



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 10-003

MUNICIPALITIES:
Authority to Contract with
Private, Not-for-Profit Corporations
for Auxiliary Police Services

The Honorable Antonio Muñoz
Assistant Majority Leader
State Senator, 1st District
1836 West 35th Street, 1st Floor
Chicago, Illinois 60609

Dear Senator Muñoz:

I have your letter inquiring whether municipalities have the authority to contract with private, not-for-profit corporations for the provision of auxiliary police services. For the reasons stated below, it is my opinion that although non-home-rule municipalities are expressly authorized by statute to appoint individual auxiliary police officers, they are not authorized to contract with private, not-for-profit corporations, private security firms, or other private business entities for the provision of auxiliary police services. Further, while it is my opinion that home rule municipalities may appoint individual auxiliary police officers, they may not contract with private, not-for-profit corporations, private security firms, or other private business entities for

auxiliary police services and permit the corporation's employees or members to carry firearms and wear peace officer style uniforms, unless specific, named employees or members of the corporation have been properly appointed as auxiliary police officers and have successfully completed all required training.

BACKGROUND

It is our understanding that certain private, not-for-profit corporations organized pursuant to the General Not For Profit Corporation Act of 1986 (805 ILCS 105/101.01 *et seq.* (West 2008)), or its predecessor statutes,¹ are providing auxiliary police officer services to units of local government. The corporations include terms such as "Illinois" and "Police" in their corporate names,² and assert that their civilian members can function as municipal auxiliary police officers when requested to do so by a local police department. A number of these corporations have entered into contracts with local authorities for the provision of auxiliary police services. Once they enter into a contract, the corporations frequently seek the

¹See General Not For Profit Corporation Act (Ill. Rev. Stat. 1985, ch. 32, par. 163a *et seq.*); AN ACT concerning corporations (Ill. Rev. Stat. 1941, ch. 32, par. 158 *et seq.*).

²The U.S. Marshals Service has provided information that refers to a number of these organizations, including: the Illinois Police Bureau, Illinois Police Auxiliary, Illinois Police Reserves, Illinois Auxiliary Police, Police Reserves of Northeastern Illinois, Reserve Traffic Police, Sheriffs Police Reserves, Illinois "Sheriff" Police, Metropolitan Auxiliary Police, Inc., Illinois Sheriffs Police Auxiliary, and Merchants Police. The information also references a number of dissolved corporations, including: Illinois Auxiliary Police Reserve, Illinois Police Reserve Unit, Illinois Police Patrol Reserve, Reserve & Auxiliary Police of Illinois, Cook County Auxiliary Police, Illinois Auxiliary Special Police, Police Auxiliary of Illinois, Police Reserves of Illinois, and Reserve Unit Police.

Subsection 17-2(b-10) of the Criminal Code of 1961 (720 ILCS 5/17-2(b-10) (West 2009 Supp.)) prohibits organizations from using the "words 'officer', 'peace officer', 'police', 'law enforcement', 'trooper', 'sheriff', 'deputy', 'deputy sheriff', or 'state police' in combination with the name of any state, state agency, public university, or unit of local government without the express written authorization of that state, state agency, or unit of local government."

"commissioning" of their members as auxiliary police officers of the local police department. Based on information from the U.S. Marshals Service, it is our understanding that specific, named corporation members or employees are not appointed as auxiliary police officers, but rather the private, not-for-profit corporation "and its personnel" are "commissioned" as auxiliary police officers and are granted peace officer status. After "commissioning," the employees of the not-for-profit corporations are authorized to wear an official uniform, carry a firearm while on duty, and use and carry official and authorized equipment. The individual members of these private, not-for-profit corporations have not received training as conservators of the peace pursuant to section 3.1-15-25 of the Illinois Municipal Code (the Municipal Code) (65 ILCS 5/3.1-15-25 (West 2008)) or firearm training in accordance with section 2 of the Peace Officer Firearm Training Act (50 ILCS 710/2 (West 2008)). Nevertheless, they are issued identification and firearm cards, as well as badges by the not-for-profit corporations, many of which prominently contain the word "police." The corporations are commonly referred to as "auxiliary police organizations."

We have been made aware of eleven auxiliary police organizations that are or recently have been active in the Chicago metropolitan area. The most active of the organizations are the Illinois Police Reserves, the Illinois Police Bureau, and the Illinois Auxiliary Police (*see* Letter from Kim R. Widup, United States Marshal, United States Marshals Service, Northern District of Illinois, to Michael Hood, Deputy, Criminal Justice, Office of the Illinois Attorney General (June 26, 2009)). These organizations have entered into contracts with at least four suburban police departments for the provision of auxiliary police services. Subsequent to the

execution of the contracts, the auxiliary police organizations have sought and received the "commissioning" of their organization "and its personnel."

ANALYSIS

Section 3.1-30-5 of the Municipal Code (65 ILCS 5/3.1-30-5 (West 2008)) authorizes the mayor or president of a municipality to appoint, with the advice and consent of the city council or the board of trustees, as the case may be, "the number of auxiliary police officers determined necessary by the corporate authorities[.]" Section 3.1-30-20 of the Municipal Code (65 ILCS 5/3.1-30-20 (West 2008)) sets forth the powers, duties, and qualifications of auxiliary police officers and provides:

(a) Auxiliary police officers shall not be members of the regular police department of the municipality. Auxiliary police officers shall not supplement members of the regular police department of any municipality in the performance of their assigned and normal duties, except as otherwise provided in this Code. *Auxiliary police officers shall only be assigned to perform the following duties in a municipality: (i) to aid or direct traffic within the municipality, (ii) to aid in control of natural or man made disasters, and (iii) to aid in case of civil disorder as directed by the chief of police. When it is impractical for members of the regular police department to perform those normal and regular police duties, however, the chief of police of the regular police department may assign auxiliary police officers to perform those normal and regular police duties.* Identification symbols worn by auxiliary police officers shall be different and distinct from those used by members of the regular police department. Auxiliary police officers shall at all times during the performance of their duties be subject to the direction and control of the chief of police of the municipality. *Auxiliary police officers shall not carry firearms, except with the permission of the chief of police and while in uniform and in the performance of their duties. Auxiliary police officers, when on duty, shall also be conservators of the peace and shall have the powers specified in Section 3.1-15-25.*

(b) Auxiliary police officers, before entering upon any of their duties, shall receive a course of training in the use of weapons and other police procedures appropriate for the exercise of the powers conferred upon them under this Code. The training and course of study shall be determined and provided by the corporate authorities of each municipality employing auxiliary police officers. Before being permitted to carry a firearm, however, an auxiliary police officer must have the same course of training as required of peace officers under Section 2 of the Peace Officer Firearm Training Act. (Emphasis added.)

Under section 3.1-30-20, it is clear that municipalities are authorized to appoint individual auxiliary police officers. It is equally clear that such auxiliary police officers are not members of the regular police department, but rather may be assigned, in appropriate circumstances, to perform certain, limited police duties such as aiding or directing traffic, aiding in control of natural or man made disasters, and aiding in case of civil disorder as directed by the chief of police. If it is impractical for members of the regular police department to perform their normal and regular police duties, the chief of police may also assign auxiliary police officers to perform other police duties in limited circumstances. In performing their duties, "[a]uxiliary police officers * * * shall also be conservators of the peace and shall have the powers specified in Section 3.1-15-25 [of the Municipal Code]."³

³Section 3.1-15-25 of the Municipal Code provides:

(a) After receiving a certificate attesting to the successful completion of a training course administered by the Illinois Law Enforcement Training Standards Board, the mayor, aldermen, president, trustees, marshal, deputy marshals, and policemen in municipalities shall be conservators of the peace. Those persons and others authorized by ordinance shall have power (i) to arrest or cause to be arrested, with or without process, all persons who break the peace or are found violating any municipal ordinance or any criminal law of the State, (ii) to commit arrested persons for examination, (iii) if necessary, to detain arrested persons in custody over night or Sunday in any safe place or until they can be brought before the proper court, and (iv) to exercise all other powers as conservators of the peace prescribed by the corporate authorities.

Before undertaking their duties, auxiliary police officers must "receive a course of training in the use of weapons and other police procedures appropriate for the exercise of the powers conferred upon them under [the Municipal] Code" as determined and provided by the corporate authorities of the municipality employing them. Further, before the municipality's chief of police may permit them to carry firearms, auxiliary police officers are required to undergo the same course of training as required of peace officers under section 2 of the Peace Officer Firearm Training Act.⁴

Under the Illinois Constitution, home rule municipalities may exercise greater powers than non-home-rule municipalities. Therefore, we will address each category individually.

⁴Pursuant to section 2 of the Peace Officer Firearm Training Act, peace officers are required to successfully complete a 40-hour course of training in the use of a "suitable type firearm" in order to possess and use that firearm in connection with the officer's official duties in the State of Illinois. The Illinois Law Enforcement Training Standards Board must approve this training. Section 2 further provides:

To satisfy the requirements of this Act, the training must include the following:

- (1) Instruction in the dangers of misuse of the firearm, safety rules, and care and cleaning of the firearm.
- (2) Practice firing on a range and qualification with the firearm in accordance with the standards established by the Board.
- (3) Instruction in the legal use of firearms under the Criminal Code of 1961 and relevant court decisions.
- (4) A forceful presentation of the ethical and moral considerations assumed by any person who uses a firearm. 50 ILCS 710/2(a) (West 2008).

The Illinois Law Enforcement Training Standards Board may waive or conditionally waive the 40-hour training course only if, in its opinion, the officer has previously successfully completed a course of similar content and duration. Before obtaining a waiver, however, the officer must demonstrate his or her knowledge and proficiency by passing the written examination on firearms and successfully passing the range qualification portion of the prescribed course of training. 50 ILCS 710/2(e) (West 2008). The Peace Officer Firearm Training Act does not apply to home rule units. 50 ILCS 710/5 (West 2008). Home rule units may establish their own standards.

Non-Home-Rule Municipalities

Turning first to whether non-home-rule municipalities have the authority to contract for the provision of auxiliary police services with private, not-for-profit corporations, it is well established that non-home-rule municipalities possess only those powers that are expressly granted to them by the Constitution or by statute, together with those powers necessarily implied therefrom to effectuate the powers that have been expressly granted. *Scadron v. City of Des Plaines*, 153 Ill. 2d 164, 174 (1992). In opinion No. 82-032, issued September 15, 1982 (1982 Ill. Att'y Gen. Op. 91), this office was asked to advise whether non-home-rule municipalities possessed the power to contract with a private security firm to provide police services for the municipality. In reaching the conclusion that a non-home-rule municipality did not possess such authority, the office reviewed the various provisions of the Municipal Code (*see* Ill. Rev. Stat. 1981, ch. 24, par. 1-1-1 *et seq.*, now codified at 65 ILCS 5/1-1-1 *et seq.* (West 2008)) that authorized non-home-rule municipalities to create, maintain, and administer municipal police forces and to confer upon municipal police officers the powers of conservators of the peace (*see* Ill. Rev. Stat. 1981, ch. 24, pars. 11-1-1, 11-1-2, 3-9-4, now codified at 65 ILCS 5/11-1-1, 11-1-2, 3.1-15-25 (West 2008)). Based upon the analysis of the pertinent laws, my predecessor concluded that non-home-rule municipalities had been granted no express constitutional or statutory power to contract with private security firms to perform police functions for the municipalities, nor was such power necessarily implied in the power granted to municipalities to create and maintain a municipal police force.

Since the issuance of that opinion, the General Assembly has not amended the law in a way that would compel a different conclusion. Further, a review of the other pertinent Municipal Code provisions, including those that authorize a municipality to enter into contracts for services, has not yielded any provision authorizing a municipality to contract for the provision of police services or auxiliary police services. *See, e.g.*, 65 ILCS 5/8-1-7 (West 2008) (corporate authorities of a municipality are authorized to contract for the employment of "a municipal manager, administrator, engineer, health officer, land planner, finance director, attorney, police chief or other officer who requires technical training or knowledge"); 65 ILCS 5/8-3-7a (West 2008) (in qualifying circumstances, municipalities "may contract with any not-for-profit corporation * * * for the purpose of providing transportation to elderly and handicapped persons"); 65 ILCS 5/11-1-7 (West 2008) (corporate authorities of a qualifying municipality may contract with a township to furnish police protection outside of the municipality's corporate boundaries).

In addition to discussing the Municipal Code, opinion No. 82-032 also addressed whether article VII, section 10(a), of the Illinois Constitution of 1970 would authorize a municipality to enter into a contract with a private firm for the performance of police services. Article VII, section 10(a), of the Illinois Constitution of 1970, provides:

(a) Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. *Units of local*

government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. (Emphasis added.)

The Constitution authorizes municipalities to contract with individuals, associations, and corporations (including private, not-for-profit corporations) "in any manner not prohibited by law or by ordinance." In opinion No. 82-032, however, this office determined that municipal law enforcement powers are governmental rather than proprietary in nature, and that article VII, section 10(a), does not permit a non-home-rule municipality to contract away to non-governmental entities the governmental powers granted to the municipality by the State. Thus, non-home-rule municipalities do not have the power under article VII, section 10(a), to contract with private security firms for police services because such a contract would result in the delegation to a private firm of governmental powers vested in and exercisable by the corporate authorities of the municipality or by a statutorily authorized subsidiary board or commission, and therefore is "prohibited by law" within the meaning of the Constitution.

Based on this analysis, it is my opinion that while section 3.1-30-5 of the Municipal Code expressly authorizes municipalities to appoint individual auxiliary police officers, it does not authorize non-home-rule municipalities to contract with private, not-for-profit corporations for the provision of auxiliary police services. Further, there is no indication that non-home-rule municipalities may contract with other types of business entities for the provision of auxiliary police services. Therefore, although non-home-rule municipalities are authorized to appoint individual auxiliary police officers, they are not authorized to contract with

private, not-for-profit corporations, private security firms, or other private business entities for the provision of auxiliary police services.

Home Rule Municipalities

Home rule units derive their powers not only from statute, but also from article VII, section 6, of the Illinois Constitution of 1970, which authorizes a home rule unit to "exercise any power and perform any function pertaining to its government and affairs[.]" except to the extent that home rule powers may be limited pursuant to section 6. In determining whether a home rule unit's action is a valid exercise of its home rule authority, the courts have applied a multi-step analysis. *County of Cook v. John Sexton Contractors Co.*, 75 Ill. 2d 494, 508 (1979); *City of Oakbrook Terrace v. Suburban Bank & Trust Co.*, 364 Ill. App. 3d 506, 514 (2006), *appeal denied*, 221 Ill. 2d 643 (2006). The first step is to determine whether a home rule unit is exercising a power "pertaining to its government and affairs[.]" If so, the next step is to ask whether the General Assembly has either specifically limited the exercise of home rule power or specifically declared the State's exercise to be exclusive, thereby preempting a home rule unit's exercise of its constitutional power. If the General Assembly has not expressly preempted the exercise of home rule power, the final step is to determine whether there is a proper relationship between the local action and State law, allowing the municipality to exercise the power. *Sexton*, 75 Ill. 2d at 508.

Government and Affairs

Turning to whether a contract for the provision of police services pertains to the government and affairs of a home rule unit, it is clear that home rule units may exercise their powers and functions to regulate "for the protection of the public health, safety, * * * and welfare[.]" Ill. Const. 1970, art. VII, §6(a), (i). Further, the powers granted to home rule units by the Constitution are to be liberally construed. Ill. Const. 1970, art. VII, §6(m); *Village of Sauget v. Cohn*, 241 Ill. App. 3d 640, 644 (1993), *appeal denied*, 151 Ill. 2d 577 (1993). Thus, home rule units have broad discretion to determine what the interests of the public require and to take steps to secure and protect those interests. *See Kalodimos v. Village of Morton Grove*, 103 Ill. 2d 483 (1984).⁵

As part of this broad discretion, it is generally accepted that the regulation of its police officers is within a home rule municipality's powers. *See Stryker v. Village of Oak Park*, 62 Ill. 2d 523 (1976), *cert. denied*, 429 U.S. 832, 97 S. Ct. 95 (1976), *reh'g denied*, 429 U.S. 988,

⁵In *Kalodimos*, the Illinois Supreme Court considered whether a village ordinance banning the possession of all operable handguns within the village's corporate boundaries was a permissible exercise of home rule power. In concluding that the ordinance was a permissible exercise of such powers, the Court noted that "[t]he limitation 'pertaining to its government and affairs' has been interpreted to mean that '* * * the powers of home-rule units relate to their own problems, not to those of the state or nation.'" *Kalodimos*, 103 Ill. 2d at 501, quoting *City of Des Plaines v. Chicago & North Western Ry. Co.*, 65 Ill. 2d 1, 5 (1976). Further, the *Kalodimos* Court stated that whether a particular problem is of statewide, rather than local dimension must be decided not on the basis of a specific formula or listing set forth in the Constitution, but rather with regard for the nature and extent of the problem, the units of government which have the most vital interest in its solution, and the role traditionally played by local and statewide authorities in dealing with the issue. Therefore, the exercise of home rule powers is predicated on the assumption that problems in which local governments have a legitimate and substantial interest should be open to local solution and reasonable experimentation to meet local needs, free from veto by voters and elected representatives of other parts of the State who might disagree with the particular approach advanced by the representatives of the locality involved or fail to appreciate the local perception of the problem. *Kalodimos*, 103 Ill. 2d at 501-05. *See also Village of Bolingbrook v. Citizens Utilities Co. of Illinois*, 158 Ill. 2d 133, 138 (1994).

97 S. Ct. 511 (1976) (home rule municipality is authorized to enact ordinance conflicting with State statute concerning appointment and certification of officers and members of fire and police departments and altering the composition of the board of fire and police commissioners); *Budka v. Board of Public Safety Commissioners*, 120 Ill. App. 3d 348 (1983) (the imposition of residency requirements for police officer candidates is within a home rule municipality's powers). Accordingly, for purposes of article VII, section 6, of the Constitution, issues concerning the appointment and qualifications of particular persons as auxiliary police officers pertain to a home rule municipality's government and affairs.

In these circumstances, however, it is our understanding that some home rule municipalities are not simply exercising their power to appoint specific, named persons as auxiliary police officers. Rather, these home rule municipalities have executed contracts with private, not-for-profit corporations, under the terms of which the corporations' unidentified employees or members will provide auxiliary police services for community events. Thus, we must determine whether a contract delegating the authority to provide auxiliary police services to a corporate entity is an exercise of power pertaining to a home rule municipality's "government and affairs."

The State has enacted, as part of the Criminal Code of 1961 (the Criminal Code) (*see* 720 ILCS 5/1-1 *et seq.* (West 2008)), a regulatory scheme for the unlawful use of weapons. Section 24-1 of the Criminal Code (720 ILCS 5/24-1 (West 2009 Supp.)), as amended by Public Act 96-1000, effective July 2, 2010; *see also* 720 ILCS 5/24-1.6 (West 2009 Supp.)) provides:

(a) A person commits the offense of unlawful use of weapons when he knowingly:

* * *

(4) Carries or possesses in any vehicle or concealed on or about his person except when on his land or in his own abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm
* * *;

* * *

(8) Carries or possesses any firearm, stun gun or taser or other deadly weapon in any place which is licensed to sell intoxicating beverages, or at any public gathering held pursuant to a license issued by any governmental body or any public gathering at which an admission is charged, excluding a place where a showing, demonstration or lecture involving the exhibition of unloaded firearms is conducted.

* * *

(10) Carries or possesses on or about his person, upon any public street, alley, or other public lands within the corporate limits of a city, village or incorporated town, except when an invitee thereon or therein, for the purpose of the display of such weapon or the lawful commerce in weapons, or except when on his land or in his own abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm[.]

A violation of subsections 24-1(a)(4) and (a)(10) is a Class A misdemeanor. A violation of subsection 24-1(a)(8) is a Class 4 felony. 720 ILCS 5/24-1(b) (West 2009 Supp.), as amended by Public Act 96-1000, effective July 2, 2010. Peace officers are exempted from the

provisions of subsection 24-1(a)(4) and (a)(10), as is any person summoned by a peace officer to assist in making arrests or preserving the peace, while actually engaged in assisting such officer. 720 ILCS 5/24-2(a)(1) (West 2009 Supp.), as amended by Public Act 96-1000, effective July 2, 2010. Subsection 24-1(a)(8) does not apply to any law enforcement officer. 720 ILCS 5/24-2(e) (West 2009 Supp.), as amended by Public Act 96-1000, effective July 2, 2010.

In addition, article 32 of the Criminal Code (720 ILCS 5/32-1 *et seq.* (West 2008)) regulates when a person may represent himself or herself to be a peace officer and provides:

(b) A person who falsely represents himself or herself to be a public officer or a public employee or an official or employee of the federal government commits a Class A misdemeanor. If the false representation is made in furtherance of the commission of a felony, the penalty for a violation of this subsection (b) is a Class 4 felony. 720 ILCS 5/32-5(b) (West 2008).

False Personation of a Peace Officer. A person who knowingly and falsely represents himself or herself to be a peace officer commits a Class 4 felony. 720 ILCS 5/32-5.1 (West 2008).

False personation of a peace officer while carrying a deadly weapon. A person who knowingly and falsely represents himself or herself to be a peace officer while carrying a deadly weapon commits a Class 3 felony. 720 ILCS 5/32-5.1-1 (West 2008).

In opinion No. 82-036, issued October 22, 1982 (1982 Ill. Att'y Gen. Op. 108), this office considered whether a home rule unit could adopt an ordinance authorizing the establishment and operation of a gambling casino within its boundaries, although the State had already enacted, as part of the Criminal Code (Ill. Rev. Stat. 1981, ch. 38, par. 28-1 *et seq.*, now codified at 720 ILCS 5/28-1 *et seq.* (West 2008)), a comprehensive regulatory scheme which

prohibited gambling activities. The conclusion in that opinion—that the home rule powers granted by article VII, section 6, of the Illinois Constitution of 1970 do not authorize a home rule unit to enact gambling ordinances inconsistent with provisions of the Criminal Code (Ill. Rev. Stat. 1981, ch. 38, par. 1-1 *et seq.*, now codified at 720 ILCS 5/1-1 *et seq.* (West 2008))—was based on a review of the pertinent provisions of the Criminal Code, the proceedings of the Sixth Constitutional Convention (which created home rule units and provided for their authority), and the applicable case law. Specifically, the opinion stated:

If the regulation or prohibition of gambling is a matter pertaining to the government and affairs of a home rule unit, that unit is free to legislate on the subject without reference to article 28 of the Criminal Code of 1961. If, however, it is a matter of state-wide concern, not pertaining to a home rule unit's government and affairs, such unit may exercise only such powers in that respect as are granted to it by the General Assembly. 1982 Ill. Att'y Gen. Op. at 110.

In the current circumstances, the regulation of the possession and use of weapons and of when a person may represent himself or herself as a peace officer are matters of state-wide concern. The General Assembly has enacted a regulatory scheme regarding the possession and use of weapons on public and private property, and by public officials or employees and private citizens throughout the State. The statutory limitations on the right to carry or possess weapons fulfill valid State purposes in controlling their use in the commission of crimes (*People v.*

Graves, 23 Ill. App. 3d 762 (1974)) and protecting the public from dangerous weapons (*People v. Musselman*, 69 Ill. App. 2d 454 (1966)). Similarly, the prohibition on a person representing himself or herself as a public officer or peace officer is intended to protect "citizens who would be harmed or deceived by those acting under the color of authority" (*People v. Ellis*, 296 Ill. App. 3d 862, 866 (1998), *appeal denied*, 183 Ill. 2d 578 (1999), *and cert. denied*, 529 U.S. 1072, 120 S. Ct. 1684 (2000), *reh'g denied*, 530 U.S. 1289, 121 S. Ct. 5 (2000)) and "to prevent the public from being deceived into believing an individual who represents himself to be a peace officer has the authority to act in an official capacity when no such authority exists." *People v. Thoennes*, 334 Ill. App. 3d 320, 326 (2002), *appeal denied*, 202 Ill. 2d 695 (2003). Because these issues are of state-wide concern, they do not pertain to a home-rule municipality's "government and affairs." It then follows that contracts that authorize the same type of conduct that constitutes a violation of the Criminal Code pertain to the application of the State's penal statutes and not to the home rule municipality's "government and affairs."⁶ It is well established that a home rule unit cannot do indirectly that which it cannot do directly. Home rule units are not authorized to adopt ordinances or enter into contracts that decriminalize violations of the Criminal Code. *See*

⁶The Criminal Code applies to conduct committed anywhere in the State. Section 1-5 of the Criminal Code (720 ILCS 5/1-5 (West 2008)) provides, with regard to the application of the Code, that:

(a) A person is subject to prosecution in this State for an offense which he commits, while either within or outside the State, by his own conduct or that of another for which he is legally accountable, if:

(1) the offense is committed either wholly or partly within the State[.]

generally 4 Record of Proceedings, Sixth Illinois Constitutional Convention 3134.⁷ Accordingly, to the extent that home rule municipalities enter into contracts with private, not-for-profit corporations, private security firms, or other private business entities that purport to authorize the entity's unnamed employees or members to carry firearms or wear peace officer styled uniforms without the requisite appointment of the particular member or employee as an auxiliary police officer, those contracts would be inconsistent with the sections of the Criminal Code relating to possession of a weapon and personation of a police officer within the corporate boundaries of the

⁷Delegate Butler summarized the intended effect of the Sixth Constitutional Convention's Committee on Local Government's proposal with regard to the provisions of the State's uniform criminal code:

Anytime you have a violation, I think, any place in the state, of a state statute, it doesn't matter whether or not the city or county has enacted an ordinance of similar import. The person who has violated the state statute can still be prosecuted under that. I cannot conceive of a situation where a person could run inside a city and commit some kind of an act which would be punishable by the state statute but not be susceptible to prosecution because he commits the act within the corporate limits of the city, when perhaps if he were out in the county, he could be prosecuted for the violation of the state statute. Remarks of Delegate Butler, 4 Record of Proceedings, Sixth Illinois Constitutional Convention 3134.

Similarly, the Report of the Local Government Committee (7 Record of Proceedings, Sixth Illinois Constitutional Convention 1650-51) indicates that section 3.4 of the Proposed Local Government Article, now contained in article VII, section 6(d)(2), of the Illinois Constitution, intended for a home rule unit's power to enact ordinances to be subordinate to the State's power in certain instances:

This section makes clear that the power to define and punish felonies is not included in the powers granted * * * to home-rule units. Existing statutes define "felony" as an offense punishable by death or by imprisonment in the penitentiary; they also provide that imprisonment other than in a penitentiary may not exceed one year in length. * * *

* * *

This paragraph makes it perfectly clear that the punishment of major crimes - felonies - remains a matter of exclusive state concern. Despite the home-rule grant, local governments lack jurisdiction with respect to felonies, unless the state should grant them authority by statute.

municipality party to the contract. Any contracts that are inconsistent with the State's Criminal Code cannot be viewed as pertaining to the government and affairs of the municipality, for purposes of article VII, section 6, of the Constitution. Consequently, it is my opinion that home rule municipalities may not contract with a private, not-for-profit corporation, private security firm, or other private business entity for the provision of auxiliary police services and commission the employees or members of the corporation to carry firearms or wear peace officer style uniforms, unless each specific, named employee or member is first properly appointed as an auxiliary police officer and successfully completes all necessary training.⁸

CONCLUSION

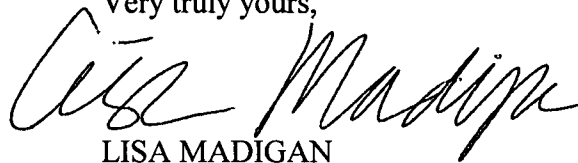
It is my opinion that while the Illinois Municipal Code authorizes municipalities to appoint auxiliary police officers, neither the Illinois Constitution of 1970, the Illinois Municipal Code, nor any State statutes grant non-home-rule municipalities the authority to contract with private, not-for-profit corporations, private security firms, or other private business entities for the provision of auxiliary police services. Further, it is my opinion that, although home rule municipalities may appoint auxiliary police officers, home rule municipalities do not possess, as an exercise of their home rule powers, the authority to contract with private, not-for-

⁸I would note that my office has reviewed the Illinois Department of Financial and Professional Regulation, Division of Professional Regulation, license database. The database did not contain any information that would indicate the auxiliary police organizations identified in footnote 2 are licensed as private security contractor agencies or private security contractors. See Division of Professional Regulation License Look-Up, <https://www.idfpr.com/dpr/licenselookup/default.asp>. Further, the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 (225 ILCS 447/10-30, 25-30 (West 2008)) expressly provides that no licensee under the Act is to have a badge, shoulder patch, or other identification that contains the words "law enforcement" or to display a badge or identification card, emblem, or uniform using the words "police," "sheriff," "highway patrol," "trooper," "law enforcement," or similar term.

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profit corporations, private security firms, or other private business entities for auxiliary police services and to grant the entity's employees or members the authority to carry firearms and wear peace officer style uniforms, unless the employees or members are properly appointed as auxiliary police officers and successfully complete all necessary training.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Madigan", written in a cursive style.

LISA MADIGAN
ATTORNEY GENERAL