

Opinion No. 73-71

November 14, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. Jimmy G. Trujillo Mayor City of Mountainair, New Mexico 87036

QUESTIONS

FACTS

The City of Mountainair employs a two man police force plus one relief man. The relief man relieves each officer for one twelve hour shift per week. At the end of the month, the relief officer works another twelve hour shift at the change over.

QUESTIONS

1. What is the authority of the relief man in making arrests, and/or issuing citations?
2. Is the relief man required to go to police training school?
3. What are the uniform requirements for all patrolmen, and in particular, the relief man?
4. What is the definition of a uniform?

CONCLUSIONS

See analysis.

OPINION

{*138} ANALYSIS

To begin with, it must be understood that the Attorney General is not authorized to furnish written opinions to municipalities, municipal officers or other county officials or political subdivisions. This office is authorized to furnish opinions only to the legislature, state officials, or district attorneys. However, in an effort to be helpful to certain political subdivisions, unofficial interpretations of the law are occasionally issued by this office as published opinions. This opinion is being issued under this basis.

1. Section 14-11-4, N.M.S.A., 1953 Comp. authorizes the governing body of each municipality to provide for its police officers. Section 14-12-2, N.M.S.A., 1953 Comp. sets forth the duties and powers of the police officers. Such officers may:

"(1) execute and return all writs and processes as directed by the municipal judge;

(2) serve criminal writs and processes in any part of the county wherein the municipality is situated; and

(3) within the municipality,

(a) suppress all riots, disturbances, and breaches of the peace;

(b) apprehend all disorderly persons;

(c) pursue and arrest any person fleeing from justice; and

(d) apprehend any person in the act of violating the laws of the state or the ordinances of the municipality and bring him before competent authority for examination and trial."

Municipal police officers are defined as "peace officers" by Section 40A-1-13(C), N.M.S.A., 1953 Comp. Such statute states:

"'Peace officer' means any public official or public officer vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or it is limited to specific crimes . . ."

As you will note, there is nothing in the foregoing to indicate that municipal police officers must be employed on a full-time basis, and there is nothing in such sections to limit the power of a part-time officer. However, certain other statutes limit the powers of a part-time relief officer.

Section 41-23-16(a), N.M.S.A., 1953 Comp. (1973 P.S.) specifies that arrest warrants must be directed to "a full-time salaried state or county law enforcement officer, a municipal officer, a campus security officer or an Indian tribal or pueblo law enforcement officer . . ." Likewise, Section 41-23-17(b), N.M.S.A., 1953 Comp. (1973 P.S.) requires that a search warrant be directed to "a full-time salaried state or county law enforcement officer, a municipal police officer, a campus security officer, or an Indian tribal or pueblo law enforcement officer . . ."

With this, I note that the statutes are not exactly clear as to the requirement that the arresting officer (or the officer who will execute the search warrant) be "full-time". The adjective "full-time" could be construed to modify all the various classes of officers, or only state or county law enforcement officers. However, it would seem that there is no obvious reason to think that the legislature intended to limit the powers of state or county law enforcement officers without a commensurate limitation of municipal officers, campus security officers, or tribal or pueblo law enforcement officers, etc. Also, the rule of statutory construction ^{*139} known as "ujusdem generis" requires that all general words in a statute which follow a designation or enumeration of particular objects, things or classes of persons, will ordinarily be presumed to be limited by the specific language preceding them. See **Grafe v. Delgado**, 30 N.M. 150, 228 P.2d 601 (1924) and **State v. Gonzales**, 78 N.M. 218, 430 P.2d 376 (1967). Thus, it is the opinion of this office that in

order to serve an arrest or search warrant, a municipal police officer must be employed on a "full-time" basis.

In addition, the authority of part-time officers to arrest persons in violation of motor vehicle laws of the State of New Mexico has been limited. Section 64-22-8.1, N.M.S.A., 1953 Comp. provides that:

"No person shall be arrested for violating the Motor Vehicle Code or any other law relating to motor vehicles punishable as a misdemeanor except by a **full-time**, salaried peace officer who, at the time of arrest, is wearing a uniform clearly indicating his official status." (Emphasis added)

Considering this, and noting that Section 64-22-8, N.M.S.A., 1953 Comp., contemplates a technical "arrest" before a traffic citation may be issued for any violation of the Motor Vehicle Code or other state law relating to motor vehicles punishable as a misdemeanor, it would be apparent that a part-time peace officer could not arrest or cite such violators.

This is not to say that a part-time municipal police officer may not cite an individual for a violation of a municipal ordinance, including municipal traffic ordinances. Section 64-22-8, **supra**, does not seem to preempt the right of a municipality to provide for the enforcement of its own traffic ordinances. See Section 14-16-5, N.M.S.A., 1953 Comp. However, it is clear that only a full-time officer may arrest or cite for violations of state motor vehicle laws.

Section 64-22-8.2, N.M.S.A., 1953 Comp. modifies the common law to the extent that certain uniformed officers may make a warrantless arrest of any person who is present at the scene of a motor vehicle accident, on a highway when charged with the theft of a motor vehicle, or charged with a crime in another jurisdiction, if such officer has reasonable grounds, based on personal investigation, to believe the person arrested has committed a crime. (See Opinion of the Attorney General, No. 61-117, where it was indicated that such statute was necessarily limited to arrests only in the case of violations of the Motor Vehicle Code and laws relating to motor vehicles, and was not meant to be used in the case of crimes in general.) Also, as noted above, the requirement of Section 64-22-8.1, **supra**, that the arresting officer must be a full-time, salaried peace officer, would be applicable.

With the foregoing exceptions, the power of a part-time officer to arrest without a warrant does not seem to be limited by any statute. Generally, any peace officer can arrest a felon if such arrest is based on probable cause. **State v. Deltenre**, 77 N.M. 497, 424 P.2d 782 (1966); **Ker v. State of California**, 374 U.S. 23, 83 S. Ct. 1623, 10 L. Ed. 2d 726 (1963). With this, I note that **Deltenre, supra**, dealt with a felony arrest, but did not distinguish between a felony and a misdemeanor, stating that "the legality of an arrest without a warrant depends on whether the arrest was based on probable cause." However, at common law, the right of a police officer to arrest for a misdemeanor was limited to those misdemeanors actually committed in the presence of

the peace officer which amount to a breach of the peace. **Jackson v. Superior Court**, 98 Cal. App.2d 183, 219 P.2d 879 (1950); **State v. Mobley**, 240 N.C. 476, 83 S.E.2d 100 (1954); 5 Am. Jur. 2d **Arrest**, Section 28, page 718; 6 C.J.S. **Arrest**, Section 6, page 584. Likewise, in the absence of a warrant, a peace officer cannot make an arrest for a violation of a municipal ordinance, even though such violation may be committed in his presence, if there is nothing in the offense that is dangerous to the public or would tend to cause a breach of the peace. 5 Am. Jur. 2d **Arrest**, Section 38, page 729. Whether the courts of New Mexico would impose the standards of **Deltentre, supra**, or follow the common law rule is questionable to me, and would thus remain a matter of conjecture. However, I note that Attorney General Opinion No. 66-93 alludes to the applicability of the common law rule as stated above, and that in absence of clear judicial or legislative determination otherwise, it would be prudent to conclude that it is still the law that a peace officer cannot make a warrantless arrest for a misdemeanor unless {**140*} such misdemeanor was committed in the presence of the officer, and amounted to a breach of the peace.

2. As to the question on the requirement of the relief man to attend the New Mexico Law Enforcement Academy pursuant to Section 39-6-10, N.M.S.A., 1953 Comp., it is noted that such statute requires satisfactory completion of the police officer basic training program before a person shall receive "an original appointment on a permanent basis as a police officer . . .". While this might seem to require the relief man to attend the Law Enforcement Academy, Section 39-6-11, N.M.S.A., 1953 Comp. defines "police officer" as "any **full-time** employee of a police department . . ." (Emphasis added) Thus, there is no statutory requirement for the part-time relief officer to have completed the basic training program offered by the Law Enforcement Academy. However, I would note that it seems clear that the legislature intended the establishment of the Law Enforcement Academy to generally upgrade the competence and ability of law enforcement officers throughout the state. Although the attendance of the relief man at the Law Enforcement Academy is not made mandatory by the statutes, it would likely behoove the City of Mountainair to require such attendance on its own initiative.

3. Except insofar as motor vehicle violations are concerned, there is no requirement that a law enforcement officer wear a uniform at the time of making an arrest, conducting a search, or in the performance of any other duties. In relation to arrests for motor vehicle offenses, Section 64-22-8.1, N.M.S.A., 1953 Comp. provides that:

"No person shall be arrested for violating the Motor Vehicle Code or other law relating to motor vehicles punishable as a misdemeanor except by a full-time, salaried peace officer **who, at the time of arrest, is wearing a uniform clearly indicating his official status.**" (Emphasis added)

It is thus apparent, that to arrest an individual for a misdemeanor violation of the Motor Vehicle Code, the police officer must be in uniform. This would hold true for all police officers. Again, it is noted that to make an arrest for violating the Motor Vehicle Code or any state law relating to motor vehicles punishable as a misdemeanor, the arresting officer must be full-time and salaried, in addition to being uniformed.

4. As to the definition of a uniform, we have no statutory guidelines. Assuming that the word "uniform" would be interpreted in its common and ordinary sense, **Scott v. New Empire Insurance Co.**, 75 N.M. 81, 400 P.2d 953 (1965), we may look to the definition contained in Webster's New Collegiate Dictionary (1961):

". . . dress of a particular style or fashion worn by persons in the same service, order, etc. . . ."

For example, the court, in **State v. Thobe**, 191 N.E.2d 182, 184 (Ct. App. Ohio 1961) reached a similar definition of "uniform," defining the term as:

"A dress of the same kind, fabric, fashion or general appearance as worn by other members of the same body, whether military, naval, or other, by which the members may be recognized as belonging to that particular body; opposed to plain clothes, or ordinary civil dress."

It can thus be concluded that the members of the municipal police force, if in uniform, should wear a dress of the same general appearance, as opposed to their ordinary civilian dress. Such dress should clearly indicate their official status. See, for guidance, Section 39-2-13, N.M.S.A., 1953, which contemplates that state police shall wear a standard and distinctive uniform in addition to their state police badges. The uniform should identify the officer as being an officer of the city police force, and should generally conform to the dress of the other officers.

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