

Opinion No. 81-10

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OPINION OF: Jeff Bingaman, Attorney General

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LAW ENFORCEMENT

Since the legislature has required the establishment of inservice training programs by the law enforcement academy, but has not compelled attendance at such programs by imposing the sanction of forfeiture of employment, it is not mandatory that police officers obey the requirement for in-service training.

QUESTIONS

Is the in-service law enforcement training requirement, as defined by Section 29-7-7.1 NMSA 1978 of the Law Enforcement Training Act, mandatory?

CONCLUSIONS

No.

ANALYSIS

Section 29-7-7.1 NMSA 1978 of the Law Enforcement Training Act (Act) which was enacted as Laws 1981, Chapter 114, Section 7, provides:

"A. In-service law enforcement training shall consist of at least forty hours of academic instruction for each police officer during each twenty-four month period of employment or service with a political subdivision for a period of not less than ten years. The first training course may commence no later than twelve months after graduation from the basic law enforcement training program.

B. All police officers who are eligible for in-service law enforcement training need not have attended the basic law enforcement training program, provided a prior basic instruction certificate is accepted by the director. The director, with the approval of the board, may waive the time limitation for in-service law enforcement training upon receipt from a police officer's chief or sheriff that it is necessary that the individual receive an in-service law enforcement training course."

OPINION

This section mandates, by the use of the word "shall," that in-service training is to consist of at least forty hours of academic instruction every twenty-four months over a ten-year period. It is not clear, however, whether attendance of such training is mandated for each police officer.

Section 29-7-7.1 does not, by its plain terms, expressly require that every police officer must attend in-service training and such language cannot be read into Section 29-7-7.1 unless necessary to conform to the obvious intent of the legislature. See, e.g., **State v. Pendley**, 92 N.M. 658, 593 P.2d 755 (Ct. App. 1979). Although legislative intent is determined primarily by the language of a statute, **Arnold v. State**, 94 N.M. 381, 610 P.2d 1210 (1980), where the intent is not clear from the language, it is necessary {228} to look to the objective to be accomplished by the legislation, **Chavez v. State Farm Mutual Auto Insurance Co.**, 87 N.M. 327, 533 P.2d 100 (1975).

The 1981 amendments to the Act added various provisions relating to in-service training. In addition to Section 29-7-7.1, a new definitions statute was enacted as Section 29-7-7 NMSA 1978. Pursuant to Section 29-7-7(E), "in-service law enforcement training" is defined to mean

". . . a course of instruction designed to train and equip all police officers in the state with specific law enforcement skills and to ensure the continuing development of all police officers in the state."

and Section 29-7-7(G) defines a "certified regional law enforcement training facility" as one certified and approved to offer "in-service law enforcement training." There is, therefore, a clear legislative objective to incorporate in-service training into the law enforcement academy program.

In construing these statutory provisions to determine legislative intent with respect to whether in-service training is mandatory, the Act should be read as a whole so that each provision may be considered in relation to the others, **Drink, Inc. v. Babcock**, 77 N.M. 277, 421 P.2d 798 (1966). It would appear therefore that the statute requires the law enforcement academy to establish and maintain an in-service training program and the requirements of Section 29-7-7.1 may be construed as "mandatory" at least insofar as the legislature requires such programs be established.

That Act does not, however, contain any provision which would enforce the in-service training requirement. The requirement that all police officers complete a basic law enforcement training program or its equivalent within twelve months, Sections 29-7-8(A)(6) and 29-7-10(A), is enforced by forfeiture of employment, Section 29-7-8(B). A similar forfeiture provision for in-service training was included in the original bill as introduced, see House Bill 170, Thirty-fifth Legislature, First Session, but deleted before final passage of the Act. Although the power of an agency is not necessarily limited to those defined by law, but includes those which may be fairly implied, see, e.g., **Wimberly v. New Mexico State Police Board**, 83 N.M. 757, 497 P.2d 968 (1972), no

forfeiture provision may be fairly implied which had been considered and rejected by the legislature.

In summary, the legislature has required the establishment of in-service training programs by the law enforcement academy, but has not compelled attendance at such programs by imposing the sanction of forfeiture of employment. As police officers are not, therefore, bound to obey the requirement for in-service training, it is not mandatory.

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