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October 8, 1984

ATTORNEY GENERAL OPINION NO. 84-104

Dennis W. Moore
District Attorney
Tenth Judicial District
Johnson County Courthouse
P.O. Box 728, 6th Floor Tower
Olathe, Kansas 66061

Re: Crimes and Punishments — Crimes Against the Public
Safety — Unlawful Use of Weapons; Exemption for
Reserve Police Officers While On Duty

Synopsis: Reserve police officers are not law enforcement officers
but rather persons who assist law enforcement officers,
and therefore fall within the general prohibition against
carrying concealed firearms when off duty. K.S.A. 1983
Supp. 21-4201(1)(d). They may carry concealed firearms
when on duty or during those hours they are actively
engaged in assisting law enforcement officers. Cited
herein: K.S.A. 19-805b, 21-3110, K.S.A. 1983 Supp.
21-4201, 74-5602.

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Dear Mr. Moore:

On behalf of Lake Quivira Chief of Police Michael T. Wilson, you have
asked whether reserve police officers may carry concealed weapons when
off duty. We understand that reserve officers do not have regular
work schedules but donate a minimum of eight hours each month for

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which they receive no salary or hourly wage. Uniforms and equipment are furnished. The City of Lake Quivira provides liability insurance and worker's compensation coverage for any injuries received by reserve police officers while on duty.

K.S.A. 1983 Supp. 21-4201(1) (d) states in pertinent part:

"Unlawful use of weapons is knowingly carrying any pistol, revolver or other firearm concealed on one's person except when on the person's land or in the person's abode or fixed place of business."

K.S.A. 1983 Supp. 21-4201(2) (a) sets forth the following exemption:

"Subsection . . . 1(d) . . . shall not apply to or affect . . . law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer." (Emphasis added.)

Therefore, we must determine whether reserve police officers are law enforcement officers who are entitled to carry a concealed firearm 24 hours a day, or whether they are "persons summoned by such officers to assist in making arrests or preserving the peace" and who therefore are entitled to carry concealed weapons only while on duty as law enforcement officers.

The definition of law enforcement officer under the Kansas Criminal Code is found in K.S.A. 21-3110(10), which states:

"Law enforcement officer means 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."

Another definition of law enforcement officer is found in K.S.A. 1983 Supp. 74-5602(e), which states:

"'Police officer' or 'law enforcement officer' means a full-time or part-time salaried officer or employee of the state, a county or a city, whose duties include the prevention or detection of crime and the enforcement of the criminal or traffic laws of this state or of any

municipality thereof. Such terms shall include but not be limited to, the sheriff, undersheriff and full-time or part-time salaried deputies in the office of each county. . . ." (Emphasis added.)

K.S.A. 74-5602(g) defines part-time employment as follows:

"Part-time employment on a regular schedule or employment which requires a minimum number of hours each payroll period. (Emphasis added.)

Thus, while the reserve officers on the Lake Quivira police force are required to put in a minimum number of hours each month, there is no requisite payroll period because those who donate their time do not appear on the city's payroll.

In State v. McDonald, 222 Kan. 494 (1977), one of the issues raised on appeal was whether a defendant could be convicted of battery against a law enforcement officer when that officer was a part-time policeman. The court held that K.S.A. 21-3110(10) was the controlling definitional statute, and applied the facts as follows:

". . . [he] was wearing a city police uniform and badge; he was driving a city vehicle . . . he had been doing this part-time police work for some time, and presumably he was paid by the City. Though his original employment, some months before the incident in question may have been irregular and not in strict conformity with the cited statute, we have no hesitancy in holding that [h]e was a law enforcement officer under the facts before us." (Emphasis added.) McDonald, supra at 495.

This dictum indicates that the Kansas Supreme Court would tend to read K.S.A. 21-3110(10) narrowly, given facts other than battery of a police officer in uniform. The fact that the part-time officer "presumably was paid by the city" also was a factor considered by the court.

The Kansas Court of Appeals has considered a similar issue in State v. Hargis, 5 Kan.App.2d 608 (1980), reh. den. 229 Kan. 671 (1981). In that case, the court considered whether a special deputy, as defined by K.S.A. 19-805b, is a law enforcement officer under K.S.A. 21-3110(10) and therefore exempt from the proscription against carrying a concealed weapon under K.S.A. 21-4201(1) (d). The court of appeals stated that since special deputies have the statutory right to assert the general powers

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of law enforcement officers only in the event of certain enumerated situations, the power of a special deputy is not co-extensive with that of a law enforcement officer. The court found that because the defendant was not engaged in one of those specified situations, he was not acting as a law enforcement officer, and therefore did not fall within the exemption for law enforcement officers.

In our judgment the powers of reserve police officers fall between those granted to special deputies and those granted to part-time officers. Special deputies have general law enforcement powers in certain specifically-enumerated situations. Reserve officers, while on duty, have full law enforcement powers because during those hours they are "persons summoned . . . to assist in making arrests, or preserving the peace . . . actually engaged in assisting [those officers.]" Part-time officers are similar to salaried full-time officers in every respect except for the fact that they serve as law enforcement officers less than 1000 hours a year.

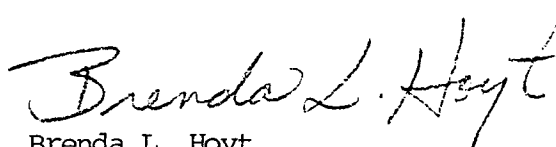
Therefore, we conclude that persons who are regularly scheduled, salaried law enforcement officers fall within the exemption of K.S.A. 1983 Supp. 21-4201(2) (a) and may carry a concealed firearm when on off-duty status. Persons who donate time or who receive nominal consideration for the time they volunteer as reserve officers **and** whose primary vocation and source of livelihood is other than as a law enforcement officer do not fall within the statutory exemption for carrying a concealed weapon as stated in 21-4201(2) (a).

Hence, reserve officers, when on duty, fall within the exemption of 21-4201(2) (a) and may carry concealed firearms. When off duty they are private citizens engaged in occupations other than law enforcement and therefore are subject to the general rule of K.S.A. 21-4201(1) (d) which prohibits carrying concealed firearms.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Brenda L. Hoyt
Acting Deputy Attorney General

RTS:BLH:may