

Dear Honorable Members of the Board of Supervisors,

My purpose in writing is to explain my concerns about the legality of a proposed ordinance that is listed as Item Number 4 on the upcoming November 16 Full Board meeting. This item would allow the city to contract with the sheriff to provide an additional police presence to combat retail theft at stores such as Walgreens. This legal remedy is being sought even though, as the supervisor supporting this ordinance conceded, “statistically, retail theft may be down.”

My understanding is that this legislation is based on Government Code section 53069, which states that:

“(a) The board of supervisors of any county may contract on behalf of the sheriff of that county, and the legislative body of any city may contract on behalf of the chief of police of that city, to provide supplemental law enforcement services to:

(1) Private individuals or private entities to preserve the peace at special events or occurrences that happen on an occasional basis.

(2) Private nonprofit corporations that are recipients of federal, state, county, or local government low-income housing funds or grants to preserve the peace on an ongoing basis.

(3) Private entities at critical facilities on an occasional or ongoing basis. A “critical facility” means any building, structure, or complex that in the event of a disaster, whether natural or manmade, poses a threat to public safety, including, but not limited to, airports, oil refineries, and nuclear and conventional fuel powerplants.

(4) Private schools, private colleges, or private universities on an occasional or ongoing basis.” (Emphasis added.)

Stores like Walgreens do not fall within subdivisions (a)(2), (a)(3), or (a)(4), which means that Walgreens and most other private businesses would be subject to the limitations outlined in subdivision (a)(1). I do not think that (a)(1) applies here.

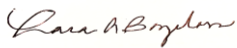
Government Code section 53069, subdivision (a)(1), by its own terms, allows for contracting for “special events or occurrences that happen on an occasional basis.” It does not allow for a regular or ongoing contract for private security services.

This issue has been litigated before. In the 1980s, various California communities and private parties began seeking the services of oft-times uniformed, off-duty local law enforcement officers, and sometimes official vehicles, through arrangements made with the head of their local law enforcement agencies.

Interpreting the terms of the predecessor to Government Code section 53069, subdivision (a)(1),¹ the Attorney General in 1985 concluded that such security “is not for a special event or occurrence, the type of privately needed occasional supplemental law enforcement services which Government Code section [53069] authorizes a county board of supervisors to provide by contracting on behalf of the sheriff.” (Opinion No. 84-204 (Apr. 16, 1985) 60 Ops. Cal. Atty. Gen. 175.) Thus, the Attorney General concluded that “[n]either cities or counties, nor their respective heads of local law enforcement, have the authority to contract with private parties to provide on or off-duty law enforcement officers for regular ongoing private security services for an agreed compensation.” (*Ibid.*)

This precedent and the plain language of the statute calls the legality of the proposed ordinance into doubt. In my opinion, the ordinance exceeds the scope of what is permissible under the law; that is, if the purpose is to deter retail theft by providing off-duty sheriffs to retailers for security. If I am correct, it makes sense to withdraw or amend the legislation.

Respectfully,



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¹ The statute was renumbered as Government Code section 54069 in 1986.