

Opinion No. 76-07

February 12, 1976

BY: OPINION OF TONEY ANAYA, Attorney General Charles Roybal, Assistant Attorney General

TO: Honorable Bennie J. Aragon, New Mexico State Representative, State Capitol Building, Santa Fe, New Mexico 87503

QUESTIONS

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1. May presently commissioned deputy sheriffs who were not serving as deputy sheriffs or police officers on July 5, 1971 receive certification by waiver of training as peace officers from the New Mexico Law Enforcement Academy?

2. Are the following personnel required to be certified by the Director of the Law Enforcement Academy under the New Mexico Law Enforcement Academy Act, Sections 39-6-1 to 39-6-12, NMSA, 1953 Comp.:

- (a) bailiffs
- (b) civil process servers
- (c) police radio operators
- (d) county jailers and guards

CONCLUSIONS

- 1. No.
- 2. See Analysis.

OPINION

{*54} ANALYSIS

1. The New Mexico Law Enforcement Academy Act requires that all full-time police officers serving in law enforcement units within the State be certified by {*55} the Director of the New Mexico Law Enforcement Academy and that every person temporarily employed as a police officer by a law enforcement unit be certified by the Director within 12 months from the date of his employment. The certification required attests to that completion of an approved police officer training program. Police officers

who were serving at the time that the Law Enforcement Academy Act took effect are exempted from the requirement of training under Section 39-6-10, **supra**, which states in applicable part:

The director of the New Mexico law enforcement academy shall waive the above training requirements for all officers who are serving full time three [3] months after the effective date of this section and shall award each such officer a certificate.

The effective date of the act was April 5, 1971.

It was the clear intent of the Legislature in enacting the "grandfather clause" to provide for the orderly implementation of the act. To extend the waiver of training provision beyond that expressly granted by the Legislature would subvert the purpose of the act and would make that mandatory requirement of training meaningless. Thus the "grandfather clause" may not be expanded beyond the scope of its terms to allow a waiver of training beyond that expressly granted by the act.

2. The requirement of training for police officers under the act is limited by the definition of police officer in Section 39-6-11, **supra**, which states:

"Police officer means any **full-time employee** of a police department which is part of or administered by the state or any political subdivision thereof and which employee is **responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this state**. Police officer specifically includes deputy sheriffs. Notwithstanding the provisions of this section, sheriffs are eligible to attend the New Mexico law enforcement academy, and are eligible to receive certification as provided therein."

While the legislature saw fit to specifically include deputy sheriffs under the coverage of the act, the definition of peace officer makes it clear that the provisions of the act do not apply to an employee of a sheriff's department unless he is responsible for ". . . the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this state." Thus the clerical staff and other employees of a sheriff's department who are not responsible for prevention and detection of crime and the enforcement of the penal, traffic or highway laws of New Mexico need not be certified by the law enforcement academy.

It was once the duty of the sheriff to provide supplies, meals, accommodations and court employees for district court judges. Under Section 16-3-43, NMSA, 1953 Comp., the sheriff of the county was responsible for the selection of bailiffs. However, this section was repealed by Chapter 69, Laws of 1968. The presently operative statute is Section 16-3-6, NMSA, 1953 Comp. which states that bailiffs may be employed as required by the District Court. It is thus clear from both the nature of the appointment and the function which bailiffs perform that they need not be certified as law enforcement officers under the Law Enforcement Academy Act.

{*56} Section 21-1-1(4) (E) (1), NMSA, 1953 Comp. states in applicable part:

"In civil causes summons and copy of complaint may be served by the sheriff of the county where the defendant may be found, or by any other person not a party to the action, over the age of eighteen [18] years."

This section provides that civil service need not be made by a deputized law enforcement officer whose functions include the prevention and detection of crime and the enforcement of the laws of the State of New Mexico. Thus civil process servers who do not function as police officers need not be certified by the law enforcement academy. Similarly, radio operators who do not otherwise perform the functions of prevention and detection of crime and enforcement of the laws of the State of New Mexico need not be certified by the law enforcement academy as police officers.

Section 15-43-14, NMSA, 1953 Comp. states that the county jailer and jail guard or guards shall be appointed by, and shall be under the supervision and control of the sheriff. Section 42-2-1.1, NMSA, 1953 Comp. provides that a county and municipality may enter into joint powers agreements by which they provide for the operation of the jail. Under subsection B it is provided that control of the jail facilities may be vested in an individual other than the sheriff. Neither section vests the county jailer or jail guards with the duty to prevent or detect crimes or to enforce the laws of the State of New Mexico. See also Section 15-43-11.1, NMSA, 1953 Comp. Accordingly, county jailers and jail guards need not be certified by the law enforcement academy unless they otherwise perform functions of prevention and detection of crime and the enforcement of state laws.