

## **Opinion No. 74-40**

December 3, 1974

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** C. Gene Samberson State Representative, District 60 Lea County P.O. Box 1298  
Lovington, New Mexico 88260

### **QUESTIONS**

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(1) What are the duties, obligations and responsibilities of each law enforcement agency, such as the City Police, the Sheriff and Deputy Sheriffs and the New Mexico State Police, with respect to responding to a burglar alarm which is hooked up directly to the alarm panel furnished by the alarm contractor, which alarm panel is located in the headquarter facilities of the law enforcement agency?

(2) What are the duties, obligations and responsibilities of each law enforcement agency, such as the City Police, the Sheriff and Deputy Sheriffs and the New Mexico State Police, with respect to responding to a burglar alarm where the alarm system has been installed by a licensed contractor under the Construction Industries Licensing Act in accordance with the National Electrical Code and the New Mexico Electrical Code, but is not hooked up directly to such an alarm panel located in the headquarter facilities of the law enforcement agency?

(3) What are the duties, obligations and responsibilities of each law enforcement agency, such as the City Police, the Sheriff and Deputy Sheriffs and the New Mexico State Police, with respect to responding to a burglar alarm where the alarm system was not installed by such a licensed contractor and does not meet the National Electrical Code and the New Mexico Electrical Code and is not hooked up directly to such an alarm panel located in the headquarter facilities of the law enforcement agency?

(4) Are there any duties, obligations and responsibilities on any law enforcement agency, such as the City Police, the Sheriff and Deputy Sheriffs and the New Mexico State Police, which require such agency to permit an alarm contractor, who has leased the alarm devices to members of the public, to locate an alarm panel within the headquarter facilities of the law enforcement agency (without expense to that law enforcement agency for such installation)?

#### **CONCLUSIONS**

See analysis.

### **OPINION**

## {\*83} ANALYSIS

The questions presented are somewhat unique in that there appears to be no legislative or judicial authority which expressly resolves them. Nevertheless, we shall examine the statutory duties of New Mexico law enforcement personnel.

Section 39-1-1, NMSA, 1953 Comp., provides:

"It is hereby declared to be the duty of every sheriff, deputy sheriff, constable and every other peace officer to investigate all violations of the criminal laws of the state of New Mexico which are called to the attention of any such officer or of which he is aware, and it is also declared the duty of every such officer to diligently file a complaint or information, if the circumstances are such as to indicate to a reasonably prudent person that such action should be taken, and it is also declared his duty to co-operate with and assist the attorney general, district attorney, or other prosecutor, if any, in all reasonable ways. Failure to perform his duty in any material way shall subject such officer so failing, to removal from office and payment of all costs of prosecution."

The term "peace officer" includes state police and municipal police, as well as sheriffs, deputy sheriffs, and constables. See also **People v. Bissonette**, 327 Mich. 377, 42 N.W.2d 113 (1950); See, for example, Sections 39-6-11, 39-8-3, 40A-1-13 NMSA, 1953 Comp. **State v. Hendricks**, 66 Ariz. 235, 186 P.2d 943 (1947).

The powers and duties of the New Mexico State Police are further defined by Section 39-2-17, NMSA, 1953 Comp., which provides:

"The chief and other members of the state police, who when duly commissioned and sworn under the provisions of this act [39-2-1 to 39-2-25], shall have the following powers and shall perform the following duties:

(a) They shall be conservators of the peace within the state of New Mexico, with full power to apprehend, arrest and bring before the proper court all law violators within the state of New Mexico.

(b) They shall be ex officio deputies and agents of all the officers and departments of the bureau of revenue and of the officers and departments within the state of New Mexico charged with the registration of motor vehicles, the issuance of licenses to operators of motor vehicles, and of the officers and departments of the state of New Mexico charged with the the regulation and control of motor vehicles operated upon the public highways for hire in the transportation of either passengers or property.

(c) They shall be charged with the enforcement of all laws of the state of New Mexico regulating the use of highways.

(d) Upon request of any officer or agency of the state of New Mexico, charged with the duty of enforcing any law of the state, made to the state police board, one [ 1 ] or more

members of the state police may be temporarily designated specifically to enforce the provisions of such law."

The duties of municipal police officers are further spelled out in Section 14-12-2, NMSA, 1953 Comp., which provides:

"-- A. The police officer of a municipality shall:

(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

{\*84} (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.

B. In the discharge of his proper duties, a police officer shall have the same powers and be subject to the same responsibilities as sheriffs or constables in similar cases."

Section 15-40-2, NMSA, 1953 Comp., further sets forth the duties of a sheriff. That section provides:

"-- The sheriff shall be conservator of the peace within his county; shall suppress assaults and batteries, and apprehend and commit to jail, all felons and traitors, and cause all offenders to keep the peace and to appear at the next term of the court and answer such charges as may be preferred against them."

Finally, the powers and duties of deputy sheriffs are further explained in Section 15-40-11, NMSA, 1953 Comp., which provides:

"-- The said deputies are hereby authorized to discharge all the duties which belong to the office of sheriff, that may be placed under their charge by their principals, with the same effect as though they were executed by the respective sheriffs."

With respect to your first three questions, the answer would seem to be the same whether or not an alarm panel is installed in a headquarters facility of a law enforcement agency. In our opinion, the personnel of each law enforcement agency must respond and investigate all potential violations of the New Mexico criminal laws of which they

have knowledge or of which they become aware. It is common knowledge that when a burglar alarm is activated, a crime is or may be in progress, and law enforcement officials should respond to the alarm and investigate. Section 39-1-1, **supra**.

With respect to your fourth question, there is no affirmative statutory or common law duty which requires law enforcement agencies to permit alarm panels to be installed in their respective headquarters facilities.

By: Ralph W. Muxlow, II

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