

**OPINION NO. 70-145****Syllabus:**

Private policemen duly commissioned pursuant to Section 737.05, Revised Code, are not exempt from the licensing statutes of Chapter 4749, Revised Code, when they act independently of a law enforcement agency as private investigators or watchguards.

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**To: J. Gordon Peltier, Director, Dept. of Commerce, Columbus, Ohio**  
**By: Paul W. Brown, Attorney General, October 27, 1970**

I have before me your request for an opinion which reads as follows:

"Is a private policeman, commissioned in accordance with Section 737.05, R.C., exempt from the licensing requirements of

Chapter 4749, R.C. even though they are directly engaged in the business of offering private investigation/watchguard services and do not operate through a law enforcement agency?"

Section 4749.01 (C) (1) and (5), Revised Code, provides that public officers, whose official duties require them to engage in investigatory activities are exempt from the licensing requirements of Chapter 4749, Revised Code. Although private policemen are clearly public officers, it can not be inferred that they are automatically exempt from the licensing provisions for private investigators. Neapolitan v. U.S. Steel Corp., 77 Ohio Law Abs., 376 (1956). The dispositive factor in this matter is Section 4749.01 (C) (1) and (5), supra, which reads as follows:

"(C) 'Private investigator' and 'business of private investigation' do not include:

"(1) Public officers and employees whose official duties require them to engage in investigator activities.

"\* \* \* \* \*

"(5) An employee in the regular course of his employment, engaged in investigating matters pertinent to the business of his employer or protecting property in the possession of his employer, provided such employee is not employed by, associated with, or acting for or on behalf of any private investigator.

"\* \* \* \* \*

(Emphasis added)

Therefore, if a duly commissioned private policeman is not acting within the scope of his official duties but rather offers watchguard or private investigating services to private individuals or businesses for compensation, he would be subject to the licensing requirements of Chapter 4749, supra.

Opinion No. 70-044, Opinions of the Attorney General for 1970, stated that private policemen were exempted from the licensing requirements of Chapter 4749, supra, because they were public officers within the meaning of Section 4749.01 (C) (1) and (5), supra, which exempts certain officers. That opinion did not deal with the question of whether or not they should be exempted when they act as private investigators outside the scope of their authority as public officers, but merely held they are public officers and as such were exempted. However, the question presented for this opinion asked whether or not private policemen should be exempt when they are acting outside the scope of authority of the law enforcement agency. The exemption granted to public officers was not intended to be carte blanche, and thus when they act as private investigators independently of the public office which they serve, they should be subject to the same regulations as any other person performing the same function.

Section 4749.01 (C) (5), supra, also exempts from licensing employees who engage in investigatory activities in the regular course of their employment. Thus, regular employees who in

addition hold commissions as private policemen and whose duties require them to engage in investigatory activities would be exempt from the licensing requirement for activities within the scope of their employment. This opinion affects only those persons who offer their services as private investigators as independent contractors.

Therefore, it is my opinion and you are so advised that private policemen duly commissioned pursuant to Section 735.01, Revised Code, are not exempt from the licensing statutes of Chapter 4749, Revised Code, when they act independently of a law enforcement agency as private investigators or watchguards.