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OPINION	:	No. 80-709
of	:	<u>October 10, 1980</u>
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SUBJECT: AUTHORIZATION OF LOADED FIREARMS FOR MUSEUM SECURITY GUARDS—The California Museum of Science and Industry may authorize its uniformed security guards to carry loaded firearms in belt holsters while performing official duties, if they have been issued firearm certificates pursuant to Penal Code section 12033.

The Honorable William J. McCann, Director, California Museum of Science and Industry, has requested an opinion on the following question:

May the California Museum of Science and Industry authorize its uniformed security guards to carry loaded firearms in belt holsters while performing official duties?

CONCLUSION

The California Museum of Science and Industry may authorize its uniformed security guards to carry loaded firearms in belt holsters while performing official duties, if they have been issued firearm certificates pursuant to Penal Code section 12033.

ANALYSIS

The California Museum of Science and Industry (hereafter “Museum”) is one of numerous district agricultural associations located throughout the state. As “District 6,” it comprises a portion of Los Angeles County. (Agr. Code §§ 3857, 4101.) Each association is a “state institution” (Agr. Code § 3953) and is governed by state officers (Agr. Code § 3962) appointed by the Governor. (Agr. Code § 3959.) The associations are funded by the state and are subject to the control of a number of departments of the state. (56 Ops. Cal. Atty. Gen. 210, 214 (1973). As a state institution, each association is considered to be a “public agency of the state.” (See *South District Agricultural Association v. Wright* (1908) 154 Cal. 119, 128; 3 Ops. Cal. Atty. Gen. 263, 264 (1944).)

The Agricultural Code defines the purposes of a district agricultural association as follows:

“(a) Holding fairs, expositions and exhibitions for the purpose of exhibiting all of the industries and industrial enterprises, resources and products of every kind or nature of the state with a view toward improving, exploiting, encouraging, and stimulating them.

“(b) Constructing, maintaining, and operating recreational and cultural facilities of general public interest.” (Agr. Code § 3951.)

In carrying out its public purposes, the Museum employs security guards to protect its property and maintain orderly and safe surroundings for visitors and staff. (See § 3905; 48 Ops. Cal. Atty. Gen. 80, 81 (1966).)

The question presented for resolution is whether the Museum may authorize its uniformed security guards to carry loaded firearms in belt holsters while performing their official duties. We conclude that it may, if the guards have been issued firearm certificates pursuant to Penal Code section 12033.¹

Preliminarily, we note that the security guards would not be carrying the firearms concealed from view but rather would be carrying them openly in belt holsters. Subdivision (b) of section 12025 provides that “Any person who carries concealed upon his person any . . . firearm capable of being concealed upon the person without having a license to carry such firearm is guilty of a misdemeanor . . .” Subsection (c) of the same statute, however, provides in part: “Firearms carried openly in belt holsters are not concealed within the meaning of this section.

¹ All unidentified section references hereinafter are to the Penal Code.

While we thus are not concerned with the concealed weapons provisions of section 1202\$, it has been suggested that the general proscription against carrying loaded firearms in public places is applicable here. Subdivision (a) of section 12031 states:

“Except as provided in subdivision (b), (c), or (d), every person who carries a loaded firearm on his person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory is guilty of a misdemeanor.”

Under the statute, each security guard would be carrying “a loaded firearm” “on his person” “in any public place.” A “public place” for purposes of section 12031 has been defined as “being accessible to members of the public having business with the” proprietor. (See *People v. Vega* (1971) 18 Cal. App. 3d 954, 958; *People v. Green* (1971) 15 Cal. App. 3d 766, 771; see also *In re Zorn* (1963) 59 Cal. 2d 650, 652.)

As provided for in subdivision (a) of section 12031, however, certain exceptions are found in other subdivisions of the statute and one exception is specifically applicable to the Museum’s security guards. Subdivision (d) states in part: “Subdivision (a) shall not apply to any of the following who have been issued a certificate pursuant to section 12033. (4) Uniformed security guards or night watchmen employed by any public agency, while acting within the scope and in the course of their employment.”

Under this statutory exception, the Museum’s security guards would be (1) in uniform, (2) employed by a public agency, and (3) would be acting within the scope and in the course of their employment while carrying their firearms. The only other statutory requirement is that the security guards receive a certificate pursuant to section 12033.” Section 12033 states:

“The Department of Consumer Affairs may issue certificate to any person referred to in subdivision (d) of Section 12031, upon notification by the school where the course was completed that the person has successfully completed a course in the carrying and use of firearms and a course of training in the exercise of the powers of arrest which meet the standards prescribed by the department pursuant to Section 7514.1 of the Business and Professions Code.”

In subdivision (b) of Business and Professions Code section 7514.1, the Legislature has specified the topics to be covered in the course on exercising the power to arrest:

“The course of training in the exercise of the power to arrest may be administered, tested and certified by any licensed private patrol operator. The Department of Consumer Affairs may approve any person or school to teach the course in the exercise of the power to arrest. The course of training shall be approximately two hours in length and cover the following topics:

“(1) Responsibilities, ethics in citizen arrest.

“(2) Relationship with the public police in arrest.

“(3) Limitations on security guard power to arrest.

“(4) Restrictions on searches and seizures.

“(5) Criminal and civil liabilities.

“(A) Personal liability.

“(B) Employer liability.

“The department shall make available a guide book as a standard for teaching the course on exercising the power to arrest.”

No other statutes appear to bear upon the Museum’s authority to use armed security guards in protecting the Museum’s property, its staff and visitors. We therefore conclude that the Museum may authorize its uniformed security guards to carry loaded firearms in belt holsters while performing their official duties, if they have been issued firearm certificates pursuant to section 12033. To obtain the certificate, a security guard must receive the appropriate training in the general use of firearms and the powers of arrest.
