

SHERIFFS' DEPUTIES: Not necessary for private guards to be  
PRIVATE GUARDS: commissioned as deputy sheriffs.

December 31, 1941

Honorable Stanley Wallach  
Prosecuting Attorney  
St. Louis County  
Clayton, Missouri



Dear Mr. Wallach:

Under date of December 26, 1941, you wrote this office requesting an opinion as follows:

"My office is in receipt of a request for a legal opinion from the McDonnell Aircraft Corporation at Lambert-Saint Louis Airport, Robertson, Missouri, relative to a problem which confronts them. Inasmuch as this is a matter of public importance and there probably are a number of plants in the State of Missouri similarly situated, I feel that it is best to procure an opinion from your office concerning this situation.

"Will you kindly let me have your opinion in this matter so that I may advise the McDonnell Aircraft Corporation whether they may legally arm their guards in the manner indicated in their letter, without the guards being deputized as deputy sheriffs or deputy constables. I spoke to Arnold J. Willmann, Sheriff of St. Louis County and he informed me that he has appointed the full number of

deputies provided for his office under the order of the County Court, but states it is possible for him to provide deputies for the protection of this and other plants similarly situated with the approval of the Judges of the Circuit Court, if the plant that desires the protection will pay the amount for the services of these deputies. However, these additional deputies are subject to call for any service that may be required of them as deputies in any part of St. Louis County.

"As St. Louis County comes under the provision of Laws of 1939, page 683, relative to the number of deputy constables to be appointed in counties having a population between 200,000 and 400,000 inhabitants, there is no manner in which additional deputy constables could be appointed for the protection of plants of this nature.

"It is my thought that to permit these plants to employ guards without deputizing them as officers, would lead to a great deal of confusion and it would be a great deal better to have men selected by the Sheriff and approved by our four Circuit judges to provide the necessary protection."

A copy of the letter received by you from the McDonnell Aircraft Corporation and which was enclosed with your letter to this office is as follows:

"Would you please give me your legal opinion on a problem which confronts McDonnell Aircraft Corporation?"

"Firearms have been issued to the plant guards. These revolvers are worn by the guards only on plant property and are passed on from one guard shift to another. They will at no time be taken from plant property and will be worn in sight at all times while in use.

"Will it be necessary to have each guard deputized or just what procedure would you advise?"

The duties of a sheriff are set out in Sections 13136 and 13138, R. S. Missouri 1939. Briefly summarized, a sheriff's duties are to conserve the peace and cause all offenders against the law, in his view, to enter into recognizance to keep the peace and to appear at the next term of court, and to quell and suppress assaults and batteries, riots, routs, affrays and insurrections and apprehend and commit to jail all felons and traitors, and to serve civil and criminal writs and processes, and attend upon court of record and a sheriff should be alert and vigorous to prevent unlawful acts as far as it is within his power to do so, but an examination of the statutes and cases reveals that the routine guarding of private property is not one of the sheriff's duties.

It is recognized in this State that commissioned police officers may in some instances act as private watchmen and guard private property. (Brill v. Eddy, 115 Mo., 596; Murphy v. Southwest Missouri Railroad Company, 168 Missouri Appeal Reports, 588.) It is a question of fact to be determined by the trial court in each case whether such police officers act as public officers or as private employees. If they act as private employees or under the orders of a private employer, then such private employer is liable of the wrongful acts just as for the wrongful acts of any other employee. If wrongful acts are committed by a public officer then the bond of such officer, or the bond of his superior, if he is a deputy, will be liable for any wrong act as such public officer.

In this State it is the privilege and duty of the citizen to protect and own property as far as possible. This is recog-

nized by the constitution of the State, Section 17, Article 2, which is as follows:

"That the right of no citizen to keep and bear arms in defense of his home, person and property, or in aid of the civil power, when thereto legally summoned, shall be called in question; but nothing herein contained is intended to justify the practice of wearing concealed weapons." (Underscoring ours.)

#### CONCLUSION

It is the conclusion that the McDonnell Aircraft Corporation has an excellent plan for guarding their own property; that there is no occasion for having the guards of this company selected and commissioned by the sheriff of St. Louis County. It is much better for the company to select its own employees for whose acts it will be liable.

Respectfully submitted

W. O. JACKSON  
Assistant Attorney General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney General

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