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SPRINGFIELD

March 18, 1976

FILE NO. S-1067

CRIMINAL LAW:
Deputy Sheriff -
Spare Time Employment

Honorable Loren S. Golden
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Mt. Carroll, Illinois 61053

Dear Mr. Golden:

I have your letter wherein you ask whether a sheriff's deputy can obtain a certificate of registration as a private detective and do business as a private detective in his spare time. Before dealing with this problem, however, I will first address myself to the issue of whether a sheriff's deputy need obtain a certificate of registration in order to do business as a private detective.

Section 2 of "AN ACT to provide for Licensing and Regulating Detectives and Detective Agencies, and to safeguard

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the interest of the public" (Ill. Rev. Stat. 1975, ch. 38, par. 201-2) states in relevant part:

"The provisions of this Act shall not apply to any detective or officer belonging to the police force of the state or any county, city, town or village thereof, appointed or elected by due authority of law; nor to any person in the employ of the police force or police department of the state or of the county, city, town or village thereof while engaged in the performance of his official duties; * * * "

With regard to the "employees" of the law enforcement agencies described in section 2, it is clear from the quoted language that such individuals must comply with the provisions of this Act when not engaged in the performance of their official duties. The punctuation of this provision, however, raises a question as to whether law enforcement officers as described therein need ever comply with the Act. In dealing with this issue, I assume without deciding that sheriff's deputies were meant by the legislature to be covered by the portion of section 2 quoted above.

As in any case involving the construction of a statute, the primary goal is to ascertain and give effect to the intent of the legislature. (People ex rel. KucharSKI v. Adams, 48 Ill. 2d 540.) Punctuation, although helpful in some instances, is

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not necessarily conclusive evidence of that intent. (Smith v. Logan County, 284 Ill. 163; Illinois Bell Telephone Co. v. Ames, 364 Ill. 362.) In this regard it is especially important to remember that the legislative intent is to be derived from the Act as a whole and not from a single clause read in isolation. Pliakos v. Liquor Control Com., 11 Ill. 2d 456.

The title of the Act at issue here states that the purpose of the Act is to "safeguard the interest of the public". The substantive provisions of the Act reflect this legislative purpose and it is evident from an examination of these provisions that the legislature did not intend to exclude off-duty law enforcement officers from compliance with them.

Section 6a of the Act (Ill. Rev. Stat. 1975, ch. 38, par. 201-6a) sets forth the requirements for the acquisition of a certificate of authority to do business as a private detective. Among other things it requires that the applicant be bonded and carry comprehensive general liability insurance. The value to the public of these requirements is obvious. It seems equally evident that the General Assembly did not intend the public to be deprived of this protection by exempting law enforcement officers who engage in private detective work in

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their spare time from compliance with the bonding and insurance requirements.

Various other sections of the Act are also important in protecting those individuals who seek the aid of a private detective and the existence of these provisions further supports the conclusion that section 2 of the Act was not meant to exempt off-duty law enforcement officers from compliance with the Act.

Section 10b of the Act (Ill. Rev. Stat. 1975, ch. 38, par. 201-10b) for example, requires the holder of a certificate of authority to obtain certain background information from his employees, including past criminal convictions, and to retain this information in such a manner that it is readily accessible to representatives of the Illinois Department of Registration and Education. Once again the benefit to the public of these requirements is self-evident, and it is unlikely that the General Assembly intended to deny this benefit to the public in the case of a law enforcement officer doing business as a private detective in his spare time.

Finally, I point out section 16 of the Act (Ill. Rev. Stat. 1975, ch. 38, par. 201-16) which sets forth a series of actions which can lead to the suspension or revocation of a

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certificate of authority. This, of course, provides the ultimate restraint on the activities of an individual operating as a private detective. If law enforcement officers were allowed to do business as private detectives in their spare time without a certificate of authority, they would, of course, be beyond the reach of this final deterrent.

It is, therefore, my opinion based on these and other provisions of the Act that the General Assembly in section 2 did not intend to exempt off-duty law enforcement officers from compliance with the Act's provisions.

Turning now to the specific question you pose, I point out once again section 6a of the Act which sets forth the requirements for acquiring a private detective's certificate. The clear meaning of the language of this provision is that any "person" meeting the necessary qualifications is to be granted a certificate. Nowhere in the Act is there any indication that a sheriff's deputy is to be denied a certificate because of his profession. Section 6a(e) does require that an applicant's "regular principal employment" has been, for a period of no less than three years, in the law enforcement field or as a registered employee of a licensed detective agency. I do not,

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however, interpret this provision as requiring the applicant to give up his existing "regular and principal employment" in order to receive a private detective's certificate. The purpose of the Act as set forth in the title is to protect the interest of the public by licensing those who seek to engage in the private detective business. Allowing an otherwise qualified individual who happens to be a sheriff's deputy to acquire such a license seems in no way to be in conflict with the legislative purpose.

I also find nothing in the statutes dealing with the powers and duties of sheriffs and their deputies indicating a legislative intent that such officers be prohibited from obtaining a private detective's certificate. The only statutory limit placed on their outside activities is found in section 21 of "AN ACT to revise the law in relation to sheriffs" (Ill. Rev. Stat. 1975, ch. 125, par. 21) which states:

"§ 21. No sheriff or deputy sheriff shall appear in any court as attorney or counsel for any party, or become security for any person in any civil or criminal suit or proceeding."

Applying the constructional maxim "expressio unius exclusio alterius" here it would seem that no other limitations were

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contemplated by the General Assembly. Nelson v. Union Wire
Rope Corp., 31 Ill. 2d 69.

It is, therefore, my opinion that under the law of Illinois a deputy sheriff may acquire a private detective's certificate and do business as a private detective in his spare time, if otherwise qualified.

Nothing set forth in this opinion, however, should be construed as a denial of the power of local authorities to enact valid regulations limiting the outside employment of sheriff's deputies.

Very truly yours,

A T T O R N E Y G E N E R A L