

June 11, 2008

Attorney General J. B. Van Hollen
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

RE: Request for Attorney General Opinion

Dear Mr. Van Hollen:

Pursuant to Wis. Stats. § 59.42(2)(b)(4), I am requesting your legal opinion in regard to the following questions:

1. May a private security guard contracted by the County detain a suspect for up to 10 minutes if the security guard does not personally witness the commission of a crime?
2. May a private security guard contracted by the County detain a suspect up to 10 minutes when the security guard witnesses the commission of a crime on a video monitor?

Background Facts. Austin Straubel International Airport is owned and operated by Brown County. The airport is served by 7 major airlines and is the third largest airport in the State of Wisconsin.

The Transportation Security Administration of the U. S. Department of Homeland Security maintains security screening at the airport. Transportation security officers are not deputized and do not have arrest powers. These officers screen passengers and carry-on baggage at the security checkpoints accessing the departure gate.

Separately, the County contracts with a private security company to maintain general security throughout the airport grounds. These private security guards are armed and licensed under Wis. Stats. § 440.26. These private security guards are not sworn or otherwise deputized by the Sheriff of Brown County.

Brown County maintains video security which is monitored by the private security guards. These security cameras are fixed throughout the interior of the airport building. Some of these video cameras are fixed at the checkpoints operated by the Transportation Security Administration. The Brown County Sheriff's Department does not maintain a sworn deputy on the airport premises. By agreement the Sheriff maintains a response time of not more than 10 minutes to the airport proper.

Occasionally, passengers will be stopped at the departure gate checkpoint for various reasons such as confrontational behavior, carrying contraband, or attempting to board with a weapon. When such occasions arise, the transportation security officer calls the airport's private security to respond. The private airport security detain the suspects and place a call for the dispatch of a sworn deputy to effect an arrest.

Tentative Conclusions. (1) A private security guard contracted by the County may not detain a suspect for up to 10 minutes if the security guard does not personally witness the commission of a crime. (2) A private security guard contracted by the County may detain a suspect for up to 10 minutes if the security guard personally witnesses the commission of a crime on a video monitor.

Relevant Statutes and Case Law. Wis. Stats. § 940.30 makes it a Class H Felony to intentionally confine or restrain another without the person's consent and with knowledge that he or she has no lawful authority to do so. Under Wis. Stats. § 440.26, a private security guard, such as the private security company contracted by Brown County, is authorized to carry firearms and provide security services. However, the statute does not authorize a private security guard to detain an individual suspected of committing a crime. Likewise, Wis. Adm. Code Chapters 30, et. seq., are silent as to the authority of a private security guard to detain a suspect. (Contrawise, the statutes at Wis. Stats. § 943.50(3) authorize a merchant or a merchant's security agent to detain a person in a reasonable manner for a reasonable length of time to deliver the person to a peace officer.)

The legal authority of a private security guard to detain a suspect therefore must rest under the concept of a "citizen arrest."

Wisconsin follows the common law regarding a citizen arrest. Radloff v. National Food Stores, 20 Wis. 2d 224, 237, 123 N.W.2d 570, 571 (1963). "Under the common law, when a felony actually has been committed, a private citizen may arrest a person whom he reasonably believes to have committed a felony. A private person may arrest for a misdemeanor only if it was committed in his presence and it involved a breach of peace. See generally 4 Wharton, Criminal Law and Procedure, 1601-03; 5 Am.Jur.2d, Arrest 34-36; 6 C.J.S. Arrest 8." Moll v. United States, 413 F.2d 1233, 1236 (5th Cir. 1969). City of Waukesha v. Gorz, 166 Wis. 2d 243, 247, 479 N.W.2d 221, 223 (Ct. App. 1991).

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The private security guards at Austin Straubel International Airport presumably would have to adhere to the common law on citizen arrests. In instances where the alleged crime is a misdemeanor, the common law would require the private security officer to be present and witness the crime being committed. The crime would also need to involve a breach of the peace. It does not appear that the observation of the crime by a Transportation Security Administration officer is sufficient to empower a private security guard with the authority to detain the suspect.

On the other hand, observation by way of video of the commission of a crime would appear to empower the private security guard with the authority to detain the individual until a sworn deputy could respond.

Presumably, if the offense was taped by the video camera and the private security guard replayed the tape, the guard would have sufficient grounds to effect a citizen's arrest.

There is no pending or threatened litigation regarding this issue. I appreciate your efforts in responding to the foregoing questions. If there is any further information which I have neglected to provide you, please feel free to contact me at your convenience.

Very truly yours,



Frederick J. Mohr
Interim Corporation Counsel for
Brown County

FJM:ek