



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 29, 1996

The Honorable Tanya S. Davis  
Cooke County Attorney  
Cooke County Attorney's Office  
Courthouse, Third Floor  
Gainesville, Texas 76240

Letter Opinion No. 96-021

Re: Authority of a private security guard to detain or arrest an individual who commits a criminal offense in his presence (ID# 36001)

Dear Ms. Davis:

You ask what authority a private security guard has to detain a person "he has reason to believe has violated a rule of [a private homeowners'] association which is also a violation of a law of the State of Texas, until a police officer arrives."

A private security guard is not a peace officer. *Bohn v. State*, 651 S.W.2d 274, 276 (Tex. App.--Dallas 1983, no writ). He has, therefore, no more power to arrest than any other private citizen. The powers of private citizens in this regard are essentially delineated by article 14.01 of the Code of Criminal Procedure and section 9.51(b) of the Penal Code. Briefly, article 14.01 permits a private citizen to arrest a person who has committed a felony or an offense against the public peace "in his presence or within his view." Code Crim. Proc. art. 14.01. Section 9.51(b) permits a private citizen to use force against another when and to the degree the citizen reasonably believes such force "immediately necessary" to make a lawful arrest or to prevent an escape after a lawful arrest. Additionally, a person who reasonably believes another has stolen property may detain that person in a reasonable manner for a reasonable period of time in order to investigate. 38 TEX. JUR. 3D *False Imprisonment* § 21 (1985). Beyond those limits a private citizen may not go without risk of civil, or possibly penal, sanction.

In the event that a private citizen does go beyond these limits, he may be criminally liable for the class B misdemeanor of false imprisonment, the unlawful restraint of one person by another, *see* Penal Code § 20.02; *Zuniga v. State*, 664 S.W.2d 366, 370 (Tex. App.--Corpus Christi 1983, no writ). Additionally or alternatively, he may be civilly liable for the tort of false imprisonment, the elements of which are essentially the same as the criminal offense: direct restraint by one person of another's physical liberty without adequate legal justification. 38 TEX. JUR. 3D *False Imprisonment* § 2 (1985).

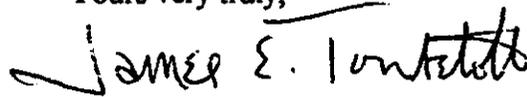
You have asked us whether a private security guard has any authority to detain or handcuff a person "if no violation of a law of the State of Texas has occurred." Since the defenses which may be available in a particular false imprisonment case depend upon

matters of fact, upon which we cannot opine, we cannot give a general answer to your question. However, it may well be that if such a guard detains or, particularly, handcuffs a person, that act might subject the officer to civil or criminal liability. Accordingly, unless such a private security guard has himself observed a person commit a felony or breach of the peace, his physical detention of such a person may be at least ill-advised and at most illegal.

**S U M M A R Y**

A private security guard is not a peace officer, and therefore has no greater powers of arrest than any private citizen.

Yours very truly,

A handwritten signature in black ink, appearing to read "James E. Tourtelott". The signature is written in a cursive style with a prominent initial "J" and a long horizontal stroke above the name.

James E. Tourtelott  
Assistant Attorney General  
Opinion Committee