

LETTER OPINION
2004-L-68

November 10, 2004

Ms. Francine Johnson
Executive Director
Private Investigation & Security Board
513 E Bismarck Expy Ste 5
Bismarck, ND 58504

Dear Ms. Johnson:

Thank you for your letter asking whether a Montana armored car company (Company), whose employees are licensed in Montana, is exempt from licensing by the North Dakota Private Investigation & Security Board (Board) because a federal law provides that armored car company personnel licensed to carry firearms in one state are not required to be licensed in another state.

In my opinion the Company is not exempt from licensing by the Board. The federal law in question provides reciprocity between states for firearms licenses issued to armored car personnel; it does not provide reciprocity for private security service licenses for armored car companies.

ANALYSIS

The Company picks up coin and currency at certain locations, including banks, and delivers it to banks and automatic teller machines in western North Dakota and Montana. According to the Company, its personnel who carry weapons are licensed to do so by the Montana Board of Private Security. That fact, the Company claims, exempts it from licensing by the Board under the Armored Car Industry Reciprocity Act of 1993 as amended, 15 U.S.C. §§ 5901 et seq.

The Federal Act establishes the requirements under which states are required to provide reciprocal recognition of weapons licenses issued to armored car crew members. It provides

If an armored car crew member employed by an armored car company—
(1) has in effect a license issued by the appropriate State agency (in the State in which such member is primarily employed by such company) to carry a weapon while acting in the services of such company in that State,

and such State agency meets [certain prescribed minimum requirements]; and (2) has met all other applicable requirements to act as an armored car crew member in the State in which such member is primarily employed by such company, then such crew member shall be entitled to lawfully carry any weapon to which such license relates and function as an armored car crew member in any State while such member is acting in the service of such company.

15 U.S.C.A. § 5902(a). Congress found there was “a need for each State to reciprocally accept weapons licenses of other States for armored car crew members to assure the free and safe transport of valuable items in interstate commerce.” 15 U.S.C.A. § 5901(6). (Emphasis added). The minimum state requirements for issuing a firearms license are specified in 15 U.S.C.A. § 5902(b). Thus, if armored car company personnel are licensed to carry firearms in one state they need not be licensed to carry firearms in other states in which the armored car company operates provided the minimum standards are met.

While the federal law, 15 U.S.C.A. §§ 5901 et seq., provides for weapons reciprocity of crew members, it does not address licensing of armored car companies. North Dakota law, on the other hand, does address licensing companies.

Section 43-30-04, N.D.C.C., requires the Board to “establish by rule the qualifications and procedures for . . . licensing . . . persons providing . . . security services, including armed security personnel.”¹ “Private security service’ means furnishing for hire security officers or other persons to protect persons or property, or to prevent the theft or the unlawful taking of goods . . . or to prevent misappropriation or concealment of . . . money . . . , or the business of performing the service of such security officer or other person for any of these purposes.” N.D.C.C. § 43-30-01(5).

Section 93-02-02.1-03, N.D.A.C., provides that “[a]ny individual or entity hiring another person to perform private security services must obtain a private security agency license.” At least one owner, member or partner of an agency, who is also the applicant for an agency license, must be licensed by the Board “to provide private security services and who will be responsible for all agency personnel providing those services.” Id. Other agency employees need only be registered to provide private security services for the agency. N.D.A.C. §§ 93-02-02.1-01, 93-02-02.1-04.² Thus, the agency license the Board issues is not a weapons license; rather, it is a license to conduct an armored car business in the state.

¹ The word “person” includes a body corporate. N.D.C.C. § 1-01-28.

² Section 93-02-02.1-10, N.D.A.C., provides that the “board may waive part or all of any [North Dakota] training or experience requirements for individuals licensed or registered by the board based upon equivalent training or experience.”

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In order to carry a firearm in the course of providing private security services, an individual must obtain an armed private security certificate from the Board. N.D.A.C. § 93-02-02.1-08. To obtain the certificate, an individual must have certain qualifications, including firearms training. Id. Section 5903, 15 U.S.C.A., provides that federal law preempts inconsistent state law. Consequently, company personnel licensed in Montana to carry firearms would not be required to obtain an armed private security certificate from the Board if Montana's licensing requirements meet the minimum state requirements under federal law.

Based on the foregoing, it is my opinion that the Company is required to obtain a license from the Board as a private security agency to operate in North Dakota. Its personnel need not obtain an armed private security certificate from the Board if they are licensed in Montana to carry firearms, the Montana licensing requirements meet the federal minimum requirements, and they have met all other applicable requirements to act as an armored car crew member in Montana.

Sincerely,

Wayne Stenehjem
Attorney General

tam/vkk

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).