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OPINION	:	No. 79-619
	:	
of	:	October 26, 1979
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SUBJECT: WILDLIFE PROTECTION OFFICER AS PEACE OFFICER—Members of the Wildlife Protection Branch of the Department of Fish and Game deputized, and with the requisite training, may exercise their authority as peace officers while off duty and out of uniform except while acting within the course and scope of some private employment for compensation.

E. C. Fulleton, Director of the Department of Fish and Game, has requested an opinion on the following question:

May a member of the Wildlife Protection Branch of the Department of Fish and Game, who is off duty and not in uniform, place himself on duty and act as a peace officer in the following situations:

- (a) Where the branch member witnesses a public offense (misdemeanor or felony).
- (b) Where the branch member has probable cause to believe a public offense (misdemeanor or felony) has been committed, but not in his presence.

(c) Where the branch member encounters a person for which there is a valid outstanding arrest warrant.

(d) Where the branch member is approached by a citizen who requests he render assistance or act on complaint.

CONCLUSION

A member of the Wildlife Protection Branch of the Department of Fish and Game, deputized pursuant to section 856 of the Fish and Game Code, with the requisite training, may exercise his authority as a peace officer while off duty and out of uniform except while acting within the course and scope of some private employment for compensation.

ANALYSIS

Penal Code section 830 provides:

“Any person who comes within the provisions of this chapter and who otherwise meets all standards imposed by law on a peace officer is a peace officer, and notwithstanding any other provision of law, no person other than those designated in this chapter is a peace officer. The restriction of peace officer functions of any public officer or employee shall not affect his status for purposes of retirement.”

Section 830.1¹ defines the peace officer authority of specified local law enforcement officers, including deputy sheriffs and city policemen, regularly employed and paid as such. Section 830.2 defines the peace officer authority of certain state officers including the California Highway Patrol and the State Police. Section 830.3 defines the peace officer authority of other state officers including fish and game enforcement officers. Subdivision (d) of section 830.3 provides:

(d) (1) Members of the Wildlife Protection Branch of the Department of Fish and Game deputized pursuant to Section 856 of the Fish and Game Code are peace officers. The authority of any such peace officers extends to any place in the state as to a public offense committed or which there is probable cause to believe has been committed within the state.

“(2) Other deputies of the Department of Fish and Game deputized pursuant to Section 851 of the Fish and Game Code, and county fish and

¹ Unless otherwise indicated, all section references are to the Penal Code.

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.”

Subdivision (q) of section 830.3 provides:

“(q) The authority of any peace officer listed in subdivisions (c) through (p), inclusive, extends to any place in the state; provided, that except as otherwise provided in this section, Section 830.6 of this code, or Section 8597 of the Government Code, any such peace officer shall be deemed a peace officer only for purposes of his primary duty, and shall not act as a peace officer in enforcing any other law except:

“(1) When in pursuit of any offender or suspected offender; or

“(2) To make arrests for crimes committed, or which there is probable cause to believe have been committed, in his presence while he is in the course of his employment; or

“(3) When, while in uniform, such officer is requested, as a peace officer, to render such assistance as is appropriate under the circumstances to the person making such request, or to act upon his complaint, in the event that no peace officer otherwise authorized to act in such circumstances is apparently and immediately available and capable of rendering such assistance or taking such action.”

Section 856 of the Fish and Game Code provides:

“(a) All members of the Wildlife Protection Branch designated by the director as deputized law enforcement officers are peace officers. The authority of any such peace officer extends to any place in the state as to a public offense committed or which there is probable cause to believe has been committed within the state.

“(b) Every peace officer described in this section, prior to the date that he is first deputized by the department, shall have satisfactorily completed the basic course as set forth in the regulations of the Commission on Peace Officer Standards and Training.

“(c) Every peace officer described in this section who is not promoted, appointed, or transferred to a first-level supervisory position, as defined in the regulations of the Commission on Peace Officer Standards and Training, shall satisfactorily complete at least once every four years the advanced officer course as set forth in the regulations of the Commission on Peace Officer Standards and Training.

“(d) Every peace officer described in this section who is promoted, appointed, or transferred to a first-level supervisory position, as defined in the regulations of the Commission on Peace Officer Standards and Training, shall satisfactorily complete, within the minimum time limit prescribed by the regulations of the Commission on Peace Officer Standards and Training, the supervisory course as set forth in such regulations.

“(e) Persons described in this section as peace officers who do not satisfactorily complete the courses required by subdivisions (b) to (d), inclusive, shall not have the powers of a peace officer.”

Under section 830.3(d)(1), Members of the Wildlife Protection Branch of the Department of Fish and Game (referred to herein as “Branch Members”) are peace officers. The second sentence of section 830.3(d) (1) then provides:

“The authority of any such peace officers extends to any place in the state as to a public offense committed or which there is probable cause to believe has been committed within the state.”

The question presented relates to the limitations, if any, on this plenary grant of peace officer authority to Branch Members while they are not on duty and not in uniform.

First we note that only those Branch Members who are “deputized pursuant to section 856 of the Fish and Game Code” are peace officers under section 830.3(d) (1). Thus only those Branch Members who are designated by the Director of the Department of Fish and Game as deputized law enforcement officers are peace officers under section 830.3 (d) (1) and then only if they have completed the requisite training courses as provided in section 856 of the Fish and Game Code.

Second we note that subdivision (q) of section 830.3 imposes certain limitations on the authority of peace officers listed in subdivisions (c) through (p) inclusive, which, of course, includes subdivision (d) governing Branch Members. The limitation provides that the authority of such peace officers: “extends to any place in the state;” provided, that except as otherwise provided in this section, section 830.6 of this code, or section 8597 of

the Government Code any such peace officer “shall be deemed a peace officer only for purposes of his primary duty, and shall not act as a peace officer in enforcing any other law” with three specified exceptions. (Emphasis added.)

The language of this limitation raises two questions with respect to Branch Members. What is the “primary duty” of a Branch Member and are there exceptions to the limitations applicable to Branch Members “otherwise provided” in the sections mentioned? An examination of subdivisions (c) through (p) of section 830.3 reveals that the “primary duties” of the officers affected are defined in all but subdivisions (d), (k) and (p). In subdivision (k), the enforcement of Health and Safety Code section 216 is made the “exclusive duty” of inspectors of the Bureau of Food and Drug. In subdivision (p), municipal utility district security officers are peace officers “while engaged in the performance of their duties as security officers” pursuant to Public Utilities Code section 12820.

As originally enacted by chapter 1222, statutes of 1968, then subdivision (e) of section 830.3 provided that Branch Members had the “primary duty” of the enforcement of the provisions of the Fish and Game Code. The proviso setting forth the primary duty of Branch Members was deleted by chapter 42, statutes of 1976, which amended subdivision (e) to read as subdivision (d) now provides: The 1976 deletion of the language making enforcement of the Fish and Game Code the primary duty of Branch Members, and the enactment of the same language granting plenary peace officer authority as was used in subdivision (a) for Department of Justice agents, is a clear indication that the Legislature intended to terminate the subdivision (q) limitations with respect to Branch Members. We conclude that the peace officer authority of Branch Members, which extends to any place in the state as to a public offense committed or which there is probable cause to believe has been committed within the state, is limited by the training requirements of Fish and Game Code section 856, but is not limited by the restrictions set forth in subdivision (q) of section 830.3.

The question, as phrased, asks whether a Branch Member who is off duty and not in uniform may “place himself on duty” and act as a peace officer in given situations. The quoted words suggest that a Branch Member, by some decision on his part, may acquire or divest himself of his authority as a peace officer. A Branch Member’s peace officer authority is not subject to such on-off switching under California law.

“Public officers such as policemen, constables, etc., are under a special duty *at all times*, because of the nature of their employment, to use their best efforts to apprehend criminals.” *People v. Derby* (1960) 177 Cal. App. 2d 626, 631. The court in that case applied this rule in holding that a California Highway Patrol officer who arrested a man for fighting and resisting an officer in the performance of his duties after the officer’s duty

shift was over was acting in the performance of his duties as a peace officer when he made the arrest.

The Supreme Court has carved out an exception to the *Derby* case rule that a peace officer may exercise his peace officer authority to apprehend criminals at all times. In *People v. Corey* (1978) 21 Cal. 3d 738, the court held that the enhanced punishment provisions for battery of a peace officer engaged in the performance of his duties does not apply to peace officers who are assaulted within the course and scope of their private employment as security guards. The court then stated, “We do not suggest that a peace officer’s official duties necessarily cease at the end of his normal working hours [citing the *Derby* case], where there are no private contractual duties of the nature involved herein.” Similarly in *Cervantez v. J.C. Penney Co.* (1979) 24 Cal. 3d 579, the court held that in making an arrest for shoplifting while working as a private security guard for Penneys during his off-duty hours as city police officer he was performing private rather than official duties. The court observed at page 588, “It is thus the fact of private employment which operates to prevent a peace officer from acting in what would otherwise be his official capacity.” The court then reiterated its statement in the *Corey* case quoted above. The court explained that the determinative rationale for its exception to the *Derby* rule was Penal Code section 70 which makes it unlawful for any public employee or officer to receive any “emolument, gratuity or reward, or promise thereof . . . for doing an official act.” Since he is forbidden from receiving private payment for the performance of his official duties, the court concluded the officer must have been performing private rather than official duties while acting within the course and scope of his private employment as a security guard during his off-duty hours. (*Id.*, p. 588.)

We conclude, on the authority of *Derby*, *Corey* and *Cervantez*, that Branch Members retain their peace officer authority during their off-duty hours as well as their duty hours as Branch Members except at such times as they are acting within the course and scope of some private employment for compensation.

The fact that a Branch Member is not in uniform does not effect his authority as a peace officer except as a uniform may be relevant where knowledge by others that the Branch Member is acting as a peace officer is significant. Thus, Penal Code section 243 provides that when a battery is committed against the person of a peace officer “and the person committing the offense knows or reasonably should know that such victim is a peace officer . . . engaged in the performance of his duties . . .” the crime is a felony. The officer’s uniform may establish such knowledge but the knowledge may be conveyed to the offender by other means. Where the law granting a particular authority to a peace officer conditions its exercise upon wearing a uniform, that authority may be exercised only when the officer is in uniform. (*Cf.* § 830.3(q) (3).)

Turning to the particular situations mentioned in your request, you asked whether a Branch Member while off duty and out of uniform may act as a peace officer:

- (a) Where he witnesses a public offense.
- (b) Where he has probable cause to believe a public offense has been committed, but not in his presence.
- (c) Where he sees a person for whom there is a valid warrant of arrest outstanding.
- (d) Where a citizen asks him for assistance or to act on a complaint.

We conclude that a Branch Member may exercise his authority as a peace officer in each of these situations while he is off duty and out of uniform except during such time as he is acting within the course and scope of some private employment for compensation.

Thus a Branch Member, under these circumstances, may arrest a person: whenever he has reasonable cause to believe the person has committed a public offense (including felonies, misdemeanors or infractions) in his presence; when the person arrested has committed a felony although not in his presence; whenever he has reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony has in fact been committed; or pursuant to a valid outstanding warrant of arrest. (§ 836.) A Branch Member, under the same circumstances, may render assistance to, or act on the complaint of, a citizen in his capacity as a peace officer and exercise such peace officer authority as may be applicable to the situation.
