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OPINION	:	No. 80-807
	:	
of	:	<u>October 30, 1980</u>
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SUBJECT: APPLICABILITY OF THE PUBLIC SAFETY OFFICERS PROCEDURAL BILL OF RIGHTS ACT—The Public Safety Officers Procedural Bill of Rights Act (Gov. Code, § 3300 *et seq.*) is applicable to sheriffs and police chiefs.

William J. Anthony, Director, Division of Law Enforcement, Department of Justice, has requested an opinion on the following question:

Is the Public Safety Officers Procedural Bill of Rights Act (Gov. Code, § 3300 *et seq.*) applicable to sheriffs and police chiefs?

CONCLUSION

The Public Safety Officers Procedural Bill of Rights Act (Gov. Code, § 3300 *et seq.*) is applicable to sheriffs and police chiefs.

ANALYSIS

The Public Safety Officers Procedural Bill of Rights Act (Gov. Code, § 3300 *et seq.*) establishes certain rights and protections to persons employed in certain peace officer

positions.

Government Code¹ 3301 provides:

“For purposes of this chapter, the term public safety officer means all peace officers, as defined in Section 830.1 and subdivisions (a) and (b) of Section 830.2 of the Penal Code, including peace officers who are employees of a charter city or county. The term public safety officer also means all persons employed by the State of California and designated by law as peace officers.

“The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that such stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.” (Emphasis added.)

The act provides in substance that all public safety officers shall have the right to engage in political activity while off duty and out of uniform or to abstain from such activity (§ 3302, subdiv. (a)); that such officers shall be permitted to seek election to a school board (§ 3302, subdiv. (b)); that the officers shall be accorded certain rights during an interrogation which could lead to punitive action (§ 3303); that no such officer shall be subject to punitive action or denied probation because of the lawful exercise of the rights granted under this chapter and provides the officer with the opportunity of an administrative appeal (§ 3304); that no adverse comment shall be placed in an officer’s personnel file unless the officer is given the opportunity to read and sign the instrument containing the adverse comment (§ 3305); that the affected officer shall have 30 days in which to respond to such adverse comments (§ 3306); that the officer may not be compelled to submit to a polygraph examination (§ 3307); that the officer shall not be required to make financial disclosure with certain specified exceptions (§ 3308); and that the officer’s locker shall not be searched except under certain specified circumstances (§ 3309).

The question presented herein is whether the act is applicable to a sheriff of a county or the police chief of a city. The first sentence of section 3301 expressly provides that the

¹ Hereinafter, all unidentified section references are to the Government Code.

term public safety officer includes all peace officers as defined in Penal Code section 830.1.

The first sentence of Penal Code section 830.1 provides:

“Any sheriff, undersheriff, or deputy sheriff, regularly employed and paid as such, of a county, *any policeman of a city*, any policeman of a district authorized by statute to maintain a police department, any marshal or deputy marshal of a municipal court, any constable or deputy constable, regularly employed and paid as such, of a judicial district, or any inspector or investigator regularly employed and paid as such in the office of a district attorney, is a peace officer. . . .” (Emphasis added.)

In interpreting the statute we are required to give effect to the statute according to the usual, ordinary import of the language employed in framing it; when statutory language is thus clear and unambiguous there is no need for construction. (*People v. Belletti* (1979) 24 Cal. 3d 879, 884.)

Accordingly, it is clear that a sheriff is included within the Public Safety Officers Procedural Bill of Rights Act since “sheriff” is one of the peace officers expressly mentioned in Penal Code section 830.1. However, the term “chief of police” is not mentioned in that section. Instead, the section uses the term “policeman of a city.” Is a chief of police a “policeman of a city”? We believe the answer is yes.

One of the officers in whom the government of a general law city is vested is a “chief of police.” (§ 36501.) The chief of police is appointed by the city council (§ 36501) or the city manager (§ 348\$6). “The police department of a city is under the control of the chief of police.” (§ 38630.) The chief of police of a city is authorized to appoint one or more police officers subject to the approval of the city council or with the concurrence of the mayor in cases where the mayor and the police chief deem it necessary for the preservation of the public order. (§ 38631.)

Government Code section 41601 provides:

“For the suppression of riot, public tumult, disturbance of the peace, or resistance against the laws or public authorities in the lawful exercise of their functions, the chief of police has the powers conferred upon sheriffs by general law and in all respects is entitled to the same protection.”

Government Code section 41602 provides:

“His lawful orders shall be promptly executed by deputies, police

officers, and watchmen in the city. Every citizen shill also lend his aid when required for the arrest of offenders and maintenance of public order.”

Government Code section 41603 provides:

“He shall execute and return all process issued and directed to him by legal authority.”

The above cited statutory provisions, in our view, make it clear that the chief of police of a general law city is in fact the chief “policeman” of the city.

The organization of a police department by a charter city is controlled by its charter. (Cal. Const., art. VI, § 5; *Brown v. City of Berkeley* (1976) 57 Cal. App. 3d 223, 233; 8 Ops. Cal. Atty. Gen. 149, 150 (1946).) We are aware of no constitutional or statutory requirement for a charter city to establish the office of chief of police. (See *Brown v. City of Berkeley*, *supra*, at p. 236.) In contrast, the office of county sheriff is specifically provided by the constitution for both general law and charter counties. (Cal. Const., art. XI, §§ 1 and 4.) Nevertheless, a charter city is clearly authorized to provide for a chief of police in its charter. (See 8 Ops. Cal. Atty. Gen. 149, 150 (1946).)

While it is not clear to us why the Legislature chose to omit the term “chief of police” from Penal Code section 830.1, a possible explanation is that since the office of chief of police as defined in the Government Code is not required in charter cities, in a particular chartered city the officer with the title “chief of police” may not be charged with the same law enforcement duties as the chief of police of a general law city, or conversely, the officer charged with such duties may not be titled “chief of police.”² However, if (as we understand is the usual case) the chief of police is the chief law enforcement officer of a charter city, he or she would be the chief “policeman of a city” to use the words of Penal Code section 830.1. We assume the reference to “police chiefs” in the question is a reference to such officers.

It is our conclusion, therefore, that a chief of police is a peace officer within the definition of Penal Code section 830.1 and, therefore, is a public safety officer for purposes of the Public Safety Officers Procedural Bill of Rights Act.

We recognize that the legislative intent expressed in section 3301 concerns “the maintenance of stable employer-employee relations” and that the provisions of the act

² In this respect we note that Penal Code section 12050 authorizes “[t]he sheriff of a county or the chief or other head of a municipal police department of any city or city and county to issue concealed weapons permits.

appear to be protections for the rank-and-file peace officer. A sheriff and a chief of police would commonly be thought of as the employers. Nevertheless, the statute is clear on its face and includes sheriffs, constables, marshals, and as we have seen, chiefs of police, as well as peace officers employed by those officers. There is no room for another construction of the statute.³

In concluding that the sheriffs and police chiefs are included within the Public Safety Officers Procedural Bill of Rights Act, we have also considered the question of whether these officers, as well as any peace officers who would be otherwise included in the act, are covered by the act when they are unable to exercise peace officer authority by virtue of their failure to meet certain training or certificate requirements prescribed by the Commission on Peace Officer Standards and Training.

Penal Code section 832 requires all peace officers to complete a certain basic course of training within 90 days following the date of employment and before exercising police officer powers. Penal Code section 832.3 which applies to: "any sheriff, undersheriff, or deputy sheriff of a county, any policeman of a city, and any policeman of a district authorized by statute to maintain a police department, who is first employed after January 1, 1975, for the purposes of prevention and detection of crime and the general enforcement of criminal laws of this state" also requires the successful completion of a course of training approved by the Commission on Peace Officer Standards and Training before the officer may exercise the powers of a peace officer (except as a trainee under certain circumstances). Penal Code section 832.4 which applies to the same officers as mentioned in section 832.3, with the exception of the sheriff and date of first employment, which in Penal Code section 832.4 is "after January 1, 1974," requires that such officers obtain a basic certificate issued by the Commission on Peace Officers Standards and Training within 18 months of employment in order for such officers to exercise the power of a peace officer after the expiration of the 18 month period.

If a sheriff or chief of police fails to complete the applicable training requirements or a chief of police fails to obtain the applicable certificate provided by the above-cited statutes, are the provisions of the Public Safety Officers Procedural Bill of Rights Act

³ We recognize that section 33102, subdivision (h), would permit a sheriff or a police chief to be elected to a local school board. It may be argued that this authorizes such an officer to hold two incompatible offices. (See 58 Ops. Cal. Atty. Gen. 241 (1975) wherein we concluded that the offices of district attorney and elementary school district trustee are incompatible.) The answer to such argument is that assuming, for the sake of argument, that such offices are incompatible, the Legislature may abrogate the common law doctrine of incompatibility when it considers necessary or convenient to permit officers to hold incompatible offices. (*McClain v. County of Alameda* (1962) 209 Cal. App. 2d 73.)

applicable to such officer? In answering this question, we need not and do not resolve any issues involving the applicability of such requirements to an elective office, such as the sheriff or an appointed statutory office, such as the chief of police. We simply point out that it is a cardinal rule of statutory construction that in interpreting the statute we must ascertain the intent of the Legislature so as to effectuate the purposes of the law. (*Select Base Materials Bd. of Equalization* (1959) 1 Cal. 2d 640, 645.) The Legislature has expressly indicated that the purpose behind the Public Safety Officers Procedural Bill of Rights Act is “the maintenance of stable employer-employee relations.” (§ 3301.) The act concerns the employment of peace officers, not whether such officers are authorized to act with peace officer authority. Indeed, the requirements of Penal Code sections 832, 832.3, and 832.4 are not a condition of employment but simply a condition of the exercise of peace officer authority.

We can perceive no legislative intent to exclude from the benefits of the Public Safety Officers Procedural Bill of Rights Act a person employed in the position of a peace officer described in Penal Code section 830.1 who has not met the applicable statutory training requirements or received the Commission on Peace Officers Standards and Training certificate. Indeed, failure to meet those requirements or receive such a certificate by such a person may cease an employer-employee relation of the type contemplated by the Legislature in enacting the act.

It is concluded that the Public Safety Officers Procedural Bill of Rights Act (Gov. Code, § 3300 *et seq.*) is applicable to sheriffs and police chiefs.
