

FORMAL OPINION

February 10, 1976

COL. CLINTON PAGANO, *Superintendent*  
Division of State Police  
Box 68  
West Trenton, New Jersey 08625

FORMAL OPINION NO. 6-1976

Dear Colonel Pagano:

You have asked for an opinion on certain questions concerning the activities of constables. In particular, you have asked whether a constable may carry a firearm during off duty hours without having a permit or firearms purchaser identification card in accordance with the law governing firearms or be employed as a security guard at a private building or business concern consistent with the provisions of the Private Detective Act of 1939, N.J.S.A. 45:19-8, *et seq.* It is our conclusion based upon a review of the pertinent statutory provisions that a constable may not permissibly carry a firearm during off duty hours without having obtained the requisite permit or firearms purchaser identification card and must be licensed under the Private Detective Act as a condition to his employment as a private security guard for hire.

N.J.S.A. 2A:151-41 provides in pertinent part that with certain exceptions persons may not carry pistols or revolvers without having obtained a permit and may not possess a rifle or shotgun without having obtained the appropriate firearms purchaser identification card. N.J.S.A. 2A:151-43(f), however, exempts from these requirements "any . . . constable . . . when in discharge of his duties." It is clear that the Legislature intended to restrict the possession of the firearm by a constable without the necessary permit to his official constabulary responsibilities carried out during his normal and commonly understood duty hours. In *State v. Nicol*, 120 N.J. Super. 503 (Law Div. 1972), the defendant constable was charged with possession of a revolver without a permit. The accused argued that the indictment should be dismissed because N.J.S.A. 2A:151-43(f) exempted him from the requirement of a permit. The court disagreed and held that the defendant who on the occasion in question had been serving a subpoena on behalf of an attorney was not engaged in constabulary duties and would not therefore come within the exception found in section 43(f). Accordingly, the constable's status during his off duty hours is comparable to that of a private citizen and he must possess a permit or purchaser identification card to legally carry a firearm.

There is a clear legislative distinction intended between those persons authorized to carry firearms at all times and those whose authority to carry firearms without a permit or firearms purchaser identification card is circumscribed. For example, United States marshals, sheriffs and police officers may possess firearms at all times without having obtained permits or purchaser identification cards. N.J.S.A. 2A:151-43(a), (c), (d) and (e). Other persons, including constables, members of the armed forces, prison guards and court attendants, may only carry unlicensed firearms during the performance of their duties. N.J.S.A. 2A:151-43(b), (f), (h) and (i).

The limitation placed on a constable's right to carry a firearm is grounded in the fact that a constable's obligations and responsibilities with respect to law enforcement and preservation of the peace are narrower than those of other officers. A police officer has an obligation to enforce the law at all times. It is the "nature of a policeman's job that he be fit and armed at all times, whether on or off duty, and subject to response to any call to enforce the laws and preserve the peace." See *Banks v. City*

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of Chicago, 11 Ill. App.3d 543, 297 N.E.2d 343, 349 (1973). See also, *Ward v. Keenan*, 3 N.J. 298, 311 (1949). Similarly, a sheriff is under the duty to be constantly vigilant and alert to violations of the law. See *State v. Williams*, 346 Mo.1003, 144 S.W.2d 98, 104 (1940); *Commonwealth ex rel. Davis v. Mallon*, 195 Va.368, 78 S.E.2d 683 (1953); *State v. Lombardi*, 8 Wisc.2d 421, 99 N.W.2d (1959). On the other hand, constables are not obligated to enforce the law when they are engaged in matters other than strictly the performance of constabulary duties. See 80 C.J.S., *Sheriffs and Constables*, §42(b); *In re Borough High Constables*, 32 Del.Col. 335 (Del. Co., Pa. 1944). See also, *Ferguson v. Kern County*, 26 Cal.App. 554, 147 P.603 (1915). For these reasons, a constable may not legally carry a firearm without a permit or identification card when not engaged in the performance of his constabulary duties pursuant to law.

It is also clear that a constable may not engage in the occupation of a security guard at various private business enterprises without a license under the Private Detective Act of 1939. N.J.S.A.45:19-8 *et seq.* That act prohibits any person from engaging in the private detective business or as a private detective without having first obtained a license to conduct such business from the Superintendent of State Police. Any person who shall engage in such a business without a license shall be guilty of a misdemeanor. N.J.S.A.45:19-10. The definition of a "private detective" is one who conducts a private detective business which includes the furnishing for hire or reward of watchmen or guards or other persons to protect persons or property either real or personal or for any other purpose whatsoever. N.J.S.A.45:19-9(a), (c). The constable is not empowered as part of his express or inherent official responsibilities to guard private property. 80 C.J.S., *Sheriffs and Constables*, §49. You are therefore advised that a constable who engages in the business of a security guard for hire in various private buildings or business enterprises is subject to licensure by the Superintendent of State Police in accordance with the provisions of the Private Detective Act and must be immediately licensed to avoid the criminal penalties imposed by the act.

Your very truly,

WILLIAM F. HYLAND

*Attorney General of New Jersey*

By: SOLOMON ROSENGARTEN

*Deputy Attorney General*

FORMAL OPINION

March 23, 1976

COLONEL CLINTON A. PAGANO, *Superintendent*  
Division of State Police  
Route 29  
West Trenton, New Jersey 08625

FORMAL OPINION NO.6-1976-SUPPLEMENT

Dear Colonel Pagano:

In *Formal Opinion No. 6-1976* dated February 10, 1976, you were advised, among other things, that a constable who engages in the business of a security guard for hire in various private buildings or business enterprises is subject to licensure by the Superintendent of State Police pursuant to the provisions of the Private Detective Act of 1939, N.J.S.A. 45:19-8 *et seq.* Some question has arisen as to whether our ruling was also designed to include those constables who are employed by a licensed private detective or security guard business. I am writing at this time to confirm that *Formal Opinion No. 6* does not cover such constables.

The Private Detective Act requires a person engaged either in the "private detective business" or as a "private detective or investigator" to acquire a license from the Superintendent as a prerequisite to conducting operations. N.J.S.A. 45:19-10. A person engaged in a private detective business is defined to be one who engages in the business of a watch, guard or patrol agency and who employs one or more persons in conducting such a business. N.J.S.A. 45:19-9(a), (b). A private detective or investigator is defined as a person who singly and for his own account conducts a private detective business without the aid or assistance of any employees. N.J.S.A. 45:19-9 (c). Licensure requirements thus do not extend to persons employed by a private detective business.\*

Very truly yours,  
WILLIAM F. HYLAND  
*Attorney General*

By: THEODORE A. WINARD  
*Assistant Attorney General*

\* It should be noted that although an employee of a private detective business is not personally subject to licensure, the holder of a license issued by the Superintendent is responsible for the actions and conduct of his employees. N.J.S.A. 45:19-15, 16, 17, 18. The Superintendent has also promulgated specific regulations dealing with the fingerprinting, identification and badges of employees. N.J.A.C. 13:55-1.2, 1.3, 1.4, 1.5.