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The Honorable Luciano "Lucky" Varela, Chairman
Legislative Finance Committee
325 Don Gaspar, Suite 101
Santa Fe, New Mexico 87501

Re: **Opinion Request – Scope of Authority of MTD Officers**

Dear Representative Varela:

You have requested our advice regarding the statutory authority conferred upon police officers employed by the Motor Transportation Division ("MTD") of the New Mexico Department of Public Safety ("DPS"). More specifically, you ask (1) whether MTD officers have the explicit or implicit authority to enforce elements of the New Mexico Controlled Substances Act, NMSA 1978, §§ 30-1-1 through 30-1-15, or the New Mexico Criminal Code, NMSA 1978, §§ 30-31-1 through 30-31-41, and (2) whether DPS can dictate the scope of authority allotted to MTD officers as a result of the 1998 transfer of MTD from the Taxation and Revenue Department to DPS. Based on our examination of the relevant New Mexico constitutional, statutory and case law authorities, and on the information available to us, we conclude that the DPS Secretary may dictate the scope of enforcement duties, including the enforcement of the Criminal Code and the Controlled Substances Act, of his employees. MTD officers do not have independent legal authority to enforce these laws. Therefore, MTD officers may enforce provisions of the New Mexico Controlled Substances Act or the Criminal Code only if the DPS Secretary authorizes them to do so.

As a preliminary matter, there are several rules of statutory construction that guide our analysis. First, in construing a statute, our goal is to give primary effect to legislative intent, which intent is evidenced primarily through the statute's language. See Souter v. Ancae Heating and Air Conditioning, 2002-NMCA-078, 132 N.M. 608, 611. Second, under the plain meaning rule, we give statutory language its ordinary and plain meaning unless the Legislature indicates a different interpretation is necessary. See Cooper v. Chevron, 2002-NMSC-020, 132 N.M. 382, 388. We read statutes concerning the same subject matter together as harmoniously as possible in a way that facilitates their operation and achievement of their goals. See Jicarilla Apache Nation v. Rodarte, 2004-NMSC-035, 136 N.M. 630, 634-5.

We begin our analysis by reviewing the relevant statutes that establish DPS and place MTD within DPS as one of its five program divisions. The legislative purpose for the creation of DPS was “to establish a single, unified department to consolidate state law enforcement and safety functions in order to provide better management, real coordination and more efficient use of state resources and manpower in responding to New Mexico’s public safety needs and problems and to improve the professionalism of the state’s law enforcement and investigative functions and personnel.” See NMSA 1978, § 9-19-3 (1989). Upon creating DPS, the Legislature charged its Secretary with the “duty to manage all operations of the department and *to administer and enforce the laws with which he or the department is charged.*” See NMSA 1978, § 9-19-6 (A) (1989) (emphasis added). Moreover, “[t]o perform his duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or the department or *any division of the department*, except where authority conferred upon any division is explicitly exempted from the secretary’s authority by statute.” See NMSA 1978, § 9-19-6(B) (1989) (emphasis added).

In accordance with these provisions, the Secretary, among other things, is authorized to, “within the limitations of available appropriations and applicable laws, employ . . . persons necessary to discharge his duties,” and “delegate authority to subordinates as he deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto.” Id. Consistent with its efforts to consolidate all law enforcement and safety functions under one roof, in 1998 the Legislature transferred MTD from the Taxation and Revenue Department (“TRD”) to DPS and made it one of the five program divisions of DPS. See N.M. Laws 1998, 1st Sp. Sess., Ch. 10, § 3. The Legislature’s actions and this statutory scheme establishing DPS make clear that the Secretary of DPS is authorized to dictate the scope and extent of duties of all DPS employees, including MTD officers, except where explicitly exempted by statute from the Secretary’s authority.

Section 65-1-6 of the Motor Transportation Act describes the primary duties of MTD officers. It reads:

“The *department* shall:

- A. enforce in the field the provisions of the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978] and the regulations promulgated by the public regulation commission pursuant to that act; and
- B. maintain sufficient personnel in the field to enforce provisions of the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978] and the regulations promulgated by the public regulation commission pursuant to that act.”

NMSA 1978, § 65-1-6 (2003) (emphasis added). Prior to MTD’s transfer to DPS, the “department” referred to in the above-cited provision meant the Taxation and Revenue

Department.¹ Now, the “department” referred to in Section 65-1-6 and other provisions of the Motor Transportation Act “without modification, means the department of public safety, the secretary of public safety or any employee of the department exercising authority *lawfully delegated by the secretary.*” NMSA 1978, § 65-1-2(F) (2003) (emphasis added). Even though these were and still are the primary duties of MTD officers, we note that the Legislature assigned these duties to DPS, not to MTD. See NMSA 1978, § 65-1-6 (2003). It is then the Secretary’s task to delegate these duties to MTD officers or any other DPS employees, as he sees fit. See NMSA 1978, § 9-19-6(B) (1989). If the Legislature had intended the duties set forth in Section 65-1-6 to be non-delegable and outside of the Secretary’s authority, it could have assigned these duties to MTD exclusively, as it has done in the past. See, e.g., N.M. Laws 1977, ch. 250, § 104. In fact, we found no law currently expressly conferring certain authority on MTD and explicitly exempting the Secretary from the same authority, as contemplated by NMSA 1978, § 9-19-6(B) (1989).

To discern whether MTD officers today are authorized by statute to enforce any part of the Criminal Code, Controlled Substances Act, or other provisions of law not specified in the Motor Carrier Act, we first look back to 1993, when the Legislature conferred express authority on MTD officers to enforce provisions of the Criminal Code and the Controlled Substances Act. Before being amended, Section 65-1-7, relating to the powers of enforcement employees of TRD, read:

The enforcement employees designated by the [TRD] have all the powers of peace officers in all cities, towns, villages and counties in New Mexico with respect to the Motor Transportation Act, regulations under the act and any other law or regulation regarding commercial motor carrier vehicles, the operation of commercial motor carrier vehicles or the operators, passengers or cargoes of commercial motor vehicles that the department is empowered to administer or enforce.

N.M. Laws 1992, ch. 106, § 3. In 1993, it was amended to read:

The enforcement employees designated by [TRD] have all the powers of peace officers in all cities, towns, villages and counties in New Mexico with respect to the Motor Transportation Act, regulations under the act and any other law or regulation regarding commercial motor carrier vehicles, the operation of commercial motor carrier vehicles or the operators, passengers or cargoes of

¹ Since it was first enacted in 1967, Section 65-1-6 has been amended several times to read “[t]he motor transportation department . . .,” N.M. Laws 1967, ch. 97, § 5, “[t]he motor transportation division . . .,” N.M. Laws 1977, ch. 250, § 104, or “[t]he division . . .” N.M. Laws 1987, ch. 268, § 11, to reflect changes in the organizational structure of MTD from a stand-alone department, to a division, first, of the Department of Transportation, then of the Taxation and Revenue Department. In 1992, Section 65-1-6 was amended to read “[t]he department . . .,” indicating that the enforcement duties previously vested in the motor transportation division of TRD were being vested in TRD itself and not in MTD alone. See N.M. Laws 1992, ch. 106, § 2.

commercial motor vehicles that the department is empowered to administer or enforce. *In addition, the enforcement employees designated by the department have all the powers of peace officers in all cities, towns, villages and counties with respect to the Controlled Substances Act, the Drug Precursor Act, Section 7-1-74, 7-1-75, 30-22-1 through 30-22-5, 30-22-10, 30-22-21 through 30-22-26, 30-24-1 and 30-24-2 NMSA 1978 when violations of these provisions are committed in connection with the operation or control of commercial motor vehicles or in a designated employee's presence.*

N.M. Laws 1993, ch. 294, § 2 (emphasis added). The Legislature granted this express authority one year after a 1992 Attorney General Opinion concluded that MTD officers had no statutory authority to make arrests for any offenses not specified in the Motor Carrier Act and other laws regulating commercial vehicles or enforcing state taxes and fees. See N.M. Atty. Gen. Op. 92-02 (1992).

Analyzing the existing law prior to the 1993 amendment, the Attorney General reasoned that MTD (not TRD) was a state law enforcement agency whose officers had specific but limited investigatory and enforcement authority. See id. MTD was statutorily authorized to enforce the laws and regulations governing transportation for hire and commercial vehicles and, by agreement, to enforce excise taxes and other fees imposed by other state agencies. Id. Upon a close reading of the several statutes governing MTD inspectors' arrest authority, the Attorney General also found in 1992 that these inspectors had no statutory authority to make arrests for any offenses not specified in the Motor Carrier Act and other laws regulating commercial vehicles or enforcing state taxes and fees. Id. At the time, neither the Criminal Code nor the Controlled Substances Act was specified in the Motor Carrier Act. Similarly, MTD's authority to stop commercial vehicles at MTD-designated ports of entry did not include general criminal arrest authority. Id. The Attorney General in the 1992 opinion also reasoned that because the Motor Vehicle Code allowed the MVD director to appoint other law enforcement officers to assist him in the enforcement of the Motor Vehicle Code, he could by agreement authorize MTD officers to enforce provisions of the Motor Vehicle Code.

Upon the transfer of MTD from TRD to DPS in 1998, the Legislature repealed the above-cited Section 65-1-7 in its entirety, and with it MTD's express authority to enforce provisions of the Criminal Code or the Controlled Substances Act. See N.M. Laws 1998, 1st Sp. Sess., Ch. 10, § 3. In its stead, the Legislature enacted the following language:

The enforcement employees of the division designated by the director of the division are police officers as defined in Section 29-7-7 NMSA 1978.

Id.² NMSA 1978, Section 29-7-7 defines "police officer" as:

² As used in this section, "division" means the motor transportation division of the Department of Public Safety, and "director" means the secretary of the Department of Public Safety. See NMSA 1978, § 65-1-2(G) and (H) (2003).

“any commissioned employee of a law enforcement agency that is part of or administered by the state . . . which employee is responsible for the prevention and detection of crime or the enforcement of the penal and traffic or highway laws of the state. As used in this section “commissioned” means an employee of a law enforcement agency who is authorized by a sheriff or chief of police to apprehend, arrest and bring before the courts all violators within the state.”

(emphasis added). With the 1998 amendment to Section 65-1-7, the Legislature recognizes two significant factors. First, DPS, unlike TRD, is a law enforcement agency authorized to enforce provisions of New Mexico civil and criminal law. Second, MTD officers are commissioned employees of DPS. As such, MTD officers no longer have, nor do they need, independent statutory authority to enforce provisions of the Criminal Code, Controlled Substances Act, or for that matter, of the Motor Carrier Act because that authority already is vested in DPS and its Secretary. MTD officers’ authority to enforce the Motor Carrier Act or any other provision of law comes to them in the form of a lawful commission from DPS and its Secretary, pursuant to Sections 9-19-6(B) and 65-1-6. So long as DPS complies with its duty to maintain sufficient personnel in the field to enforce the Motor Carrier Act and regulations enacted by the Public Regulation Commission, the Secretary also may, consistent with his statutory authority, lawfully delegate other enforcement duties, including enforcement of the Criminal Code and the Controlled Substances Act, to the same officers, if the Secretary so chooses. The exercise of that discretionary authority rests, under current law, solely with the DPS Secretary.

If we may be of further assistance, please let us know. Your request to us was for a formal Attorney General’s Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General’s Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Very truly yours,



Sally Malavé
Assistant Attorney General

Cc: Secretary John Denko, DPS
John Wheeler, DPS General Counsel
Stuart M. Bluestone, Deputy Attorney General