

**Opinion No. 88-77**

November 30, 1988

**OPINION OF:** HAL STRATTON, Attorney General

**BY:** Patricia A. Gandert, Assistant Attorney General

**TO:** Honorable James A. Caudell, New Mexico State Senate, State Capitol, Santa Fe, New Mexico 87503

**QUESTIONS**

Does a municipal police officer have the authority to enforce the Motor Vehicle Code outside the city limits of the municipality?

**CONCLUSIONS**

No, unless subject to statutory exceptions.

**ANALYSIS**

Section 3-13-2 NMSA 1978 (Cum. Supp. 1988) contains the following provisions:

A. The police officer of a municipality shall:

(1) execute and return all writs and process as directed by the municipal judge of the municipality employing the police officer;

(2) execute and return all criminal process as directed by the municipal judge of any incorporated municipality in the state if the criminal process arises out of a charge of violation of a municipal ordinance prohibiting driving while under the influence of intoxicating liquor or drugs;

(3) serve criminal writs and process specified in Paragraphs (1) and (2) of this subsection in any part of the county wherein the municipality is situated; and

(4) 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 in similar cases.

"In interpreting a statute the intent is to be first sought in the meaning of the words used, and when they are free from ambiguity and doubt and express plainly, clearly and distinctly the sense of the Legislature, no other means of interpretation should be resorted to." *Arnold v. State*, 94 N.M. 381, 383-384, 610 P.2d 1210, 1212-1213 (1980). The plain language of the statute indicates that it is only "within the municipality" that a municipal police officer may "apprehend any person in the act of violating the laws of the state." This follows the general rule that the powers conferred on a police officer must be exercised within the territorial limits of the city. See A.G. Op. No. 76-4.

Statutes or appellate court decisions may create exceptions to the general rule that a municipal police officer's authority ceases at the city limits. The New Mexico Legislature has provided for such an exception in situations of "fresh pursuit." Section 31-2-8 NMSA 1978 (Repl. Pamp. 1984) provides:

A. Any county sheriff or municipal police officer who leaves his jurisdictional boundary while in fresh pursuit of a misdemeanor whom he would otherwise have authority to arrest shall have the authority to arrest that misdemeanor anywhere within this state and return him to the jurisdiction in which the fresh pursuit began without further judicial process.

B. For purposes of this section, "fresh pursuit of a misdemeanor" means the pursuit of a person who has committed a misdemeanor in the presence of the pursuing officer. Fresh pursuit shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

Although Section 31-2-8 recognizes that a municipal police officer is limited to enforcement of laws within his "jurisdictional boundary," it provides an exception for the arrest of a misdemeanor when the municipal police officer is in fresh pursuit of the misdemeanor. Therefore, if the violation of the Motor Vehicle Code occurred within the municipality and the violation is a misdemeanor, a municipal police officer in fresh pursuit of the misdemeanor has the authority to make an arrest anywhere within the state.

The Motor Vehicle Code, Sections 66-1-1 through 66-6-35, NMSA 1978 (Repl. Pamp. 1984 and Cum. Supp. 1988) and Sections 66-7-1 through 66-8-140, NMSA 1978 (Repl. Pamp. 1987 and Supp. 1988) contains provisions which may authorize a municipal police officer to act outside his jurisdictional territory. Section 66-2-12 is entitled "Police authority of division." It provides:

A. The director and such officers, deputies and inspectors of the division as he shall designate by the issuance of credentials shall have the powers:

(1) of peace officers for the purpose of enforcing the provisions of the Motor Vehicle Code [Articles 1 to 8, Chapter 66 NMSA 1978];

(2) to make arrests upon view and without warrant for any violation committed in their presence of any of the provisions of the Motor Vehicle Code;

(3) when on duty, upon reasonable belief that any vehicle is being operated in violation of any provision of the Motor Vehicle Code, to require the driver thereof to stop and exhibit his driver's license and the registration evidence issued for the vehicle and submit to an inspection of such vehicle, the registration plate and registration evidence thereon or to an inspection and test of the equipment of such vehicle;

(4) [to] inspect any vehicle of a type required to be registered hereunder in any public garage or repair shop or in any place where such vehicles are held for sale or wrecking, for the purpose of locating stolen vehicles and investigating the title and registration thereof; and

(5) to determine by inspection that all dealers and wreckers of vehicles are in compliance with the provisions of the Motor Vehicle Code with particular reference to but not limited to the requirements for an established place of business and for records.

B. The director may issue credentials to officers of state and local law enforcement agencies as evidence of the division's intent to fully implement the enforcement of the provisions of the Motor Vehicle Code.

The Motor Vehicle Code further requires that the arresting officer be in uniform. Section 66-8-124 states:

No person shall be arrested for violating the Motor Vehicle Code [66-1-1 to 66-8-140 NMSA 1978] 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.

The Motor Vehicle Code also sets forth those situations in which a law enforcement officer may arrest a person without a warrant. Section 66-8-125 provides:

A. Members of the New Mexico state police, sheriffs and their salaried deputies and members of any municipal police force, may arrest without warrant any person:

(1) present at the scene of a motor vehicle accident;

(2) on a highway when charged with theft of a motor vehicle; or

(3) charged with crime in another jurisdiction, upon receipt of a message giving the name or a reasonably accurate description of the person wanted, the crime alleged and a statement he is likely to flee the jurisdiction of the state.

B. To arrest without warrant, the arresting officer must have reasonable grounds, based on personal investigation which may include information from eyewitnesses, to believe the person arrested has committed a crime.

C. Members of the New Mexico state police, sheriffs, and their salaried deputies and members of any municipal police force may not make arrest for traffic violations if not in uniform; however, nothing in this section shall be construed to prohibit the arrest, without warrant, by a peace officer of any person when probable cause exists to believe that a felony crime has been committed or in non-traffic cases.

Although the Motor Vehicle Code sets forth certain procedures for arrests due to violation of the Motor Vehicle Code, the procedures prescribed in the Motor Vehicle Code are not exclusive of any other method prescribed by law for the arrest and prosecution of persons violating the Motor Vehicle Code. See Section 66-8-127.

In construing a statute, the entire statute is to be read as a whole so that each provision is considered in relation to the other parts of the statute. *Westgate Families v. County Clerk of Los Alamos*, 100 N.M. 146, 667 P.2d 453 (1983). It is presumed that the Legislature was informed as to existing law and that the Legislature did not intend to enact law inconsistent with any existing law. *Quintana v. New Mexico Department of Corrections*, 100 N.M. 224, 668 P.2d 1101 (1983). The Legislature is assumed to be informed as to existing statutory and common law and that it does not intend to enact useless statutes. *State ex rel. Bird v. Apodaca*, 91 N.M. 279, 573 P.2d 213 (1977).

Section 66-2-12(B), states that the director of the Motor Vehicle Division may issue credentials to officers of state and local law enforcement agencies to fully implement the enforcement of the provisions of the Motor Vehicle Code. A plain reading of the statute would be that one of the powers which can be delegated by the issuance of credentials is the power to make arrests upon view and without warrant for any violation committed in the presence of an officer of a local law enforcement agency. See Section 66-2-12(A)(2). Because a municipal police officer already has the authority within the municipality to apprehend any person in the act of violating the laws of the state, a reasonable interpretation of this provision is that upon issuance of credentials by the director of the Motor Vehicle Division, a municipal police officer may be given the authority to enforce the Motor Vehicle Code outside his jurisdictional boundary.

In conclusion, absent a statutory exception, such as fresh pursuit or the issuance of credentials by the Motor Vehicle Division, a municipal police officer's authority to enforce the Motor Vehicle Code is limited to the city limits of the municipality where he is employed.

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