

November 13, 2018 Advisory Letter — Opinion Request – Authority of Livestock Inspectors

Robert Alexander
Executive Director
New Mexico Livestock Board
300 San Mateo NE, Suite 1000
Albuquerque NM 87108

Re: Opinion Request – Authority of Livestock Inspectors

Dear Mr. Alexander:

Your predecessor, former Executive Director William W. Bunce, requested our advice regarding the responsibilities of livestock inspectors as law enforcement officers. Because the Attorney General believes the questions raised remain relevant and may be of interest to you and the Livestock Board, we offer this opinion. Specifically, Mr. Bunce asked:

- (1) Must livestock inspectors who are certified law enforcement officers carry firearms at all times while on duty?
- (2) Are livestock inspectors limited to enforcing the Livestock Code or are they obligated to act as law enforcement officers in other situations, such as when a crime is being witnessed or when asked by other law enforcement agencies to provide assistance?

As discussed in detail below, we conclude that:

- (1) New Mexico law does not require certified law enforcement officers, including livestock inspectors, to carry a firearm at all times while on duty. The Livestock Board, as the law enforcement agency employing certified livestock inspectors, may adopt rules governing the carrying of firearms by livestock inspectors, including when or where carrying a firearm is or is not appropriate.
- (2) The authority of livestock inspectors to act as law enforcement officers is expressly limited by statute to specific crimes. Livestock inspectors have no duty or authority to enforce or assist in the enforcement of criminal laws that fall outside their statutory jurisdiction.

1. Duty of a Livestock Inspector to Wear a Firearm

The Livestock Board, among other responsibilities conferred by the Livestock Code, NMSA 1978, ch. 29, art. 7, “exercise[s] general regulatory supervision over the livestock industry of this state in order to protect the industry from theft and diseases and to protect the public from diseased or unwholesome meat or meat products.” *Id.* § 77-2-7(A) (1999). To carry out the purposes of the Livestock Code, the Board is authorized

employ livestock inspectors, who have “the same powers as any other peace officer in the enforcement of that code.” *Id.* § 77-2-7(D).¹ See also *id.* § 77-2-1.1(P) (2015) (defining “livestock inspector” for purposes of the Livestock Code as “a certified inspector who is granted full law enforcement powers for enforcement of the Livestock Code and other criminal laws relating to livestock”). The Criminal Code provides that livestock inspectors “who are certified peace officers shall enforce the provisions of Chapter 30, Article 18 NMSA 1978 [crimes involving animals] and other criminal laws relating to livestock.” NMSA 1978, § 30-18-14 (2001).

The Office of Attorney General previously determined that the Livestock Board is a “law enforcement agency” and livestock inspectors are “police officers” for purposes of the Law Enforcement Training Act, NMSA 1978, ch. 29, art. 7. See N.M. Att’y Gen. Op. No. 87-34 (1987). Consequently, a person may not be employed as a livestock inspector unless, within 12 months after employment by the Livestock Board, the person is certified by the director of the Law Enforcement Academy as having completed an approved basic law enforcement training program. *Id.*; NMSA 1978, § 29-7-6 (1993). The basic program includes firearms training. See Law Enforcement Academy Board Rules, 10.29.9.8(A) NMAC (minimum standards of training for police officer certification include firearms proficiency), 10-29-7-8(A) NMAC (bi-annual training for certified law enforcement officers includes day and night firearms training).

The Criminal Code exempts certified law enforcement officers from its prohibition against the unlawful carrying of a deadly weapon. In pertinent part, it provides:

Unlawful carrying of a deadly weapon consists of carrying a concealed loaded firearm or any other type of deadly weapon anywhere, except ... by a peace officer in accordance with the policies of his law enforcement agency who is certified pursuant to the Law Enforcement Training Act....

NMSA 1978, § 30-7-2(A)(3) (2001). While New Mexico law clearly permits certified law enforcement officers, including livestock inspectors, to carry a firearm, we found nothing that requires them to carry a firearm while on duty or otherwise. Instead, based on the section of the Criminal Code quoted above, it appears the law contemplates that a law enforcement agency employing certified peace officers will establish policies governing the carrying of firearms by those officers. We conclude that the Livestock Board, as the law enforcement agency for livestock inspectors, may set appropriate policies for the carrying of firearms, including policies dictating when livestock inspectors should or should not carry firearms while performing their responsibilities for enforcing the Livestock Code and criminal laws relating to livestock.

2. Extent of a Livestock Inspector’s Law Enforcement Authority

The law enforcement authority of a livestock inspector is delineated by state law. As discussed above, certified livestock inspectors employed by the Livestock Board have “the same powers as any other peace officer” for enforcement of the Livestock Code and other criminal laws relating to livestock. NMSA 1978, §§ 30-18-14, 77-2-1.1(P), 77-

2-7(D). These provisions expressly limit the law enforcement authority of livestock inspectors to specific criminal laws.

The legislature has recognized the distinction between specific and general law enforcement authority in the Criminal Code. As used in the Code, “peace officer” is defined as “any public official or public officer vested by law with a duty to maintain public order or to make arrests for crime, *whether that duty extends to all crimes or is limited to specific crimes.*” NMSA 1978, 30-1-12(C) (1963) (emphasis added). The definition of “peace officer” in the Criminal Code appears to reflect the legislature’s assumption that a law enforcement officer whose duty to “maintain public order or to make arrests ... is limited to specific crimes” has no authority to enforce criminal laws outside those covered by officer’s statutory authority.

The authority of local law enforcement officers generally is confined by statute to specific geographical territories. *See, e.g.,* NMSA 1978, 3-13-2 (1988) (authorizing a municipal police officer to exercise law enforcement authority “within the municipality”). New Mexico courts have held that these laws limit the authority of local law enforcement officers to enforce state laws, such as the Motor Vehicle Code, to the statutorily defined territorial limits of their jurisdictions. *See, e.g., State v. Arroyos*, 2005-NMCA-086, 115 P.3d 232 (jurisdictional territory of a deputy marshal was limited by statute to the Town of Mesilla and the deputy had no official authority to initiate a traffic stop outside the Town limits), *overruled on other grounds, State v. Slayton*, 2009-NMSC-054, 223 P.3d 337; *Incorporated County of Los Alamos v. Johnson*, 1989-NMSC-045, 776 P.2d 1252 (discussing fresh pursuit exception allowing county sheriffs and municipal police officers to arrest DWI suspects outside their territorial jurisdictions).

Just as the jurisdiction of a law enforcement officer may be limited by statute to a specified territory, jurisdiction may also be statutorily limited to specified crimes. This Office addressed the substantive limitations on a law enforcement officer’s authority in a prior opinion discussing the authority of motor transportation division inspectors to make arrests. *See* N.M. Att’y Gen. Op. No. 92-02 (1992). When the opinion was issued, the motor transportation division (“MTD”) was part of the New Mexico Taxation and Revenue Department² and was responsible for enforcing laws and regulations governing transportation for hire and commercial vehicles. By statute, MTD inspectors had the power of peace officers in carrying out their duties. The opinion concluded that the arrest authority of MTD inspectors was limited to offenses specified in the Motor Carrier Act and other laws regulating commercial vehicles and did not extend to criminal violations outside the scope of their statutory authority.³

The Livestock Board, as a creature of statute, is “limited to the power and authority expressly granted or necessarily implied” by statute. *Qwest Corp. v. New Mexico Pub. Regulation Comm’n*, 2006-NMSC-042, ¶ 20, 143 P.3d 478, 484. Livestock inspectors employed by the Livestock Board, like the MTD inspectors addressed in the 1992 Attorney General opinion, do not have general law enforcement jurisdiction. Livestock inspectors are limited by statute to making arrests under and otherwise enforcing the Livestock Code and other criminal laws related to livestock. Based on their limited

jurisdiction and applicable New Mexico judicial and other legal authorities, we conclude that livestock inspectors may not act as law enforcement officers or assist other law enforcement agencies to enforce criminal laws outside the inspectors' specific statutory authority.

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 our legal advice in the form of a letter rather than 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 this letter to the public.

Sincerely,

Jennie Lusk,
Assistant Attorney General

[1] For purposes of this letter, the terms "peace officer," "police officer" and "law enforcement officer" are used interchangeably.

[2] In 1998, MTD was transferred to the Department of Public Safety, 1998 N.M. Laws, ch. 10, and was subsequently renamed the "motor transportation police unit" under the New Mexico State Police Division. 2015 N.M. Laws, ch. 3, § 3, codified at NMSA 1978, § 9-19-7(B).

[3] As part of its analysis, the 1992 Attorney General opinion considered the effect of NMSA 1978, Section 29-1-1 (1979) on the authority of MTD inspectors. Section 29-1-1 provides, in pertinent part, that it is the "duty of every ... peace officer to investigate all violations of the criminal laws of the state which are called to the attention of any such officer or of which he is aware...." The opinion concluded that despite its broad language, Section 29-1-1 did not authorize MTD inspectors to act outside their statutory jurisdiction. The conclusion reached in the opinion comports with accepted rules of statutory construction requiring that different statutes covering the same subject "be harmonized and construed together in a way that facilitates their operation," *Stinbrink v. Farmers Ins. Co.*, 1990-NMSC-108, ¶ 10, 803 P.2d 664, 667 (1990), and that the statute "dealing with a specific subject" be "considered an exception to, and given effect over, [the] more general statute," *Qwest Corp.*, 2006-NMSC-042, ¶ 59, 143 P.3d at 494.