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GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 79-518
	:	
of	:	<u>July 26, 1979</u>
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GEORGE DEUKMEJIAN	:	
Attorney General	:	
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Paul H. Dobson	:	
Deputy Attorney General	:	
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SUBJECT: RESERVE OFFICERS—The Director of the Department of Fish and Game has the authority to appoint reserve officers who would be peace officers required to receive training under the appropriate Penal Code sections. The Department would not be obligated to furnish them safety equipment.

E. C. Fullerton, Director, Department of Fish and Game, has asked for an opinion on the following questions:

1. Does the Department of Fish and Game have the authority to appoint reserve officers?
2. If the Department does appoint reserve officers, would they:
 - a. be peace officers as described in section 830.6, subdivision (a) of the Penal Code?
 - b. be required to receive training pursuant to section 832.6 of the Penal Code?

3. If the Department does appoint reserve officers, is it obligated, at its own expense, to furnish them safety equipment?

CONCLUSION

1. The Director of the Department of Fish and Game does have the authority to appoint reserve officers.

2. If the Director does appoint reserve officers, (a) they would not be peace officers as described in Penal Code section 830.6, subdivision (a), but would be peace officers as described in Penal Code section 830.3, subdivision (d) (2); and (b) they would not be required to receive training pursuant to Penal Code section 8326, but they would be required to receive training pursuant to Penal Code section 832.

3. If the Director does appoint reserve officers, the Department would not be obligated, at its own expense, to furnish them safety equipment.

ANALYSIS

The Director of the Department of Fish and Game asks whether he has authority to reactivate a “reserve officer” program which, we are advised, was terminated in 1973 for lack of funds. By ‘reserve officer’ the Director means an unpaid volunteer deputy fish and game warden, with peace officer status, authorized to enforce the provisions of the Fish and Game Code and the regulations made pursuant thereto. We find express statutory authority for the appointment of such officers.

Fish and Game Code section 850 provides:

“The director shall, from time to time, employ or appoint, with or without pay, such deputies, clerks, assistants, and other employees as the department may need to discharge in proper manner the duties imposed upon it by law.”

Fish and Game Code section 851 provides:

“A deputy appointed to enforce the provisions of this code is a peace officer. He has all the powers and authority conferred by law upon peace officers listed in Section 830.3 of the Penal Code to make arrests for violations of this code, and may serve all processes and notices throughout the state.”

Penal Code section 830.3, subdivision (d) (2) provides:

“Other deputies of the Department of Fish and Game deputized pursuant to Section 851 of the Fish and Game Code, and county fish and game wardens deputized pursuant to Section 875 of such code, are peace officers, provided that the exclusive duty of such deputies or county fish and game wardens shall be the enforcement of the provisions of the Fish and Game Code and the regulations made pursuant thereto.”

As can be seen, Fish and Game Code section 850 authorizes the Director to appoint unpaid deputies. Fish and Game Code section 851 and Penal Code section 830.3, subdivision (d) (2) provide deputies so appointed are peace officers for the purpose of enforcing fish and game laws and regulations.

The status of a volunteer state fish and game warden as a public officer was recognized long ago in *Dept. Nat. Resources v. Indus. Acc. Commission* (1929) 208 Cal. 14. The Supreme Court in that case held the widow and minor son of the volunteer, who drowned while on duty, were not entitled to death benefits awarded by the Industrial Accident Commission because, as a volunteer, the deceased was not an “employee” within the meaning of the Workmen’s Compensation Act. Now, Labor Code section 3363 provides:

“Each member registered with the Department of Fish and Game as *an active member of the reserve fish and game warden program* of the department is an employee of the department for the purposes of this division, and is entitled to receive [worker’s] compensation from the department in accordance with the provisions thereof.” (Emphasis added.)

Thus, we conclude that the Department of Fish and Game does have the authority to appoint reserve officers.

Next, we are asked whether reserve officers are peace officers described in section 830.6, subdivision (a), which provides:

“Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city policeman, or as a deputy sheriff, and is assigned specific police functions by such authority, such person is a peace officer; provided, such person qualifies as set forth in Section 832.6, and provided further, that the authority of such person as a peace officer shall extend only for the duration of such specific assignment.”

A basic rule of statutory construction is that in the absence of countervailing considerations, it must be assumed that the Legislature intended a statute to mean what it says. (*Tracy v. Municipal Court* (1978) 22 Cal. 3d 760, 764.) “Words may not be inserted in a statute under the guise of interpretation.” (*In re Miller* (1947) 31 Cal. 2d 191, 199; *Kirkwood v. Bank of America* (1954) 43 Cal. 2d 333, 341; *Gilbert v. City of Los Angeles* (1973) 33 Cal. App. 3d 1082, 1087.) If the words of a statute are clear, they must be followed. (*Hogya v. Superior Court* (1977) 75 Cal. App. 3d 122, 132–133; see also *Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152, 155.)

Penal Code section 830.6 refers only to a reserve “sheriff,” “deputy sheriff” and “city policeman.” There is no mention of a deputy appointed pursuant to Fish and Game Code sections 850 and 851. A “sheriff” is a county law enforcement officer. (See tit. 3, div. 2, part 3, ch. 2, (§ 26600 *et seq.* of Gov. Code).) In is self-evident the term “city policeman” does not include a state fish and game officer. While deputies appointed by the Director of the Department of Fish and Game are designated peace officers by Penal Code section 830.3, subdivision (d) (2), they are not included among the reserve peace officers described in Penal Code section 830.6(a).

Since the training requirements set forth in Penal Code section 832.6 apply only to reserve officers described in section 830.6(a), those requirements are not applicable to reserve deputies of the Department of Fish and Game.¹ Training requirements for

¹ Penal Code section 832.6 provides:

“(a) On or after January 1, 1979, every person deputized or appointed as described in subdivision (a) of Section 830.6 shall have the powers of a peace officer only when such person is:

“(1) Assigned to the prevention and detection of crime and the general enforcement of the laws of this state while working alone and the person has completed the training prescribed by the Commission on Peace Officer Standards and Training; or

“(2) Assigned to the prevention and detection of crime and the general enforcement of the laws of this state while under the immediate supervision of a peace officer possessing a basic certificate issued by the Commission on Peace Officer Standards and Training, the person is engaged in a field training program approved by the Commission on Peace Officer Standards and Training, and the person has completed the course required by Section 832 and such other training prescribed by the commission; or

“(3) Deployed only in such limited functions as would not usually require general law enforcement powers and the person has completed the training required by Section 832 or such other training prescribed by the commission.

“(b) Notwithstanding the provisions of subdivision (a), a person deputized or appointed as described in subdivision (a) of Section 830.6 before January 1, 1979, shall

Department of Fish and Game deputies are set forth in Penal Code section 832, which provides:

“(a) Every person described in this chapter [which includes § 830.3] as a peace officer, shall receive a course of training in the exercise of his powers to arrest and a course of training in the carrying and use of firearms. The course of training in the carrying and use of firearms shall not be required of any peace officer whose employing agency prohibits the use of firearms. Such courses shall meet the minimum standards prescribed by the Commission on Peace Officer Standards and Training.

“(b) (1) Every such peace officer described in this chapter, within 90 days following the date that he was first employed by any employing agency, shall, prior to the exercise of the powers of a peace officer, have satisfactorily completed the course of training as described in subdivision (a).

“(2) Every peace officer described in Section 832.3 shall satisfactorily complete the training required by this section as part of the training and under the limitations set forth in Section 832.3.

“(c) Persons described in this chapter as peace officers who have not so satisfactorily completed the courses described in subdivision (a) as specified in subdivision (b), shall not have the powers of a peace officer until

have the powers of a peace officer if the appointing authority determines the person is qualified to perform general law enforcement duties by reason of the person’s training and experience.

“(c) In carrying out the provisions of this section, the commission:

“(1) May use proficiency testing to satisfy reserve training standards.

“(2) Shall provide for convenient training to remote areas in the state.

“(3) Shall establish a professional certificate for reserve officers as defined in paragraph (1) of subdivision (a) of this section, and may establish a professional certificate for reserve officers as defined in paragraphs (2) and (3) of subdivision (a) of this section.

“(d) In carrying out paragraphs (1) and (3) of subdivision (c), the commission may establish and levy appropriate fees, provided the fees do not exceed the cost for administering the respective services. These fees shall be deposited in the Peace Officers’ Training Fund established by Section 13520.

“(e) The commission shall include an amount in its annual budget request to carry out the provisions of this section.”

they satisfactorily complete such courses.

“(d) Any peace officer who on the effective date of this section possesses or is qualified to possess the basic certificate as awarded by the Commission on Peace Officer Standards and Training shall be exempted from the provisions of this section.”

Thus we conclude that while Department of Fish and Game reserve officers are not among the reserve officers designated by Penal Code section 830.6(a) who must receive the training required by Penal Code section 832.6, they must receive the training required by Penal Code section 832.

The third question for consideration is whether under the California Occupational Safety and Health Act (hereafter OSHA) (Lab. Code, §§ 6300–6708) the Department must furnish, at Department expense, safety equipment to reserve officers. Safety equipment includes such items as a baton, a revolver, handcuffs and Mace. We are advised the Department does furnish such equipment to regularly employed deputies.

The Department would require reserve officers to possess such equipment. The only question is whether the reserve officers could be required to pay for it.

Labor Code section 6401 (added by Stats. 1973, ch. 993, § 96, effective Oct. 1, 1973) provides:

“Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.”

Labor Code section 6403 (added by Stats. 1973, ch. 993, § 96, effective Oct. 1, 1973) provides:

“No employer shall fail or neglect:

“(a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

“(b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.

“(c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.”

“Employer” as used in the above sections would include a state agency such as the Department of Fish and Game. (Lab. Code, §§ 3300, 6304.)

In *Oakland Police Officers Association v. City of Oakland* (1973)30 Cal. App. 3d 96, the Court of Appeal, First Appellate District, Division Four, held that a policeman’s service revolver and other such tools of his trade are safety devices within the meaning of former Labor Code section 6401, which read substantially the same as the present version. (See Stats. 1937, ch. 90.) The court found that Labor Code section 6401 established an obligation on the employer city to provide such equipment at no cost to the officer independent from the provisions of Government Code sections 50081 and 50082.²

² Government Code sections 50081 and 50082 provide:

“§50081. Duty to furnish police officers and deputy sheriffs with necessary equipment: Enumeration: Stratus as property of local agency

“To the extent that funds therefor have been made available to a local agency pursuant to Section 50082, the legislative body of a local agency shall furnish each newly hired police officer and deputy sheriff employed full time by the local agency with a service revolver or other suitable pistol, holster, belt and ammunition, a nightstick, handcuffs, raincoats, and rainboots.

“The following items are recommended to be provided by local agencies but are not reimbursable pursuant to Section 50082:

“(a) Off-duty holster.

“(c) Flashlight, flashlight batteries, and flashlight bulb.

“(d) Chemical Mace and chemical Mace holder.

“(e) Utility jacket.

“(f) Protective vest.

“Such equipment shall remain the property of the local agency and shall be returned upon request of the local agency.”

“§50082. Duty of Legislature to provide funds for acquisition of necessary safety equipment: Adoption of rules

“The Legislature shall make available to the Commission on Peace Officer Standards and Training in the Department of Justice for allocation to local agencies, funds to be used to provide the equipment required to be furnished by Section 50081. The Legislature shall, in addition, provide sufficient funds to the commission to cover the cost of administering the provisions of this section. The Commission on Peace Officer Standards and Training shall adopt rules necessary to implement this section including rules governing the manner of application for allocation of funds.”

The holding of *Oakland Police Officers Association, supra*, 30 Cal. App. 3d 96, suggests the Department of Fish and Game would be required to furnish, free of charge, safety equipment to its reserve officers, if such officers were deemed “employees” within the meaning of OSHA.

We conclude that such reserve officers are not “employees” within the meaning of OSHA.³ ‘Employee’ for the purposes of OSHA is defined by Labor Code section 6304.1 as follows:

“‘Employee’ means every person who is required or directed by any employer, to engage in any employment, or to go to work or be at any time in any *place of employment*.” (Emphasis added.)

Labor Code section 6303 provides:

“(a) ‘Place of employment’ means any place, and the premises appurtenant thereto, where employment is carried on, except a place the health and safety jurisdiction over which is vested by law in, and actively exercised by, any state or federal agency other than the division.

“(b) ‘Employment’ includes the carrying on of any trade, enterprise, project, industry, business, occupation or work, including all excavation, demolition, and construction work, or any process or operation in any way related thereto, in which any person is engaged or permitted to work for hire except household domestic service.” (Emphasis added.)

Recently, in 62 Ops. Cal. Atty. Gen. 115 (1979), we concluded that a volunteer fire fighter is not an “employee” for purposes of OSHA. There we stated:

³ There is presently pending before the State Supreme Court the case of *Bendix Forest Products Corp. v. Department of Industrial Relations*. (S.F. 24018, hearing granted Apt 26, 1979.) The issue in this case is whether the Division of Industrial Safety of the Department of Industrial Relations has authority under the Labor Code to issue a safety order which requires an employer to furnish its employees, at its own expense, personal safety equipment. (Cf. 51 Ops. Cal. Atty. Gen. 105 (1968).) It appears that the validity of the holding in *Oakland Police Officers Association, supra*, 30 Cal. App. 3d 96, is subject to review by the Supreme Court in the Bendix case. However, in view of our conclusion that reserve deputies for the Department of Fish and Game are not “employees” within the meaning of OSHA, we need not consider the possible effect of a forthcoming decision in the *Bendix* case.

“Of significance here is the fact that this definition [of “employment” in Lab. Code, § 6303] utilizes the phrase, ‘work for hire.’ As stated in *Ferrell v. Industrial Commission of Arizona* (1955) 288 P. 2d 492, 494, ‘The word “hire” connotes payment of some kind.’ And see *Reynolds v. Reynolds* (1936) 14 Cal. App. 2d 481, 483, where the court notes that the word ‘salary’ is synonymous with the word ‘hire.’

“In thus specifying that employment constitutes those enumerated activities in which one is ‘engaged or permitted to work for *hire*’ (emphasis added) the term ‘employment,’ under OSHA, contemplates work that is done for compensation.

“The term ‘place of employment’ is defined in OSHA as ‘any place, and the premises appurtenant thereto, where employment is carried on’ (§ 6303, subd. (a).) Thus again the definition requires compensated work.

Describing the jurisdiction of the Division of Industrial Safety to enforce OSHA, section 6307 provides:

“The division has the power, jurisdiction, and supervision over every employment and place of employment in this state, which is necessary adequately to enforce and administer all laws and lawful standards and orders, or special orders requiring such employment and place of employment to be safe, and requiring the protection of the life, safety, and health of every employee in such employment or place of employment.’

“This delineation of OSHA’s enforcement jurisdiction is thus confined to the regulation of compensated work and of those places where compensated work is performed (see also § 6308, and see 24 Ops. Cal. Atty. Gen. 290, 291–292 (1954)). It thus appears that all of the provisions relating to the employee status under OSHA are persistently characterized by the element of compensated work. This would therefore indicate that the Legislature did not intend to extend the protection of OSHA to uncompensated workers; i.e., volunteers. (See *Beaver Plumbing Company* (1976) Cal-OSHA Digest, [paragraph] 11,561, and *Bill’s Cesspool Service* (1976) Cal-OSHA Digest, [paragraph] 10,952.)” (62 Ops. Cal. Atty. Gen., *supra*, at p. 116.)

In that opinion we noted that volunteer fire fighters are expressly included within the protection of the Workers’ Compensation Act (Lab. Code, § 3361), but that there is no similar designation of volunteer fire fighters as employees under OSHA. We found that

omission to be evidence of legislative intent to exclude such volunteers from the provisions of OSHA. (See *Marsh v. Edwards Theatres Circuit, Inc.* (1976) 64 Cal. App. 3d 881, 891; but see *Bragg v. Mobilhome Company of Los Angeles* (1956) 145 Cal. App. 2d 326, 331.)

Likewise, in the case of reserve deputies of the Department of Fish and Game the fact such volunteers are expressly designated as eligible for workers' compensation benefits (Lab. Code, § 3363), but are omitted from the definition of "employee" for purposes of OSHA, strongly suggests a legislative intent to exclude such volunteers from the provisions of OSHA. We so conclude. Thus, the Department of Fish and Game would not be required to furnish reserve deputies safety equipment at the Department's expense.
