



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
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August 5, 1970

Mr. J. Mason Lankford, Jr.
Chairman
Board of Private Detectives, Investigators,
Patrolmen, Guardsmen, and Managers
P.O. Box 12577, Capitol Station
Austin, Texas 78711

Opinion No. M-664

Re: Applicability of Article 4413
(29bb), V.C.S., to certain
situations.

Dear Chairman Lankford:

You have asked an opinion of this office concerning the applicability of Article 4413(29bb), Vernon's Civil Statutes, to certain situations. Rephrased, your questions are as follows:

Can an unlicensed off-duty policeman of a municipal police department or other political subdivision of this state employ other off-duty policemen or officers in a private enterprise to perform guard duty or patrol duty under the provisions of Section 14(a) of Article 4413(29bb), without being licensed under this Article?

Can an alarm agency, approved by the State Board of Insurance, perform the following services subsequent to installations of an alarm system and incident to the sounding of an alarm, without its personnel obtaining a license: Send their representative to answer the alarm, furnish a key to police officers for entrance to the premises, assist the police as they may request in their check of the premises, and reset the alarm after the police have finished their work?

The pertinent part of Article 4413(29bb), reads as follows:

"SUBCHAPTER C. LICENSES.

"License required and false representation prohibited

"Sec. 13. (a) It shall be unlawful and punishable as provided in Section 45 of this Act for any person to engage in the business of, or perform any service as, a private detective, private investigator or private patrol operator or to offer his services in such capacities unless he is licensed under the provisions of this Act.

"(b) It is unlawful and punishable as provided in Section 45 of this Act for any person to represent falsely that he is employed by a licensee.

"Exceptions

"Sec. 14. (a) This Act does not apply to

"(1) . . .

"(2) an officer or employee of the United States of America, or of this state or a political subdivision of either, while the employee or officer is engaged in the performance of official duties;

" . . .

"(8) alarm agencies approved by the State Board of Insurance.

" . . ."

In answer to your first question, Section 14(a)(2) provides quite unambiguously and clearly that the Act does not apply to an officer or employee of the United States of America or of this state or a political subdivision of either, ". . . while the employee or officer is engaged in the performance of official duties, . . ." (Emphasis added). Obviously, therefore, an off-duty policeman of this state or political subdivision engaged in a private enterprise of his own is not excepted from the provisions of this act and thus must secure a license when not engaged in the performance of his official duties as an employee of one of the employers named in Section

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14(a)(2), supra. Section 13(a), quoted above, is to the same effect.

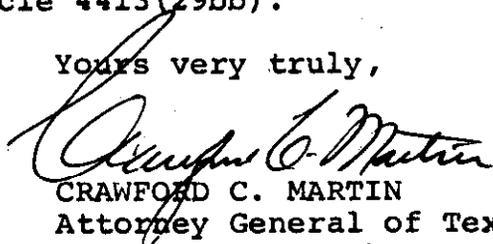
In answer to your second question, our opinion is that the activities you set out, when performed by personnel of an alarm agency approved by the State Board of Insurance, comport with the normal and customary activities of alarm agencies, and therefore in the performance of these activities such employees are excepted by Section 14(a)(8) from the license provisions of Article 4413(29bb).

S U M M A R Y

Without securing a license an off-duty policeman of a municipal police department or other political subdivision of this state may not conduct a private enterprise, employing other off-duty policemen or officers, to perform guard duty or patrol. Article 4413 (29bb), Section 13(a) and 14(a)(2).

An alarm agency, approved by the State Board of Insurance may perform certain activities herein named at the premises from which an alarm may be received without its personnel having obtained a license under the provisions of Article 4413(29bb).

Yours very truly,


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Prepared by Bennie W. Bock, II
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APPROVED:
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