

Opinion No. 56-6350

January 9, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: New Mexico Mounted Patrol, Troop 3, 600 Reynolds Avenue, Las Vegas, New Mexico. Attention: Alfred E. Rogers

You have asked this office to briefly outline the authority of the New Mexico Mounted Patrol under the statutes creating it and the commissions issued thereunder.

Two questions which you ask are:

(1) Is it necessary that members of the Mounted Patrol be in uniform in order to exercise whatever authority they possess?

(2) What authority do members of the Mounted Patrol have to arrest?

In connection with your request, you have enclosed a commission which is issued members of the Mounted Patrol. That commission, in part, reads:

"This is to Certify that the Bearer:

___ whose signature and identification are established hereon, has been appointed a ___ of the NEW MEXICO MOUNTED PATROL and vested with full power and authority of a Conservator of the Peace, with commission to apprehend, arrest and bring before the proper court all violators within the State of New Mexico, under authorization of the Governor of New Mexico and the Chief of the New Mexico State Police."

Pertinent statutes, and parts thereof, are the following:

Section 9-11-3 (c), N.M.S.A., 1953:

"That the chief of the New Mexico state police may, at the expense of members of the New Mexico mounted patrol, execute and deliver to each member of said mounted patrol proper pocket commissions as **emergency** and voluntary state police, **the same to be effective only upon specific request of the New Mexico state police in each instance of service.**" (Emphasis supplied)

Section 9-11-5, N.M.S.A., 1953:

"It shall be the duty of the New Mexico mounted patrol and the members thereof to assist in the enforcement of law by cooperating with all law enforcement agencies and regulatory bodies of the state of New Mexico **when requested by them and under**

their direction and control; to act as an official bodyguard to the governor of this state or to distinguished visitors **upon the call** of the governor." (Emphasis supplied)

Section 9-11-6, N.M.S.A., 1953:

"Members of the New Mexico mounted patrol may be detailed to assist and render aid in specific instances involving law enforcement or other matters **when request is made for such assistance and aid by the New Mexico state police or other law enforcement agencies**. When acting upon such call members shall be deemed to be the agents or deputies of the authority issuing such request and shall be possessed of the same powers and duties as such requesting authorities." (Emphasis supplied)

Section 9-11-7, N.M.S.A., 1953:

"The governor shall have the power in case of insurrection, invasion, riot, breach of the peace or imminent danger to call into service the New Mexico mounted patrol or any unit or member thereof. **Any and all service under such call shall be under the direction and control of the governor**." (Emphasis supplied)

From the foregoing, we conclude as follows:

It is not necessary that you be in uniform in order to exercise the authority which you have.

Regarding your second question, it is apparent from the above statutes that unless called in specific instances to assist law enforcement officers, your power to arrest is no different than that of a private citizen. Throughout the statutes above, it is seen that your authority to arrest, other than as a private citizen, exists only when there is a specific request from regular law enforcement officers. And it is further apparent that when you are called upon to assist law enforcement agencies that your conduct shall be under their direction and control. The commission which is issued you can, of course, have no more force than the authority given by the statutes under which that commission is issued. It should also be noted that the commission, itself, provides that you shall have the power to apprehend and arrest "under authorization of the Governor of New Mexico and the Chief of the New Mexico State Police."

I am returning the commission which you enclosed with your request and I trust that the above is of help to you.

By Santiago E. Campos

Assistant Attorney General