



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 82-62

Michael G. Moroney
Legal Counsel
Wyandotte County Sheriff's Office
816 North 9th Street
Kansas City, Kansas 66117

Re: Counties and County Officers -- Sheriff -- Special
Deputies in Counties Over 100,000

Synopsis: The authority of a special deputy appointed pursuant to K.S.A. 19-805a to exercise general law enforcement powers is not equal to that of a "law enforcement officer" as such term is defined by the Kansas Criminal Code. The authority of a special deputy to exercise general law enforcement powers is limited by K.S.A. 19-805b to certain specified premises or in the event of riot, sabotage, serious disturbances or breach of the peace. Thus, a special deputy is prohibited from carrying a concealed firearm when not engaged in the performance of his or her statutorily authorized duties. . Cited herein: K.S.A. 19-805, 19-805a, 19-805b, 21-3110(10), 21-4201, 22-2401a.

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Dear Mr. Moroney:

On behalf of the Wyandotte County District Attorney and Sheriff, you have requested the opinion of this office concerning the authority of special deputy sheriffs, appointed pursuant to 19-805a, to assert the general powers of a law enforcement officer and to carry concealed firearms when they are not on official duty.

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We are limiting our consideration to your specific inquiry as to appointments pursuant to K.S.A. 19-805a, and nothing herein should be construed as an opinion regarding appointments or limited appointments made in accordance with K.S.A. 19-805.

A "law enforcement officer" is defined by the general definition section of the Kansas Criminal Code, K.S.A. 21-3110(10), as

"any person who by virtue of his or her office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes."

By definition, then, when a law enforcement officer may act as such is not limited. That is, when a law enforcement officer is not officially on duty he retains his authority to act as an officer within his or her territorial jurisdiction (see K.S.A. 22-2401a). [Cf. State v. Coleman, 224 Kan. 447 (1980), wherein an off duty police officer working as an employee in detecting shoplifters was held to be a law enforcement officer engaged in performance of his duty.] The critical issue in both questions you raise is whether a special deputy appointed pursuant to K.S.A. 19-805a is a "law enforcement officer." We conclude that special deputies may assert the general powers of a law enforcement officer only while actually engaged in the performance of their statutorily authorized duties.

K.S.A. 19-805a provides the sheriff of counties having a population in excess of 100,000 with authority "to appoint so many special deputies as he or she may think proper." The authority of a special deputy to act as a law enforcement officer is governed by K.S.A. 19-805b, which provides:

"Such special deputies may be limited in their authority to perform the acts of a peace officer in or about certain specified premises or relating thereto, but shall have a general right in event of riot, sabotage or serious disturbances or breach of the peace to call upon and deputize any other peace officer or private citizen to assist him in quelling such riot or disturbance."

In the case of State v. Hargis, 5 Kan.App.2d 608 (1980), this statute was construed as follows:

"[t]he appointment of special deputies and the authority of these deputies is controlled by specific provisions in K.S.A. 1979 Supp. 19-805a and K.S.A. 19-805b. These deputies have the statutory right to assert the general powers of law enforcement officers only in the event of "riot, sabotage or serious disturbances or breach of the peace." Id. at 610-11.

Comparing the authority of a special deputy with the definition provided by K.S.A. 21-3110(10), we do not find that a special deputy is generally "vested by law with a duty to maintain public order or to make arrests for crimes." Nor do we find that a special deputy has authority for "specific crimes" as contemplated by K.S.A. 21-3110(10). The authority of a special deputy is limited to certain specified premises except in certain emergency situations. Thus, it is our conclusion, that the power of a special deputy is not equal to that of a law enforcement officer. State v. Hargis, supra. Hence, we believe that such a person may exercise general law enforcement powers only on the premises for which the commission as a special deputy has been granted or in the event of riot, sabotage, serious disturbances or breach of the peace.

Your final question is whether a special deputy may carry a concealed firearm when not on duty. The carrying of a concealed firearm is prohibited by K.S.A. 21-4201(1)(d), with certain exceptions. One of those exceptions is granted to law enforcement officers, K.S.A. 21-4201(2)(a). Having previously concluded that a special deputy appointed pursuant to K.S.A. 19-805a is not a "law enforcement officer" except for a specific premises or emergency situations, we find that the carrying of a concealed firearm by a special deputy is prohibited when not acting in such capacity. That is, a special deputy's authority to carry a concealed firearm extends only while the deputy is actually engaged in the performance of his or her statutorily authorized duties.

We would note that in your request you indicate Wyandotte County special deputies perform duties such as process server and the transporting of prisoners. If these activities are conducted under the authority of an appointment pursuant to K.S.A. 19-805b, we believe that such activities are beyond the scope of the authority conferred by that statute. As indicated in the Hargis decision, the general power conferred upon a special deputy to act as a law enforcement officer is limited to certain emergency situations. Additionally, the sheriff may also grant to a special deputy limited "authority to perform the acts of a peace officer

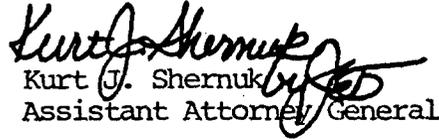
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in or about certain specified premises." K.S.A. 19-805b. We do not believe this limited authority extends to such general activities as transporting prisoners or acting as a process server.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Kurt J. Shernuk
Assistant Attorney General

RTS:JEF:KJS:may