

Opinion No. 88-09

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OPINION OF: HAL STRATTON, Attorney General

BY: David A. Garcia, Assistant Attorney General,

TO: Thomas T. Gillespie, Director, Training Division, New Mexico Department of Public Safety, 4491 Cerrillos Road, Santa Fe, New Mexico 87505

QUESTIONS

Are undersheriffs required to obtain certification through the New Mexico Law Enforcement Academy as are other police officers?

CONCLUSIONS

Yes.

ANALYSIS

New Mexico law requires a new police officer to complete successfully a basic training program approved by the Director of the New Mexico Law Enforcement Academy (now, the Training Division of the Department of Public Safety) within one year of the date a law enforcement agency first employs him. Section 29-7-8 NMSA 1978. The institution that provides the training certifies an officer who passes such a program. The Law Enforcement Training Act, Sections 29-7-1 through 29-7-11 NMSA 1978, defines the term "police officer" in two separate sections. Section 29-7-11F provides:

"Police officer" means any full time employee of a law enforcement agency 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. The terms specifically includes deputy sheriffs.

Section 29-7-9 also defines the term:

"Police officer" means any full time employee of the 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 the 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 herein.

These provisions' first two sentences contain almost identical language. The only difference between the definitions is the replacement of the term "police department" with the term "law enforcement agency" in Section 29-7-7F. The extra language in Section 29-7-9 makes sheriffs eligible to attend the Law Enforcement Academy and to receive certification for doing so. As deputy sheriffs are included specifically in both definitions, it is clear that the legislature considers sheriff departments to be law enforcement agencies which employ police officers. Thus, under Section 29-7-8 NMSA 1978 law enforcement officers who are employed by sheriff departments must comply with the basic training requirement.

Sheriffs are public officers rather than public employees. *State ex rel. Gibson v. Fernandez*, 40 N.M. 288, 58 P.2d 1197 (1936) (defining the phrase "public officer"). Sheriffs thus do not have to undergo the training that Section 29A-7-8 NMSA 1978 mandates, as that statute only affects employees. Deputy sheriffs and undersheriffs are public employees, however. Att'y Gen. Op. 60-222 (deputy sheriffs are public employees, rather than public officers, because the sheriff exercises detailed supervision and control over their employment).

Deputy sheriffs, as police officers, are required to receive training. An undersheriff is a deputy sheriff. *Shirran v. Dallas*, 21 Cal. App. 405, 407, 132 P. 454, 458 (1913) (phrases undersheriff and deputy sheriff describe "precisely" the same officer); *Delfelder v. Teton Land and Investment Co.*, 46 Wyo. 142, 24 P.2d 702, 704 (1933). Courts have recognized that the terms deputy sheriff and undersheriff are usually interchangeable. *Holly v. Preuss*, 172 Mont. 422, 564 P.2d 1303 (1977). Further, undersheriffs clearly fall under Section 29-7-8 NMSA 1978's training mandate as employees of law enforcement agencies who are responsible for preventing and detecting crime. Section 29-7-11F.

Under New Mexico law, an individual must be certified if an agency appoints him as a law enforcement officer on a permanent basis. Undersheriffs perform the functions of law enforcement officers. Further, the term "undersheriff" is interchangeable with the term "deputy sheriff" for the purposes of the Law Enforcement Training Act. Undersheriffs therefore must comply with Section 29-7-8 NMSA 1978's certification requirements.

ATTORNEY GENERAL

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