); section 4(a), and provided that:

It shall be unlawful and punishable as provided in Section 44 of this Act for any *person* to engage in the business of, or perform any service as an

⁷(...continued)

from other jurisdictions from serving as part-time security officers for the district as a matter of law. In Attorney General Opinion DM-212, this office concluded that neither city police officers nor sheriff's deputies hold civil offices within the meaning of article XVI, section 40 as a matter of law. Attorney General Opinion DM-212 (1993) at 2. Similarly, that opinion also concluded that security officers for school districts do not hold civil offices as a matter of law. *Id.* Accordingly, the attorney general opined, article XVI, section 40 does not as a matter of law prohibit city police officers and sheriff's deputies from serving as part-time security officers for a school district. *Id.* at 5. We cannot, of course, determine whether article XVI, section 40 prohibits a particular police officer from serving as a security officer for the district. *Id.* at 2, 6 (unable to determine whether any particular police officer, sheriff's deputy, or security officer for school district holds civil office as that term is used in article XVI, section 40 since such determination requires resolution of factual questions which cannot be done in opinion process).

⁸You do not provide any information about the facilities at issue nor the identity of the schools or the other organizations leasing the facilities. See Attorney General Opinion JM-139 (1984) (Blinn College may lease its football stadium constructed with student fees only if such arrangement serves junior college purposes). Additionally, you do not ask and we do not consider the district's authority to provide security for events held at the leased facilities. See Educ. Code § 51.203(a) (governing board of state institution of higher education may employ and commission peace officers for purposes of carrying out provisions of Educ. Code ch. 51, subch. E). Finally, you assume the difference between the amounts the district charges the outside organizations and it pays to the part-time officers is all profit. Whether the difference constitutes profit is a question of fact that cannot be resolved in an attorney general opinion and, in any case, need not be resolved to answer your specific question.

⁹You do not ask and we do not consider any application of the Fair Labor Standards Act of 1938, 29 U.S.C. ch. 8.

¹⁰Act of May 23, 1969, 61st Leg., R.S., ch. 610, 1969 Tex. Gen. Laws 1807, 1807; *Garay v. State*, 940 S.W.2d 211, 215 (Tex. App.--Houston [1st Dist.] 1997, pet. ref'd).

investigation company, guard company, alarm systems company, or to offer his services in such capacities or engage in any business or business activity required to be licensed by this Act unless he has obtained a license under the provisions of this Act.

Id. § 13(a) (emphasis added). Your request suggests that you believe the district is engaging in the business of or performing the services of an investigation, guard or similar company by providing and charging for the security at events held by the outside organizations without a license in violation of the act.¹¹

We do not believe that the licensure requirements of the act apply to the district, a political subdivision of the state. The district is a junior college district.¹² A junior college district is a political subdivision of the state¹³ and therefore a public entity. It is a state educational agency and can only perform governmental functions.¹⁴ The act, however, was adopted to regulate the private security industry.¹⁵ A "person" for the purposes of the act is defined to "include[] [a] individual, firm, association, company, partnership, corporation, nonprofit organization, institution, or similar entity." V.T.C.S. art. 4413(29bb), § 2(2). A political subdivision is not specifically listed among those comprising "person[s]." *Id.* Nor is a political subdivision qualitatively similar to those listed so as to be embraced within the term "or similar entity" in the above definition.¹⁶ It is a well-established rule of statutory construction that the express enumeration of particular persons or things in a statute is tantamount to an express exclusion of all others.¹⁷ If the legislature had intended the

¹¹You do not specify how or why you believe the district is violating the act.

¹²See *supra* note 1.

¹³Attorney General Opinion M-707 (1970) at 3; see also *Hander v. San Jacinto Junior College*, 519 F.2d 273, 279 (5th Cir. 1975) (Texas junior college districts are independent political subdivisions for Eleventh Amendment purposes).

¹⁴See *Dealey v. Dallas County Junior College Dist.*, 434 S.W.2d 724, 726 (Tex. Civ. App.--Waco 1968, writ ref'd n.r.e.) (Dallas County Junior College District is body politic of state and as such is state educational agency and can only perform governmental functions) (junior college district not answerable in tort while exercising governmental functions).

¹⁵*Garay*, 940 S.W.2d at 215, 216 (statute clearly intended to regulate private security industry); see also *Bates v. State*, 587 S.W.2d 121, 131 (Tex. Crim. App. 1979) (act concerned with licensing of private investigators and is patently inapplicable to individual participating in criminal investigation as state's agent).

¹⁶See 67 TEX. JUR. 3D *Statutes* § 108 (1989) (general words following enumeration of particular things confined to things of the same kind as those described particularly).

¹⁷*Ex parte McIver*, 586 S.W.2d 851, 856 (Tex. Crim. App. 1979) (superseded by statute on other grounds as stated in *Ex parte Johnson*, 697 S.W.2d 605 (Tex. Crim. App. 1985)); see generally 67 TEX. JUR. 3D *Statutes* § 119 (1989).

act to apply to a political subdivision as a "person" that must obtain a license, it would have so expressly provided. In sum, the district is not subject to the act.¹⁸

S U M M A R Y

Part-time peace officers, off-duty from other jurisdictions, employed and commissioned by a public junior college district pursuant to Education Code section 51.203 have the same police powers as the district's full-time peace officers employed and commissioned under such section. The licensure requirements of the Private Investigators and Private Security Agencies Act, Texas Civil Statutes article 4413(29bb), do not apply to a junior college district, a political subdivision of the state.

Yours very truly,



Sheela Rai
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Opinion Committee

¹⁸We note that the act also does not apply to "an officer or employee of the United States of America, or this State or political subdivision of either, while the employee or officer is engaged in the performance of official duties" except as specifically provided. See V.T.C.S. art. 4413(29bb), § 3(a)(2), (e); Attorney General Opinion JM-742 (1987) at 5 n. 2 (because authority is political subdivision, security guards employed by it need not be licensed under act; political subdivision may choose to seek licensing of security guards); see also V.T.C.S. art. 4413(29bb), § 3(a)(22) (act does not apply to person employed as noncommissioned security officer by political subdivision). Accordingly, the act's strictures governing exemption of regular, full-time peace officers who are privately employed while off-duty under section 3(a)(3) would not apply to a peace officer employed by the district and exempted by section 3(a)(2). See *id.* § 3(a)(2), (3) (act does not apply to person who has full-time employment as peace officer who receives compensation for private employment if person satisfies requirements set forth in statute); Attorney General Opinion DM-287 (1994) (section 3(a)(3) exemption applies only to person employed directly by security recipient). Of course, a peace officer employed by an individual who contracted with the district to provide security officers would not be exempt from the licensing requirements of the act pursuant to the above sections. See *id.*; see also Attorney General Opinion DM-212 (1993) at 6 (if school district contracts directly with private security service for security officers, security service must be licensed under act).