SUNSET EVALUATION REPORT

PRIVATE INVESTIGATORS AND GUARDS

Chapter 463, Hawaii Revised Statutes

A Report to the Governor and the Legislature of the State of Hawaii

Submitted by the
Legislative Auditor of the State of Hawaii

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FOREWORD

Under the "sunset law," licensing boards and commissions and regulated programs are terminated at specified times unless they are reestablished by the Legislature. Nationally, the first sunset law was passed in 1976. Within three years, 30 more states had enacted similar legislation. The rapid spread of sunset legislation reflects increasing public concern with what it sees as unwarranted government interference in everyday activities.

Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, terminated 38 occupational licensing programs over a six-year period. These programs are repealed unless they are specifically reestablished by the Legislature. In 1979, the Legislature assigned the Office of the Legislative Auditor responsibility for evaluating each program prior to its repeal.

This report evaluates the regulation of private detectives and guards under Chapter 463, Hawaii Revised Statutes. It presents our findings as to whether the program complies with the Sunset Law and whether there is a reasonable need to regulate private detectives and guards to protect public health, safety, or welfare. It includes our recommendation on whether the program should be continued, modified, or repealed.

Our approach to the evaluation of the regulation of private detectives and guards is described in Chapter 1 of this report under "Framework for Evaluation." That framework also serves as the framework for conducting other sunset evaluations. We used the policies enunciated by the Legislature in the Sunset Law to develop our framework for evaluation. The first and basic test we apply is whether there exists an identifiable potential danger to public health, safety, or welfare arising from the conduct of the occupation or profession being regulated. If the program does not meet this first test, then the other criteria for evaluation are not applied. However, if potential harm to public health, safety, or welfare exists, then the other evaluation criteria, as appropriate, are applied.

We acknowledge the cooperation and assistance extended to our staff by the Board of Detectives and Guards, the Department of Regulatory Agencies, and other officials contacted during the course of our examination.

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February 1980

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Chapter 1

INTRODUCTION

The Hawaii Regulatory Licensing Reform Act of 1977, or Sunset Law, repeals statutes concerning 38 state licensing boards and commissions over a six-year period. Each year, six to eight licensing statutes are scheduled to be repealed unless specifically reenacted by the Legislature.

In 1979, the Legislature amended the law to make the Legislative Auditor responsible for evaluating each licensing program prior to its repeal and to recommend to the Legislature whether the statute should be reenacted, modified, or permitted to expire as scheduled. This is our evaluation of Chapter 463, Hawaii Revised Statutes, on the licensing of private detectives and guards, which statute is scheduled by the Sunset Law to expire on December 31, 1980.

Objective of the Evaluation

The objective of the evaluation is: To determine whether, in light of the policies set forth in the Sunset Law, the public interest is best served by reenactment, modification, or repeal of Chapter 463.

Scope of the Evaluation

This report examines the history of the statute on licensing of private detectives and guards and the public health, safety, or welfare that the statute was designed to protect. It then assesses the effectiveness of the statute in preventing public injury and the continuing need for the statute.

Organization of the Report

This report consists of three chapters: Chapter 1, this introduction and the framework developed for evaluating the licensing program; Chapter 2, background information on the regulated industry and the enabling legislation; and Chapter 3, our evaluation and recommendations.

Framework for Evaluation

Hawaii's Regulatory Licensing Reform Act of 1977, or Sunset Law, reflects rising public antipathy toward what is seen as unwarranted government interference in citizens' lives. The Sunset Law sets up a timetable terminating various occupational licensing boards. Unless reestablished, the boards disappear or "sunset" at a prescribed moment in time.

In the Sunset Law, the Legislature established policies on the regulation of professions and vocations. The law requires that each occupational licensing program be assessed against these policies in determining whether the program should be reestablished or permitted to expire as scheduled. These policies are:

1. The regulation and licensing of professions and vocations shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services; the purpose must be the protection of the public welfare, not that of the regulated profession or vocation.

2. Even where regulation is reasonably necessary, government interference should be minimized; if less restrictive alternatives to full licensure are available, they should be adopted.

3. Regulation shall not be imposed except where necessary to protect relatively large numbers of consumers who, because of a variety of circumstances, may be at a disadvantage in choosing or relying on the provider of the service.

4. Evidence of abuses by providers of the service shall be accorded great weight in determining whether government supervision is desirable.

5. Regulation which artificially increases the costs of goods and services to the consumer should be avoided.

6. Regulation should be eliminated where its benefits to consumers are outweighed by its costs to taxpayers.

7. Regulation shall not unreasonably restrict entry into professions and vocations by all qualified persons.

We translated these policy statements into the following framework for evaluating the continuing need for the various occupational licensing statutes.

Licensing of an occupation or profession is warranted if:

1. There exists an identifiable potential danger to public health, safety, or welfare arising from the operation or conduct of the occupation or profession.

2. The public that is likely to be harmed is a substantial portion of the consuming public.

3. The potential harm is not one against which the public can reasonably be expected to protect itself.

4. There is a reasonable relationship between licensing and protection of the public from potential harm.

5. Licensing is superior to other optional ways of protecting the public from the potential harm.

6. The benefits of licensing outweigh its costs.

The potential harm. For each regulatory program under review, the initial task is to identify the purpose of regulation and the dangers from which the public is intended to be protected.

Not all potential dangers warrant the exercise of the State's licensing powers. The exercise of such powers is justified only when the potential harm is to public health, safety, or welfare. "Health" and "safety" are fairly well understood. "Welfare" means well-being in any respect and includes physical, social, and economic well-being.

This policy that the potential danger be to the public health, safety, or welfare is a restatement of general case law. As a general rule, a state may exercise its police power and impose occupational licensing requirements only if such requirements tend to promote the public health, safety, or welfare. Under particular fact situations and statutory enactments, courts have held that licensing requirements for paperhangers, housepainters, operators of public dancing schools, florists, and private land surveyors could not be justified.[1] In Hawaii, the State Supreme Court in 1935 ruled that legislation requiring photographers to be licensed bore no reasonable relationship to public health, safety, or welfare and constituted an unconstitutional encroachment on the right of individuals to pursue an innocent profession.[2] The court held that mere interest in

1. See discussion in 51 *American Jurisprudence,* 2d., "Licenses and Permits", Sec. 14.

2. *Terr. v. Fritz Kraft,* 33 Haw. 397.

maintaining honesty in the practice of photography or in ensuring quality in professional photography did not justify the use of the State's licensing powers.

The public. The Sunset Law states that for the exercise of the State's licensing powers to be justified, not only must there be some potential harm to public health, safety, or welfare, but also the potential harm must be to the health, safety, or welfare of that segment of the public consisting mainly of consumers of the services rendered by the regulated occupation or profession. The law makes it clear that the focus of protection should be the consuming public and not the regulated occupation or profession itself.

Consumers are all those who may be affected by the services rendered by the regulated occupation or profession. Consumers are not restricted to those who purchase the services directly. The provider of services may have a direct contractual relationship with a third party and not with the consumer, but the criterion set forth here may be met if the provider's services ultimately flow to and adversely affect the consumer. For example, the services of an automobile mechanic working for a garage or for a U-drive establishment flow directly to his employer, but his workmanship ultimately affects the consumer who brings a car in to his employer for repairs or who rents a car from his employer. If all other criteria set forth in the framework are met, the potential danger of poor workmanship to the consuming public *may* qualify an auto mechanic licensing statute for reenactment or continuance.

The law further requires that the consuming public that may potentially be harmed be relatively large in number. This requirement rules out those situations where potential harm is likely to occur only sporadically or on a casual basis.

Consumer disadvantage. The consuming public does not require the protection afforded by the exercise of the State's licensing powers if the potential harm is one from which the consumers can reasonably be expected adequately to protect themselves. Consumers are expected to be able to protect themselves unless they are at a disadvantage in selecting or dealing with the provider of services.

Consumer disadvantage can arise from a variety of circumstances. It may result from a characteristic of the consumer or from the nature of the occupation or profession being regulated. Age is an example of consumer characteristic which may cause the consumer to be at a disadvantage. Highly technical and complex nature of the occupation is an illustration of occupational character that may result in the consumer being at a disadvantage. Medicine and law fit into the latter illustration. Medicine and law were

the first occupations to be licensed on the theory that the general public lacked sufficient knowledge about medicine and law to enable them to make judgments about the relative competencies of doctors and lawyers and about the quality of services provided them by the doctors and lawyers of their choice.

However, unless otherwise indicated, consumers are generally assumed to be knowledgeable and able to make rational choices and to assess the quality of services being provided them.

Relationship between licensing and protection. Occupational licensing cannot be justified unless it reasonably protects the consumers from the identified potential harm. If the potential harm to the consumer is physical injury arising from possible lack of competence on the part of the provider of service, the licensing requirement must ensure the competence of the provider. If, on the other hand, the potential harm is the likelihood of fraud, the licensing requirements must be such as to minimize the opportunities for fraud.

Alternatives. Depending on the harm to be protected against, licensing may not be the most suitable form of protection for the consumers. Rather than licensing, the prohibition of certain business practices, governmental inspection, the posting of bond, or the inclusion of the occupation within some other existing business regulatory statute may be preferable, appropriate, or more effective in providing protection to the consumers. Increasing the powers, duties, or role of the consumer protector is another possibility. For some programs, a nonregulatory approach may be appropriate, such as consumer education.

Benefit-costs. Even when all other criteria set forth in this framework are met, the exercise of the State's licensing powers may not be justified if the costs of doing so outweigh the benefits to be gained from such exercise of power. The term, "costs," in this regard means more than direct money outlays or expenditure for a licensing program. "Costs" includes opportunity costs or all real resources used up by the licensing program; it includes indirect, spillover, and secondary costs. Thus, the Sunset Law asserts that regulation which artificially increases the costs of goods and services to the consumer should be avoided; and regulation should not unreasonably restrict entry into professions and vocations by all qualified persons.

Chapter 2

BACKGROUND

Chapter 463, Hawaii Revised Statutes, regulates private detectives and guards. No person or firm is allowed to engage in the business of a detective or guard or to furnish such services without a license from the Board of Detectives and Guards. Persons employed by the licensed private detective or guard need not be licensed. However, the licensee is held responsible for the acts of his employees. The regulation of detectives and guards does not include in-house security forces. For example, full-time security people employed by hotels or department stores do not have to be licensed.

Occupational Characteristics

According to the records of the Department of Regulatory Agencies (DRA) as of October 1979, there were 39 licensed guards, 21 licensed guard agencies, 42 licensed private detectives, and 12 private detective agencies.

Private guards are hired to protect property. They protect assets and prevent crime through their visible presence on the premises. They provide security against fire and equipment failure. They control access to private property, enforce the rules of the property owners, such as condominium rules, and may perform other routine maintenance functions.

Private detectives perform investigative work for attorneys, do preemployment and background checks, investigate employee dishonesty and pilferage, and do other types of investigative functions not performed by the public police.

There are security guards who function as "parapolice officers." Parapolice officers are private security personnel who have been granted or deputized by government with similar authority and powers as public police. An example of this in Hawaii is the airport law enforcement officers, who are armed and have powers comparable to police officers although they are private guards furnished under a contract with the State.

Despite the substantial differences between the functions of private guards, private detectives, and parapolice officers, they are subject to the same licensing requirements. At the same time, in-house guards, such as those employed full-time by hotels and other businesses, fall outside the purview of licensing entirely.

Statutory History

The first regulation of private detectives and guards came in 1955 with Act 268. The act created a Board of Private Detectives and Investigators responsible for licensing. The legislative purpose was to "protect the general public from unlawful and unethical conduct and operation of the business of private detectives and investigators."[1] Legislative committee reports noted there was a need "to protect the general public and to raise the standard of this occupation . . . ." Further, the legislative intent was that "only persons who are qualified and of good moral character shall practice this occupation . . . ."[2]

The licensing act was revised in 1961, apparently because of legislative concern with incidents of abuse. The specific intent of the revised statute became "to prevent the abuse of authority granted to private detectives, investigators and watchmen and thereby protect individual citizens against intimidation, coercion and duress in making false confessions."[3] Testimony from the industry cited "several instances of private detectives bullying larceny suspects into executing promissory notes for exhorbitant amounts."[4]

The act again was amended in 1974, by Act 205. The Legislature repealed two requirements—one, that applicants be of "good moral character" and, two, that licensees not employ persons convicted of felonies and offenses involving moral turpitude. The intent of the amendment was to encourage the rehabilitation of convicted persons. The Legislature noted that convicted persons should be given equal access to occupations and that the Hawaii Constitution guarantees that they should not be deprived of this right without due process of law. Act 205 prohibits the disqualification of an individual from pursuing an occupation, or an applicant from being licensed, solely by reason of a prior conviction. It prohibits the use of certain police criminal records in reviewing applications for licensing.

1. Section 8, Act 268, SLH 1955.

2. The Twenty-Eighth Legislature, Territory of Hawaii, Regular Session, *House Journal 1955*, "House Select Committee Report No. 36, H.B. 1113," p. 906.

3. The First Legislature, State of Hawaii, General Session, *House Journal 1961*, "House Standing Committee Report No. 444, H.B. 1304," p. 878.

4. The First Legislature, State of Hawaii, General Session, *House Journal 1961*, "House Standing Committee Report No. 542, H.B. 1304," p. 910.

The Board and Licensing Requirements

Board of Private Detectives and Guards. The licensing of private detectives and guards is regulated by a four-member board. For administrative purposes, the board is placed in the Department of Regulatory Agencies (DRA). It receives staff support from DRA. By law, the board includes a chief of police from one of the counties, a private citizen not engaged in guard or detective work, a person from the industry, and, as a nonvoting (ex officio) member, the Director of Regulatory Agencies. The director may designate a representative to sit in his stead. This has usually been the executive secretary to the board, a full-time employee of DRA.

The board is empowered to examine applicants for licensing. It may revoke and suspend licenses for violations of Chapter 463. It also may adopt, amend, or repeal rules and regulations relating to qualifications for licensing, the conduct and operations of the licensed business, and the revocation or suspension of licenses.

The board normally meets quarterly. According to board members, their most important and time-consuming functions are the review of applications and the handling of complaints. Over the fiscal years 1975–76 to 1978–79, the minutes show the board approved applications for 37 private detectives, 12 private detective agencies, 27 private guards, and 13 private guard agencies. Most of these approvals were subject to the posting of bonds and/or passing the examination. During this period, the board denied four applications–three because of insufficient experience, one because information on the application form was false.

Licensing requirements and procedures. Applicants for licensing as guards or detectives must be citizens of the United States and residents of the State for one year.[5] They must be 22 years of age, have a high school education or its equivalent, and four years of full-time experience in guard or investigative work. All applicants must pass the board's private detective or guard examination.

Applications may be submitted for licensing as a guard, guard agency, private detective, or private detective agency. The same application form is used for both private detectives and guards. The form requires information on the applicant's employment record for the past ten years, three notarized statements attesting to the applicant's moral

5. Citizenship requirements have been found to be unconstitutional. See Attorney General Opinion 74–18. Durational residency requirements are of questionable constitutionality. They have been found unconstitutional in certain situations, e.g., welfare residence requirements. Residency requirements have not been enforced by DRA.

character by residents of the State who have known the applicant for at least five years, self-disclosure of any criminal records or emotional breakdowns and disorders, a snapshot, a $5000 bond, and payment of a fee.

For licensing as an agency (either guard or detective), an organization must be under the direct management of a licensed private detective or guard. Each partner, officer, or director of the agency must submit a notarized statement showing employment records for the past ten years along with three notarized statements attesting to good moral character signed by residents of the State. The agency must have a bond of $5000 and pay an application fee.

The employees of licensed detectives and guards and agencies do *not* need to be licensed. The licensed employer is responsible for the acts of these employees while they are acting on the employers' behalf. The only requirement for employees is an eighth grade education or its equivalent. Under rules and regulations adopted by the board, the agency or licensee must register all employees with DRA.

Both state law and the board's rules and regulations prohibit the carrying of firearms by private detectives and guards unless specifically authorized in writing by the appropriate county chiefs of police. To prevent confusion with public police, all uniforms used by private guard firms must be approved by the board. These are required to be different in design from those used by any government law enforcement agency. Photographs of the approved uniforms and emblems must be filed with the county police departments.

Chapter 3

EVALUATION OF THE REGULATION OF PRIVATE DETECTIVES AND GUARDS

This chapter contains our evaluation and findings on the need for regulation of private detectives and guards and our recommendation concerning regulation. This chapter also discusses the statutes, regulations, and practices relating to control over the carrying of firearms by private guards and detectives, and our recommendations concerning this matter.

Summary of Findings

Our findings are as follows:

1. There is little evidence that regulation is needed. Consumers of the industry services and the industry itself appear to provide a self check against abuse of authority and dishonest practices. There appears to be little relationship between the licensing requirements and protection of the public health, safety, or welfare.

2. The exemption of private security guards under contract with the State from firearm permit requirements is potentially dangerous. State agencies are not adequately monitoring contracts with the private security guard agencies and fail to assure that guards carrying firearms are adequately qualified.

3. The State's exposure to liability from the acts of private guards and detectives under contract with the State, as well as acts of state employees, who carry firearms as part of their duties, is substantial. State statute should be enacted to require private guards and detectives under contract with the State and state employees who are required to carry firearms as part of their duties to be qualified before allowing them to carry firearms.

Evaluation of Need for Regulation

Legislative committee reports clearly show the intent of regulation was to protect the general public from abuses by private detectives and guards, such as intimidation, assault, unnecessary use of force with and without firearms, false imprisonment and arrest, and improper search and interrogation.

The Legislature also intended to protect businesses and others purchasing the services in their dealings with detective and guard services. There was a general concern for unstable business operations. Potential problems in this area are dishonest and poor business practices, failure to perform, false reporting, misrepresentation of prices and services, and negligence.

Incidence of abuse. To ascertain the incidence of abuse, the complaint records at DRA, the Office of the Ombudsman, the Office of Consumer Protection, and board minutes were reviewed. We found that, while the potential for abuse exists, the incidence of abuse is low.

Records at DRA show there have been 12 complaints since 1976. Seven of these 12 were for unlicensed practice. Most were resolved when the individuals in question acquired licenses. Two were for unethical business practices. In these cases, refunds were made to the consumers, one for $40, the other for $100. One complaint dealt with the nonpayment of wages by a guard firm. This was found to be outside the jurisdiction of the board. Two complaints dealt with coercion or injury—the complaint charging coercion was dismissed and the other was referred to the courts as a civil matter.

The Office of the Ombudsman has received three complaints in the past five years. Two dealt with the licensing requirements of the board. The third dealt with nonpayment of wages.

Board minutes show one case of battery in 1975, which was settled in court.

Interviews with past and present board members indicate that the board has received few serious complaints. Board members suggested that this might be because problems are generally handled privately and informally. Interviews with county police departments confirm there have been few problems with private guards. The Honolulu Police Department is aware of instances where guards have burglarized the premises they were supposed to have been guarding, but these incidents have been rare.

Unstable business operators are not prevalent. There has been only one known instance in which consumers have been defrauded by an unlicensed person posing as a private investigator.

Need for public protection. Since the basic function or service of a guard or detective is to protect the assets, property, or rights of the business or person hiring him, the public is exposed to the possible danger of abuse. However, businesses that hire private

guards and detectives have a very direct interest in ensuring that abuses do not occur. Not only are businesses concerned with customer and public relations, they are also very much aware that unwarranted abuses can result in liability suits against them. For these reasons, at least, businesses probably exercise much caution in selecting a private guard or detective agency. Moreover, businesses are sufficiently knowledgeable to protect themselves from the potential abuses by the private guards and detectives.

Private guards and detectives also have a self interest in avoiding abuse of authority, dishonest practices, or any other practices which might be detrimental to their business. They, like the businesses they protect, are subject to liability suits. Guard agencies report that most of their clients require them to carry liability insurance, in addition to the bonding required by law.

The low incidence of abuse appears to be related to the nature of the industry as described above. There is an internal check between the businesses that hire private guards and detectives and the private guards and detectives themselves. Thus, licensing does not appear to be necessary to accomplish the purpose of regulation; that is, the prevention of abuse of authority and dishonest practices.

Two other circumstances cast additional doubt on the need for regulating private guards and detectives. *First*, guards who are employees of the business they serve (rather than being under contract as private guards) provide services similar to services provided by those who are hired under contract. The exposure of danger to the public by employee guards is no different than that for private guards under contract. Yet, employee guards are not required to be licensed. *Second*, Chapter 463 and the regulations relating to that chapter appear to grant private guards and detectives no greater power to carry out their duties than is available to ordinary citizens.

Relationship between licensing and protection. Licensing requirements do not sufficiently relate to the skills required in guard and investigative work, including the important aspect of public protection from abuse of authority or dishonest and poor business practices. The basic licensing requirements are experience and passing the board's examination.

Applicants are required to have four years of full-time investigative or guard work experience before they are allowed to take the examination. The experience requirement presumably establishes a minimum level of skills needed by the applicant. The examination, then, should test the applicant, among other things, on his skills and competence,

including his knowledge on matters relating to the protection of the public from abuse of authority and dishonest business practices.

The examination given to applicants, however, does not test them on their competence and skills relating to guard or investigative work. The examination covers primarily Chapter 463 and the board's rules and regulations. There are 28 true-false questions on such matters as the board's powers and requirements for licensees. Board members acknowledge that the present examination does not really test competency. Moreover, considering that investigative work of detectives and watchman-type services of guards differ significantly from each other, a separate examination should be given to each. Yet, the same test is given to both guards and detectives. Thus, there is no assurance that an applicant is competent in his field of work.

Based on the foregoing, we conclude that regulation of private guards and detectives is not needed. Businesses that hire private guards and detectives, and the private guard and detective industry provide a self check against abuse of authority and prevention of dishonest practices. There appears to be little relationship between the licensing requirements and protection of the public safety.

Statutes, Regulations, and Practices Relating to Control over Firearms

The one potentially serious danger to the public is the carrying of firearms by security guards and detectives who may not be qualified in using firearms.

The Board of Private Detectives and Guards has adopted a rule which prohibits private detectives or security guards from carrying firearms, blackjacks, batons, nightsticks, or weapons unless specifically authorized in writing by the police chiefs of the counties in which they are doing business. This rule, however, has little impact, as the actual enforcement of firearms control rests with the county police departments. In addition, Chapter 134, Hawaii Revised Statutes, is the governing statute relating to firearms, ammunition, and dangerous weapons.

Section 134–9, Hawaii Revised Statutes, requires any person wishing to carry a weapon to have a permit from the respective police chiefs of the various counties. Permits are valid for one year. They may not be granted to ex-felons or to fugitives from justice. Permits are granted only if the individual can demonstrate a need to protect life and property.

The Honolulu police chief reported a total of only 51 active permits issued by the city and county as of November 1979. Permits are not generally requested by or issued to private guards, with the exception of armored car guards.

The Maui police chief has a similar policy of issuing licenses only to armored car guards. The Kauai police chief reports that no permit to carry weapons has been issued to private security personnel.

The chief of police of the County of Hawaii has issued rules and regulations which are stringent. Among other things, he requires the licensed private detective, guard, or agency to show an urgent need and to prescribe a comprehensive firearms training program by a qualified instructor on the proper usage of weapons, and to certify that the applicant is qualified to use firearms as a result of qualifying in the firearms training program or through prior experience and training. The applicant must never have been convicted of a felony or illegal use or possession of a drug, nor appear to be mentally deranged. The Hawaii County Police Department says that permits have been issued only to armored car personnel and to guards on special assignment for a period of about a week.

Private guards and detectives interviewed said that they preferred not to carry weapons or have their employees carry weapons because of the liability involved. In fact, many clients of private guard agencies specify that they do not want armed guards.

State contracts with private guard firms. Various state agencies contract with private guard firms. At least two state agencies, the Department of Transportation's Airports Division and the Stadium Authority, have contracts requiring the use of armed guards.

The Federal Aviation Administration's regulations on airport security require each airport to have a security program which has been approved by the regional director before it can operate.[1] Among other things, the program must include trained and armed law enforcement officers (LEOs) who are authorized to enforce state and local laws. The Stadium Authority also contracts for armed guards to patrol, to protect stadium personnel and property, and to prevent rowdiness and other causes of disruption.

1. *Contract guards exempt from firearms permit law.* As stated previously, Section 134–9, HRS, requires anyone carrying a firearm to secure a permit to do so from the appropriate county police department. Section 134–11, HRS, provides for several

1. *43 Federal Register*, 60786.

exemptions from that requirement. One of the exemptions includes "persons employed by the State or subdivisions thereof or the United States whose duties require them to be armed, while the persons are in the performance of their respective duties, or while going to and from their respective places of duty."

The Department of Attorney General has interpreted the above provision to include private guards employed under contract with the Stadium Authority.

With regard to the Department of Transportation, Section 261–17, HRS, gives the director of the department and to those designated by the director, the power of police officers, which includes the power to serve and execute warrants and arrest offenders, and the power to serve notices and orders.

The State assumes an awesome amount of responsibility and liability in conferring police powers and the authority to carry firearms to private guards, as well as to state employees, without complete assurance that the private guards and state employees are qualified. Because of the seriousness of the potential danger, precautions should be taken which would ensure that the public is adequately protected from injudicious or abusive uses of firearms. A system of double checks is needed. The county police departments and the Department of Attorney General should be responsible for these checks.

The public needs the same protection regardless of who employs the armed security personnel. Merely because some armed personnel are employed by the State or are under contract to the State is not a sufficient reason to exempt these individuals from provisions of the firearms permit process. All those who carry firearms should be carefully screened and checked to make sure that they have no criminal records or histories of mental disorders. Because of the exemption under Section 134–11, the State is not required to do this for either the personnel it employs full time or, according to the Department of Attorney General, for the armed guards under contract with the State. The Department of Personnel Services' minimum qualifications specifications for the state security guard series do not require a background check. And, as we discuss below, the State has not screened carefully the guards who are employed under contract.

The State has an interest in ensuring that those it employs are fit to use firearms and understand the appropriate uses of these weapons. All state security personnel, including private guards under contract with the State, should, by law, be required to have a permit from the appropriate county police departments before being allowed to carry firearms. These individuals should also be required, by law, to have had an official

background check by the police departments as to past criminal records, if any.

The county police departments are required under Section 134–14, HRS, to report monthly to the Department of Attorney General all firearms permits issued during the preceding month. The Department of Attorney General has not enforced this requirement, and the county police departments have not been making a monthly report. Before any security personnel or private guards are allowed by the State to be armed, the Department of Attorney General should verify that the individuals have undergone the background check and have a firearms permit. The Department of Attorney General should enforce the monthly firearms reporting requirement so that these records can be used for verification and as central control for all active permits in the State.

2. *Inadequate monitoring of contracts.* Both the airport and the stadium contracts have rigid requirements, but the monitoring of the contracts is poor. Both contracts require all security guards to have a complete background check equivalent to that prescribed for police officers, to meet physical and educational requirements, to have completed particular kinds of law enforcement training programs, e.g., military police school, police department recruit training, etc., and to have pre-service training consisting of four classroom hours each in a number of subjects such as the law of arrest, the laws of search and seizure, constitutional and state law, and the handling of disturbed persons.

The airport contract requires the LEOs to be qualified annually by an agency to carry a .38 caliber handgun. The stadium contract requires the security guards to be qualified annually by a certified instructor to carry a .38 caliber handgun. The stadium contract further requires a permit from the police department for the security officers to carry firearms.

Specifications and contract documents for the airport and stadium contracts both emphasize the sensitive nature of the work and state that the State will monitor stringent qualification standards for security officers employed under the contract. Certification of background checks and training is to be submitted to the state agency for approval prior to the use of any officer at these locations.

We note, however, that neither the airport nor the stadium has adequate documentation regarding armed guards on duty.

a. *Airport guards.* DOT has deputized 179 guards as armed LEOs. Seventy-two are required to provide the coverage required by the contract. The remainder are a reserve

to be drawn upon when needed. Substantiating documents were not available at the Airports Division and were said to be with the contractor. The armed LEOs have been deputized by the Airports Division to enforce state and local laws. They have powers comparable to those of police officers. Yet, there is no verified certification that these guards have the needed training or that there exist controls over them which are comparable to controls over police officers.

The airports contract requires a background check equivalent to that prescribed for police officers. Persons with emotional disorders are unacceptable. The records do not show whether such a check was actually made. Even if made, it is unclear whether it makes any difference. The Airports Division has deputized guards who have felony arrest records and others with questionable police records. This was brought out in newspaper reports on the use of special deputies at Hilo Airport during a Hawaiian rights demonstration. [2]

b. *Stadium guards.* Similar problems were found at the stadium. The stadium had summary certification forms for only five of 18 security officers who actually worked during the period we examined (between January 31, 1980 and February 5, 1980). None of the certification forms provided information on background investigations made. This line was left blank. Various names were given in the certification forms as the "certified instructor" qualifying the guard to carry a gun. It is unclear what a "certified instructor" is. One individual so named said he is neither an instructor nor certified.

As stated previously, the State assumes substantial responsibility and liability in conferring police powers upon private guards. The coercive potential of such powers is considerable, especially where firearms are involved. We do not think that it is sufficient to leave the matter of firearms control to the discretion of the government agency contracting with private guards. The requirements should be specified by law.

Conclusion and Recommendations

Our conclusion is that the licensing of private guards and detectives is not needed. There is little evidence of danger to the public health, safety, or welfare.

Even with the repeal of Chapter 463, HRS, the public would still be protected under other state and federal laws. These include state laws on tort actions which cover such

2. *The Honolulu Advertiser,* May 11, 1979.

wrongs as fraud and negligence. Criminal law covers such abuses as assault, battery, extortion, and unlawful imprisonment. Federal and state laws on privacy prohibit wire-tapping and other violations of privacy. State law prohibits the impersonation of public officials and restricts the use of firearms. State and federal agencies are also available to assist consumers in possible complaints against private detectives and guards. These include the Office of Consumer Protection, the county prosecutors, and the county police departments.

There is a potential danger to the public with respect to the carrying of firearms by guards. State law exempts state employees who are required to carry firearms as part of their duties from securing a permit to carry a firearm from the respective county police departments. According to the Department of Attorney General, this exemption extends to private guards employed under contract with the State. This exemption to state employees, including private guards under contract, should be removed. The potential liability is too great.

Recommendations. *We recommend the following:*

1. *Chapter 463, Hawaii Revised Statutes, be allowed to expire as scheduled on December 31, 1980.*

2. *Section 134–11(3) be amended to delete the exemption for employees of the State and its subdivisions from firearm permit requirements.*

3. *The Legislature enact a statute requiring all state security personnel, and private guards providing services under contract with the State, to have had background checks and firearms permits from the appropriate county police departments before being armed. These documents are to be verified by the Department of Attorney General.*

4. *The State provide for adequate controls when it contracts with private agencies for parapolice services. These controls should include:*

   - *training of employees comparable to that received by police officers;*
   - *evidence that each employee required to carry a firearm is fully competent to do so by requiring a permit from the police chiefs of the various counties; and*
   - *strict monitoring of contractor compliance with the requirements.*