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ATTORNEY GENERAL
PRIVATE INVESTIGATORS BOARD

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

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March 20, 2007

Mechele Ray, Executive Director
Private Investigators Licensing Board
3476 Executive Pointe Way, Suite 14
Carson City, Nevada 89706

Dear Executive Director Ray:

You have asked for an opinion from this Office regarding whether the Armored Car Reciprocity Amendments of 1998 preempt all of Nevada's state licensing requirements for armored car companies and their employees operating in Nevada. Specifically, you have asked for an opinion as these questions relate to the Jewelers Circular Keystone (JCK) show held annually in Las Vegas, Nevada.

BACKGROUND

The JCK show is a large jewelry trade show which takes place annually in Las Vegas, Nevada. Goods in the form of jewelry are transported to Las Vegas for the show. Due to their value, the goods require security during transportation and during the show itself.¹ Much of that security is provided by persons employed by the armored car industry.

The general practice is as follows: thirty to forty armored cars are sent to the jewelry district in New York City to pick up the goods for the show. The goods are then transported by the armored car crews to Newark Airport in New Jersey and placed on airplanes to be flown to McCarran Airport in Las Vegas. The goods are escorted in flight by persons employed by the armored car companies, but not by the entire armored car crew which transported the goods to the airport. Upon arrival in Las Vegas, the goods are received by different persons employed by the armored car companies. During the show itself, the goods are guarded by persons hired by these armored car companies as private patrol officers. See Minutes of Nevada Private Investigator's Licensing Board meeting, testimony of James J. Cusack, General Counsel, National Armored Car Association (September 20, 2006).

¹ Similar trade shows take place every year in Las Vegas, but for the purposes of this discussion, the facts discussed will be limited specifically to the JCK show.

QUESTION

Do the Armored Car Reciprocity Amendments of 1998 preempt all of Nevada's state licensing requirements for armored car companies and their employees operating in Nevada?

ANALYSIS

Chapter 648 of the Nevada Revised Statutes (NRS) requires persons who engage in certain professions in the State of Nevada to be licensed by the Private Investigators Licensing Board (Board).² Those professions include private patrolmen³, security guards⁴, and *guards employed by armored car companies*.⁵

In 1993 the United States Congress enacted the Armored Car Industry Reciprocity Act (Act). See Armored Car Industry Reciprocity Act, H.R.1189, 103rd Cong. §§ 5901-04 (1993). The purpose of the Act was to grant reciprocity for weapons licenses to allow members of armored car crews to have the ability to cross state lines without violating individual state weapons laws. See S. Rep. 103-67, 1993 U.S.C.C.A.N. 321. The Armored Car Reciprocity Amendments, which were adopted in 1998, were intended to clarify certain requirements for reciprocity. See H.R. Rep. 105-6; see also 143 Cong. Rec. E185-03. The Act⁶ contains an express preemption clause stating that "This Act shall supersede any provision of State law . . . that is inconsistent with this Act." 15 U.S.C. § 5903.

The preemption doctrine stems from the Supremacy Clause of the United States Constitution which states that the laws of the United States "shall be the supreme law of the land." Art. VI, cl. 2. It is well "settled that any state law that conflicts with federal law

² NRS 648.060(1)(a)-(b) provides that "No person may . . . [e]ngage in the business of private investigator, private patrolman, process server, reposessor, dog handler, security consultant, or polygraphic examiner or intern . . . unless he is licensed pursuant to this chapter."

³ NRS 648.013 defines a private patrolman as "a person engaged in the business of employing and providing for other persons watchmen, guards, patrolmen, uniformed officers to control traffic, bodyguards or other persons for the purpose of protecting persons or property, *including armored transport*, to prevent the theft, loss or concealment of property of any kind or to investigate the theft, loss or concealment of property he has been hired to protect." (Emphasis added.)

⁴ NRS 648.016 defines a security guard as "a person employed as a watchman, guard, security consultant, patrolman or in any other similar position."

⁵ See Op. Nev. Att'y Gen. No. 51-61 (May 22, 1951) (opining that if the operators of an armored car service furnish guards for such service, then the guards must be licensed under NRS Chapter 648).

⁶ Sections 5901, 5903, and 5904 remained unchanged by the Armored Car Reciprocity Amendments of 1998. See 112 Stat 2776. Accordingly, §§ 5901, 5903, and 5904 will be referred as the "Act". Section 5902 will be referred as the "Act" or the "Amendment" as appropriate.

is 'without effect.'" *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992) (quoting *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981)). Any supremacy clause analysis "start[s] with the assumption that the historic police powers of the States [are] not to be superseded by . . . Federal Act unless that [is] the clear and manifest purpose of Congress." *Cipollone*, 505 U.S. at 516 (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). Accordingly, "[t]he purpose of Congress is the ultimate touchstone' of pre-emption analysis." *Cipollone*, 505 U.S. at 516 (quoting *Malone v. White Motor Corp.*, 435 U.S. 497, 504 (1978) (emphasis added).

Because the Act contains an express preemption clause, it is not necessary to go beyond the language of the Act itself to determine that Congress intended to pre-empt at least some state law. See *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 484 (1996). Nevertheless, because the Act states that only those laws which are "inconsistent" with the Act are preempted, it remains necessary to "identify the domain expressly pre-empted' by that language." *Id.* (quoting *Cipollone*, 505 U.S. at 517).

The original Act of 1993 is clearly limited to reciprocity for weapons licenses. See Armored Car Industry Reciprocity Act, H.R.1189, 103rd Cong. §§ 5901-04 (1993). It specifically addresses weapons licenses throughout and makes no reference to any other type of state license.⁷ *Id.* The armored car industry maintains however, that as amended, the Act preempts not just weapons licensing requirements but *all* state licensing requirements, including all licensing of the armored car industry and its employees pursuant to Chapter 648 of the NRS. See Minutes of Nevada Private Investigator's Licensing Board meeting, testimony of James J. Cusack, General Counsel, National Armored Car Association (September 20, 2006).

The 1998 Amendments added language to § 5902(a) of the Act. The new language is italicized below:

If an armored car crew member employed by an armored car company--

(1) has in effect a license issued by the appropriate State agency (in the State in which such member is primarily employed by such company) to carry a weapon while acting in the services of such company in that State, and such State agency meets the minimum requirements under subsection (b) of this section; *and*

(2) *has met all other applicable requirements to act as an armored car crew member in the State in which such*

⁷ Even if the language of the Act was ambiguous on this point, the legislative history supports this conclusion. The accompanying Senate Report clearly and repeatedly limits the discussion to weapons licenses and the need for armored car crew members to be armed and have the ability to cross state lines without violating individual state weapons laws. See S. Rep. 103-67, 1993 U.S.C.C.A.N. 321.

member is primarily employed by such company, then such crew member shall be entitled to lawfully carry any weapon to which such license relates and function as an armored car crew member in any State while such member is acting in the service of such company.

The ability of an armored car employee to lawfully function as an armored car crew member across state lines is a marked change from the intent of the original Act of 1993. A "fundamental canon of statutory construction is that a court must first 'presume that a legislature says in a statute what it means and means in a statute what it says there.'" *RTTC Communications, LLC v. Saratoga Flier, Inc.*, 121 Nev. 34, ___, 110 P.3d 24, 26 (2005) (quoting *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-54 (1992)). "[W]hen the language of a statute is plain, its intention must be deduced from such language, and the Court has no right to go beyond it." *Id.* (quoting *Hess v. The County Commissioners of Washoe County*, 6 Nev. 104, 107 (1870) (republished as 5-6-7 Nev. 444, 446)). Nevertheless, the United States Supreme Court has stated that in circumstances such as these, where the legislature has by the clear language of the statute expressed its intent to preempt some state law, but has not clearly stated which state laws are preempted, "any understanding of the scope of a pre-emption statute must rest primarily on 'a fair understanding of congressional purpose.'" *Medtronic v. Lohr*, 518 U.S. 470, 485-86 (1996) (quoting *Cipollone*, 505 U.S. at 530, n. 27) (emphasis in original). Additionally, the Ninth Circuit "will resort to legislative history, even where the plain language is unambiguous, 'where the legislative history clearly indicates that Congress meant something other than what it said.'" *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.*, 448 F.3d 1092, 1094 (2006) (quoting *Carson Harbor Village, Ltd. v. Unocal Corp.*, 270 F.3d 863, 877 (9th Cir.2001) (en banc). See also *Chickasaw Nation v. United States*, 534 U.S. 84, 94 (2001) (noting that "canons are not mandatory rules" but guides "designed to help judges determine the Legislature's intent," and that "other circumstances evidencing congressional intent can overcome their force . . .").

The congressional purpose in enacting the 1998 Amendments is somewhat obscured by what the Amendments did not do: they did not change the title of § 5902 which still reads "State reciprocity of *weapons licenses* issued to armored car company crew members;" they did not alter Congress' findings in § 5901 that "there is a need for each State to reciprocally accept *weapons licenses* of other States for armored car crew members;" and they did not change the minimum requirements in § 5902(b) to include reference to any license other than a weapons license.

The legislative history of the Amendments however, clearly shows that they were intended to grant reciprocity for both weapons licenses and "any other licenses required in a particular state, such as those for security guards, so long as the crew member has met all the requirements in the states in which he or she is employed." See The

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Armored Car Reciprocity Amendments of 1998: Hearing on H.R. 624 Before the Subcomm. on Telecommunication, Trade and Consumer Protection, 105th Cong. (1997) (statement of the Honorable W.J. "Billy" Tauzin, Chairman, Subcomm. on Telecommunication, Trade and Consumer Protection); *see also id.* (statement of James L. Dunbar on behalf of the National Armored Car Association); *id.* (statement of Wayne R. Rogillio on behalf of the National Association of Security and Investigative Regulators); *see also* 143 Cong. Rec. E185-03 ("The armored car reciprocity amendments . . . grants reciprocity for both weapons licenses and any other permits or licenses required in a particular State so long as the crew member has met all of the requirements in the State in which he or she is primarily employed.").

Therefore, even though the text of the Act as amended is not as clear as it could have been regarding the scope of the preemption, it is clear from the legislative history that Congress intended that scope to include all state licensing of individual employees who meet the requirements in the states in which they are employed, and it is the purpose of Congress which is the ultimate touchstone in determining the scope of preemption. *See Cipollone*, 505 U.S. at 516 (quoting *Malone*, 435 U.S. at 504).

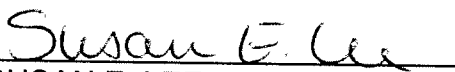
CONCLUSION

The Armored Car Reciprocity Amendments of 1998 preempt Nevada's licensing requirements for persons employed by armored car companies to provide protection for goods that are transported by a company. As long as a person is licensed in the state in which he or she is primarily employed, that state's licensing requirements meet minimal federal requirements, and the person has met all other applicable requirements in their state of primary employment, he or she need not obtain a license in Nevada pursuant to NRS 648.060(1)(a).⁸ However, neither the Act nor the Amendments address the licensing of armored companies. Therefore, Nevada law regarding the licensing of armored car companies is not preempted.

Sincerely,

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⁸ Neither the Act nor the Amendments have any effect on the licensing requirements of NRS 648.060(1)(a) as applied to persons domiciled in Nevada.