

FORMAL OPINION

December 1, 1977

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

FORMAL OPINION 1977—No. 23

Dear Colonel Pagano:

You have asked for our opinion as to whether members of a municipal police department may, during their off-duty hours, engage in police related activities for private persons or entities such as serving as a patrolman to direct traffic at shopping centers or at construction sites or at office complexes during rush hours and the like as well as serving as a watchman at construction projects. It is our opinion that such activities are permissible for regular members of the police department if arrangements are made with the employing municipality to use the policemen in this fashion during off-duty hours. A direct relationship between the policeman and the private party would violate the requirements of the Private Detective Act of 1939.¹

With respect to the Private Detective Act, the definition of a "private detective business" and of a "private detective or investigator" would include a policeman or policemen who act in capacities such as those mentioned above during off-duty hours. The term "private detective business" is defined by N.J.S.A. 45:19-9(a) to mean:

... the furnishing for hire or reward of watchmen or guards of private patrolmen or other persons to protect persons or property, either real or personal, or for any purpose whatsoever . . .

A "private detective or investigator" has been defined to mean any 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). However, the Act provides certain exemptions for persons acting in their official capacity:

... The term [private detective business] shall not include and nothing in this act shall apply to any lawful activity of any board, body, commission or agency of the United States of America, *or any county, municipality, school district, or any officer or employee solely, exclusively and regularly employed by any of the foregoing* N.J.S.A. 45:19-9(a) (Emphasis added)

It is therefore clear from this definitional section of the Act that in any instance where provision is made with a municipal police department to secure the services of a regular police officer² for those purposes during his off-duty hours with remuneration channeled through the municipality, the police officer would be acting in his official capacity and would fall within the exemption to the licensing requirements of the Act.³

This conclusion is reinforced by the legislative history of the Act. The predecessor to the present Act, Laws of 1931, c. 183, pp. 410-413, §§ 1-3, provided that nothing in that law applied "... to any detective or officer duly appointed or elected

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to the police force of the State or of any county, or municipality thereof . . .". By sharp contrast, however, the Legislature in the present Act narrowed the exemption to "employees *solely, exclusively and regularly* employed by a governmental body." This amendatory language suggests that whereas it may have been permissible for a police officer to engage in the private detective business without a license prior to 1939, the exemption is now available only when the police officer acts strictly in his official capacity.

You are therefore advised that only those police officers privately employed on their own account during their off-duty hours would incur the interdiction of the Private Detective Act.⁴ Regular members of a police department may engage in police related activities for private persons or entities during off-duty hours where arrangements are made with the employing municipality to use them in this fashion.

Very truly yours,

WILLIAM F. HYLAND

Attorney General

By ROBERT J. DEL TUFO

First Assistant Attorney General

1. An officer who was licensed under the Act would of course be in a different category.
2. By its terms, the exemption refers only to regular police officers and does not include special police officers appointed pursuant to N.J.S.A. 40A:14-146.
3. Moreover, in the construction of the literal terms of a statute, primary regard must be given to the fundamental purpose for which the legislation was enacted. *N.J. Builders, Owner, etc. v. Blair*, 60 N.J. 330, 338 (1960). This strict interpretation of the exemption of municipal police officers from the purview of the Act is fully consistent with the underlying legislative policy to protect the public from the abuse inherent in the private detective business. *Schulman v. Kelly*, 54 N.J. 364, 370-71 (1969); Formal Opinion No. 11—1961 dated August 1, 1961.
4. In *Formal Opinion No. 6 - 1976* dated February 10, 1976, and *Formal Opinion No. 6 - 1976 - Supplement* dated March 9, 1976, it was similarly concluded that a constable may not permissibly act as a private security guard for hire during off-duty hours without having obtained a license under the Private Detective Act from the Superintendent of State Police.