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United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to:
B-139965

March 6, 1980

The Honorable John C. Stennis
United States Senate

Dear Senator Stennis:

Your letter of February 1, 1980, forwarded for our comment correspondence from Mr. James P. Brewer, President of Capital Security Services, Inc., concerning the Anti-Pinkerton Act, 5 U.S.C. § 3108.

The original Anti-Pinkerton Act was enacted as part of the Sundry Civil Appropriations Act of August 5, 1892, 27 Stat. 368. It was made permanent the following year by the Act of March 3, 1893, 27 Stat. 591. The Act provides as follows:

> "An individual employed by the Pinkerton Detective Agency, or similar organization, may not be employed by the Government of the United States or the Government of the District of Columbia."

Mr. Brewer suggests that detective agencies should not be awarded contracts for guarding Government installations because of the likelihood that those firms will take advantage of an opportunity to surreptitously obtain from Government files information of value to private clients such as a party to a divorce proceeding. Mr. Brewer believes that recent decisions by a court and our Office interpreting the Act fail to take this into account and therefore have undermined the statute.

We believe that there are a number of practical obstacles which make it highly speculative that a detective agency could assure itself of a contract to provide guard service at a Government installation where there would be available to it information of interest to a private client. Most guard service contracts are let through competitive bidding and the competition is generally keen. A firm may

bid on a large number of contracts and win none of them if it is underbid by a competitor. There is no assurance, therefore, that a particular firm will win the contract to provide guard service at a particular installation. Even then, the contractor's employees may not have access to sensitive information, which may be locked in safes or stored in computers which the employees cannot operate. For reasons such as these, we think Mr. Brewer's fears are largely unfounded. More importantly, we do not believe the possible compromise of Government information is what prompted the passage of the Anti-Pinkerton Act.

The legislation resulted from Congressional concern over the use of private detectives as armed guards by private industry in the labor disputes of the 1880's and 1890's. It appears that Pinkerton detectives were frequently used as strikebreakers and labor spies, a practice which became an emotionally charged issue and gave rise to bloodshed, loss of life and destruction of property. The Act was given its present wording by the 1966 recodification of Title 5, United States Code, Pub. L. 89-554, 80 Stat. 378, 416. A comprehensive discussion of the origins of the Act is contained in S. Rep. No. 447 (to accompany S. 1543), 88th Cong., 1st Sess. (1963).

As Mr. Brewer noted in his letter, until recently, the Act had been interpreted as prohibiting the award of Government contracts to a company which performed investigative services. After many varied administrative attempts to distinguish between "protective" and "detective" services, a decision of the Fifth Circuit Court of Appeals interpreted the Act as applying only to organizations which offer "quasi-military armed forces for hire." United States ex rel. Weinberger v. Equifax, 557 F. 2d 456 (5th Cir. 1977) cert. denied January 16, 1978 (46 U.S.L.W. 3446), rehearing denied March 6, 1978 (46 U.S.L.W. 3556). This was the first published decision of any court interpreting the Anti-Pinkerton Act. The court pointed out that the legislation was based on the way Pinkerton operated in 1892, i.e. offering for hire a mercenary, quasi-military armed force, and therefore had little application to the example organization as it presently exists.

In a circular letter to the Heads of Federal Departments and Agencies, B-139965, dated June 7, 1978, we indicated our essential agreement with the Equifax decision and determined that a company which provides guard or protective services does not thereby become a "quasi-military armed force," even though the company may also be engaged in the business of providing general investigative or "detective" services. Our prior decisions to the contrary (referred to by Mr. Brewer) are no longer followed. See 57 Comp. Gen. 480 (1977). It is our belief that a review of the Act's legislative history, as provided in S. Rep. No. 447, leaves no doubt but that whatever may have been the overriding policy considerations leading to enactment of this legislation almost 90 years ago, they do not have much, if any, bearing on the current practices of the Government in contracting for guard services.

We hope the foregoing serves the purposes of your request.

Sincerely yours,

Milton J. Socolar

Milton J. Socolar
General Counsel