

**LETTER OPINION
2006-L-20**

June 30, 2006

Mr. Russell Hons
Chairman
North Dakota Private Investigative and Security Board
513 E Bismarck Expy Ste 5
Bismarck, ND 58504

Dear Mr. Hons:

Thank you for your letter asking whether a person licensed to provide private security services may review videotapes after the fact to determine what activity took place as shown on the tape without also having a license to provide private investigative services. It is my opinion that a private security service may not review videotapes after the fact to determine what activity took place if that activity constitutes "investigating," which requires a private investigative service license. Whether any particular activity is "investigating" rather than providing "security service" is usually a question of fact on which this office will not opine. However, it is my opinion that the review of videotapes after the fact in order to ascertain sufficient information to complete those gaming reports falls outside providing a "security service" and is an investigative activity which requires a private investigative service license.

ANALYSIS

The North Dakota Private Investigative and Security Board licenses both private investigative and private security services.¹ These terms are defined by statute:

5. "Private investigative service" means, for a fee, reward, or other consideration, undertaking any of the following acts for the purpose of obtaining information for others:
 - a. Investigating the identity, habits, conduct, movements, whereabouts, transactions, reputation, or character of any person or organization;
 - b. Investigating the credibility of persons;

¹ N.D.C.C. ch. 43-30.

- c. Investigating the location or recovery of lost or stolen property, missing persons, owners of abandoned property or escheated property, or heirs to estates;
 - d. Investigating the origin of and responsibility for libels, losses, accidents, or damage or injuries to persons or property;
 - e. Investigating the affiliation, connection, or relationship of any person, firm, or corporation with any organization, society, or association, or with any official, representative, or member thereof;
 - f. Investigating the conduct, honesty, efficiency, loyalty, or activities of employees, persons seeking employment, agents, or contractors and subcontractors;
 - g. Investigating or obtaining evidence to be used before any authorized investigating committee, board of award, board of arbitration, administrative body, or officer or in preparation for trial of civil or criminal cases; or
 - h. Investigating the identity or location of persons suspected of crimes or wrongdoing.
6. "Private security service" means furnishing for hire security officers or other persons to:
- a. Protect persons or property;
 - b. Prevent or detect theft or the unlawful taking of goods, wares, or merchandise, or to prevent the misappropriation or concealment of goods, wares, merchandise, money, bonds, stocks, choses in action, notes, or other valuable documents or papers;
 - c. Control, regulate, or direct the flow of or movements of the public, whether by vehicle or otherwise, to assure protection of private property;
 - d. Prevent or detect intrusion, unauthorized entry or activity, vandalism, or trespass on private property;
 - e. Perform the service of a security officer or other person for any of these purposes; or
 - f. Transport money or negotiable securities to or from a financial institution or between business locations on a regular or daily basis, except for mail delivery.²

You added that the context for your question involves a private security service reviewing previously recorded videotape on behalf of a licensed gaming organization

² N.D.C.C. § 43-30-01(5), (6).

and providing the information necessary to fill in certain gaming reports, or even filling in the gaming report on behalf of their client.³

Reviewing videotape to determine what activities are shown on the tape falls within several of the acts that are included in the definition of a private investigative service.⁴ However, while the statutory definition of a private security service does not clearly provide for a review of videotape to determine the meaning of activity that has already taken place, if that activity is undertaken in an effort to “detect theft” it may fall within the activities permitted of a private security service.⁵

A private security service is defined, in part, as protecting persons or property or preventing or detecting an intrusion.⁶ But another part of this definition also allows a private security service to “[p]revent or detect” theft, intrusion, or vandalism.⁷ “Detect” means to discern or discover the existence, presence, or fact of a matter.⁸ In its statutory context, a private security service is limited to detecting whether a theft, intrusion, or vandalism has taken place.

None of the actions that a private security service may undertake includes investigating employees’ conduct or activities. In particular, the gaming videotape review record forms that are required for certain games of chance primarily concern reporting on whether the employee’s actions were correct game play. These forms generally do not concern a private security service’s authority to identify theft, unlawful entry or vandalism.⁹ In contrast, a private investigative service may investigate to determine a person’s conduct or to investigate the location or obtain the recovery of lost or stolen property.¹⁰ These definitions are contained in the same statute. It logically follows that if the Legislature intended for private security firms to have the same power to investigate

³ See N.D.A.C. § 99-01.3-02-11(5), a gaming organization may hire an independent contractor to “[a]ccess, store, and review recorded video.”

⁴ For example, a private investigative service is defined to include investigating the identity, conduct, movements, whereabouts, or transactions of any person or organization; investigating the connection or relationship of any person or corporation with any organization or association; investigating the conduct, honesty, efficiency, loyalty or activities of employees; or investigating or obtaining evidence to be used before any authorized administrative body or officer. N.D.C.C. § 43-30-01(5)(a), (e), (f), (g).

⁵ See N.D.C.C. § 43-30-01(6)(b).

⁶ N.D.C.C. § 43-30-01(6)(a), (d).

⁷ N.D.C.C. § 43-30-01(6)(b), (d).

⁸ American Heritage Dictionary 387 (2d. col. ed. 1991).

⁹ See for example SFN 50033 (Twenty-one) and SFN 51725 (Paddlewheel).

¹⁰ N.D.C.C. § 43-30-01(5)(a), (c), (f).

that was given to private investigators, the Legislature would have used the same or similar language.¹¹

Therefore, it is my opinion that a private security service may not review videotapes after the fact to determine what activity took place because that activity constitutes “investigating,” which requires a private investigative service license. Whether any particular activity is “investigating” rather than providing “security service” is usually a question of fact on which this office will not opine.¹² However, since the information on the gaming reports at issue generally does not involve theft or the detection of theft, it is my opinion that the review of videotapes after the fact in order to ascertain sufficient information to complete those gaming reports clearly falls outside providing a “security service” and is an investigative activity which requires a private investigative service license.

Sincerely,

Wayne Stenehjem
Attorney General

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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.¹³

¹¹ “Among the factors to consider in interpreting a statute are the actual language, its connection with other classes, and ‘the words or expressions which obviously are by design omitted.’” Class v. Cass County, 236 N.W.2d 850, 854 (N.D. 1975) (citation omitted). Further, the mention of one thing in a statute implies the exclusion of another. Zueger v. ND Workers’ Comp. Bureau, 584 N.W.2d 530, 534 (N.D. 1998).

¹² N.D.A.G. 93-L-26, 2003-L-23.

¹³ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).