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RD-699

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May 9, 1994

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Honorable Dan Morales  
Attorney General, State of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

FILE # ML-26352-94  
I.D.# 26352  
Opinion Committee

Attn: Ms. Sarah Shirley  
Chairperson, Opinion Committee

Dear Ms. Shirley:

In 1989, the 71st Texas Legislature passed House Bill 1293, effective September 1, 1989. This bill amended TEX. PENAL CODE ANN. § 46.04 (1989) and proscribed that it was a third degree felony to carry a firearm, illegal knife, or a prohibited weapon on the premises of a racetrack.

The legislation provides a defense to prosecution for peace officers while in the actual discharge of their official duties. The legislation, however, ostensibly does not provide a defense to peace officers, carrying firearms and working security at a racetrack, while in an "extra-job" capacity, nor does it permit individuals employed by a racetrack as security guards to carry firearms on the premises. Moreover, the legislation apparently precludes guards employed by armored security services such as Brinks, Wells Fargo, etc. from entering on to racetrack premises with firearms. The practical effect of this legislation, as this office understands it, is the elimination of any armed law enforcement or security guard presence on the premises of a racetrack.

Therefore, pursuant to TEX. GOV'T CODE ANN. § 402.043 (1990) this office is hereby requesting the written opinion of the Attorney General with regard to the following questions:

- 1) May a peace officer, not working at the time for a governmental entity, but employed in an off-duty status or "extra-job" capacity for the purposes of providing security to his off-duty employer, a racetrack, go unto the premises of a racetrack with a firearm?

Attorney General Morales

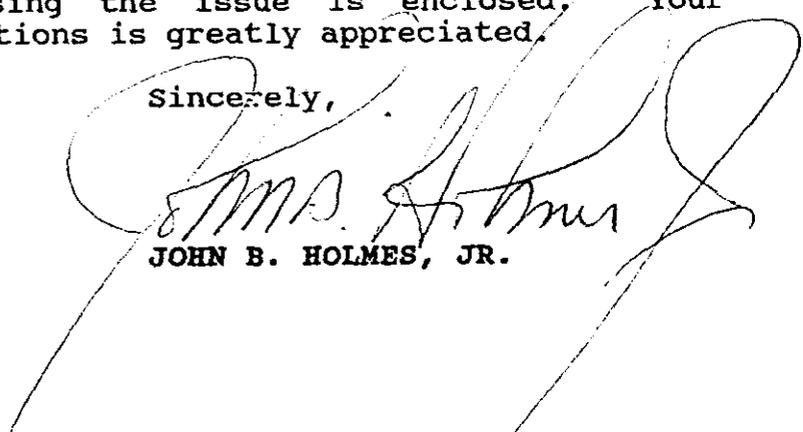
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- 2) May security guards, employed by a racetrack, go unto the premises of a racetrack with firearms while performing security duties for their employer?
- 3) May security guards employed by armored security services such as Brinks, Wells Fargo, etc., go unto the premises of a racetrack with firearms while performing duties for their respective employers?

This office has briefed the issue which is of vital importance to the safety of this community with the recent opening of the Sam Houston Racetrack in northern Harris County; a copy of the memorandum of law addressing the issue is enclosed. Your consideration of these questions is greatly appreciated.

Sincerely,



JOHN B. HOLMES, JR.