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AIR MAIL

Mr. Eugene G. Cushing
United States Attorney
324 Post Office Building
Tacoma, Washington 98402

WTF 4/18

Attention: J. S. Obenour
Assistant United States Attorney

Dear Mr. Cushing:

In your letters of December 27, 1967 and March 19, 1968, you request our opinion as to whether the Posse Comitatus Act (18 U.S.C. 1385) prohibits issuance of special police commissions to military personnel for the purpose of enabling them to be employed in off-duty hours as deputy sheriffs, special policemen, security guards, bouncers, or merchant patrolmen. Your letter of March 19 makes it clear that military personnel would not be employed in these positions by public law enforcement agencies, but by "third-party individuals or companies."

We referred your initial inquiry of December 27, 1967, to the Department of the Army, and on February 27, 1968, the Acting General Counsel of the Army conveyed to you an opinion that the Posse Comitatus Act did not prohibit employment of servicemen on the terms and conditions described in your letter. You now wish to know whether this is also the opinion of the Department of Justice.

In our opinion, the reply you received from the Department of the Army correctly states the law. The Act does not prohibit the private employment of off-duty servicemen, in their unofficial individual capacities, in positions of the kinds described in your letter of December 27, 1967. Nor

does the Act prohibit issuance of special police commissions to servicemen for the purpose of enabling them to undertake such employment.

In his reply to you the Acting General Counsel of the Army noted, however, that off-duty employment of servicemen is subject to restrictions according to policies and regulations of the Army and Air Force. We have no comment on this aspect of the matter.

We hope that the foregoing will be of assistance to your Office.

Sincerely,

Frank M. Wozencraft
Assistant Attorney General
Office of Legal Counsel