

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 81-1216
	:	
of	:	<u>SEPTEMBER 3, 1982</u>
	:	
GEORGE DEUKMEJIAN	:	
Attorney General	:	
	:	
Jack Winkler	:	
Assistant Attorney General	:	
	:	

THE HONORABLE DAVID JANSSEN, DIRECTOR, DEPARTMENT OF
GENERAL SERVICES, has requested an opinion on the following question:

Does the Chief of the California State Police Division have the authority to prohibit or allow Security Officers of the California State Police Division to carry concealed firearms while off duty?

CONCLUSION

The Chief of the California State Police Division does not have the authority to prohibit or allow security officers of that division to carry concealed firearms while off duty.

ANALYSIS

The carrying of concealed firearms in California is regulated by the Dangerous Weapons Control Law. (Pen. Code, § 12000 et seq.) Section 12025¹ prohibits the carrying of certain firearms² concealed on one's person or in a vehicle without having a license for the same. Exceptions to this prohibition are made for certain persons including "duly appointed peace officers" in section 12027.

Section 12027 is one example of the many statutes which use the term "peace officer," a generic term embracing many specific classifications of public officers having law enforcement powers and responsibilities. The term is used in different contexts to designate a class of persons to which certain legal rights, duties and consequences attach. Other examples include section 836 defining the powers of arrest of a peace officer, sections 241, 243 and 245 prescribing greater punishment for assaults committed on peace officers and section 832 et seq. establishing training requirements for peace officers. These are only a few of the many statutes which attach legal significance to a person's status as a peace officer. It is therefore important to know just who, where, when and under what circumstances a person is a peace officer within the meaning of these statutes.

Chapter 4.5 of part 2, title 3 of the Penal Code (commencing with § 830 and referred to herein as "chapter 4.5") was enacted in 1968 (ch. 1222, Stats. 1968) to provide an answer to such questions. Section 830 declares:

"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."

The sections which follow set forth a detailed enumeration of persons who are peace officers by general categories in separate sections. Currently chapter 4.5 designates 80 classes of peace officers in seven general categories in section 830.1 (paid local police officers, deputy sheriffs, etc.); 830.2 (such state officers as highway patrol, state police, etc.); 830.3 (other state officers); 830.31 (certain special purpose officers); 830.4 (security officers); 830.5 (correctional, parole and probation officers); and 830.6 (reserve and auxiliary officers). In addition to the enactment of chapter 4.5, chapter 1222, Statutes of 1968 contained 81 sections changing provisions in 15 codes to correspond with the new

¹ All section references are to the Penal Code unless otherwise indicated.

² Pistol, revolver, or other firearm capable of being concealed on the person.

peace officer definitions. One of these (§ 61) amended section 12027 to exempt "other duly exempted peace officers" from the concealed firearm proscription of section 12025.

While chapter 4.5 provides a ready answer to most peace officer status questions, a number of questions have arisen for which the answers are not readily apparent. There are several reasons for this. First, the Legislature changes the provisions of chapter 4.5 every session. In fact from 1969 through 1981, 83 separate statutes were enacted making changes in chapter 4.5. Second, chapter 4.5 itself contains a number of qualifications which require interpretation. We shall examine some of these in the next paragraph. Finally, the courts have added further qualifications in a number of cases which we shall also examine briefly.

Chapter 4.5 qualifies peace officer status by such phrases as "for the purpose of performing their primary duty" (§§ 830.3 & 830.31); "while engaged in the performance of their duties" (§§ 830.4 & 830.5); "when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of such offense" (§§ 830.3, 830.31 & 830.4); and when acting "pursuant to Section 8597 or Section 8598 of the Government Code" relating to emergencies (§§ 830.3, 830.31 & 830.5). Chapter 4.5 also distinguishes between the status and the authority of a peace officer. Both sections 830.7 and 830.8 declare that designated persons are not peace officers but may nevertheless exercise the powers of arrest of a peace officer as specified in section 836 under certain circumstances.

In *People v. Derby* (1960) 177 Cal.App.2d 626, 631 the court observed: "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." In *Derby* the court applied the rule holding that an officer of the California Highway Patrol 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. In *People v. Corey* (1978) 21 Cal.3d 738 the court carved out an exception to the *Derby* rule. 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 while acting within the course and scope of private employment as security guards. The court 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 *Cervantes 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 a city police officer was performing private rather than official duties.

The qualifications on peace officer status arising out of statutory language and court cases serve to indicate that the designation of certain persons as "peace officers" in chapter 4.5 does not mean that those persons are peace officers for any and all circumstances. Similarly the fact that chapter 4.5 serves to define peace officer for the purpose of many statutes does not mean that the same definition will be applicable in all statutes.³ The fundamental reason for this is that two separate statutes are involved and it is possible that they may conflict in some respects. Thus the application of the chapter 4.5 definitions to a particular statute requires a consideration of the language of that statute as well as the language in chapter 4.5.

The pertinent provisions of the Dangerous Weapons Control law provide:

"Section 12025.

"(a) Except as otherwise provided in this chapter, any person who carries concealed within any vehicle which is under his control or direction any pistol, revolver, or other firearm capable of being concealed on the person without having a license to carry such firearm as provided in this chapter is guilty of a misdemeanor, . . .

"(b) Any person who carries concealed upon his person any pistol, revolver, or other firearm capable of being concealed upon the person without having a license to carry such firearm as provided in this chapter is guilty of a misdemeanor, . . ."

"Section 12027.

"Section 12025 does not apply to or affect any of the following:

"(a) Peace officers listed in Sections 830.1 or 830.2 whether active or honorably retired, *other duly appointed peace officers*, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any such

³ Section 79 of the statute which first enacted chapter 4.5 (ch. 1222, Stats. 1968) provides:

"It is the intent of the Legislature that the changes effected by this legislation shall serve only to define peace officers, the extent of their jurisdiction, and the nature and scope of their authority, powers and duties, and that there be no change in the status of individual peace officers or classes of peace officers for purposes of retirement, workmen's compensation, or similar injury or death benefits, or other employee benefits."

officers to assist in making arrests or preserving the peace while he is actually engaged in assisting such officer. . . ." (Emphasis added.)

The apparent purpose of the peace officer exemption is to remove the concealed weapon proscription and license requirements from peace officers in recognition of the need for such weapons in performing peace officer duties. The Legislature particularly recognized this need in the performance of those duties involving arrests and preserving the peace by extending the exemption to those summoned to assist peace officers on such occasions. There is nothing in either section 12025 or 12027 which would indicate that the "duly appointed peace officers" exempted from section 12025 by section 12027 are not those designated by chapter 4.5. In fact the enactment of those words in section 12027 as part of the same statute which enacted chapter 4.5 (ch. 1222, § 61, Stats. 1968) clearly demonstrates the Legislature's intention that the chapter 4.5 definitions were to apply to the "peace officers" exempted from section 12025 by section 12027.

We are asked whether the Chief of the California State Police Division (the "division") has authority to prohibit or allow the security officers of that division to carry concealed firearms while off duty. We understand the Chief of the division acts on behalf of the "employer" and "employing agency" within the meaning of section 830.4. We also understand the term "off duty" in the question to refer to those periods of time the security officers are not performing their division duties.

We note that the law distinguishes between "security officers" and other members of the division. The peace officer authority of the division's security officers is governed by section 830.4 while that of other members of the division is governed by section 830.2.

The pertinent provisions of section 830.4 state:

"The following persons are peace officers while engaged in the performance of their duties in or about the properties owned, operated, or administered by their employing agency, or when they are required by their employer to perform their duties anywhere within the political subdivision which employs them. Such officers shall also have the authority of peace officers anywhere in the state as to an offense committed, or which there is probable cause to believe has been committed, with respect to persons or property the protection of which is the duty of such officer or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is an immediate danger to person or property or of the escape of the perpetrator of the offense. Such peace officers may carry

firearms only if authorized by and under such terms and conditions as are specified by their employing agency:

"(a) Security officers of the California State Police Division. . . ."

Since our research has revealed no judicial decision interpreting these statutes relevant to the question presented we resort to the applicable rules of statutory construction. The principle rules were summarized in *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230 as follows:

"We begin with the fundamental rule that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent the court turns first to the words themselves for the answer. We are required to give effect to statutes according to the usual, ordinary import of the language employed in framing them. If possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose; a construction making some words surplusage is to be avoided. When used in a statute words must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear. Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole." (Citations and quotations omitted.)

The first sentence of section 830.4 states that the security officers named "are peace officers *while engaged in the performance of their duties in or about the properties owned, operated, or administered by their employing agency, or when they are required by their employer to perform their duties anywhere within the political subdivision which employs them.*" (Emphasis added.) The use of the words "while" and "when" to introduce the qualifying clauses is significant. The dictionary defines "while" to mean during the time that and "when" to mean at what time. (See Webster's Third New Internat. Dict.) Thus the usual and ordinary import of the emphasized words is to limit the time that the security officers named "are peace officers." The clear implication is that at times other than those specified such security officers are not peace officers.

The second sentence of section 830.4 states that the designated security officers "have the authority of peace officers" in certain situations (not that they "are peace officers" as in the first sentence). Is a security officer a peace officer within the meaning of other statutes when he is exercising the authority of a peace officer in the designated situations? There is no categorical answer to this question. We think the answer is to be

found in the language used and the purposes to be served by both section 830.4 and the other statute to harmonize and effectuate the purpose of the Legislature as to both statutes.

The second sentence of section 830.4 gives the designated security officers the authority of peace officers in two situations. We consider them separately. The first provides peace officer authority "as to an offense committed, or which there is probable cause to believe has been committed, with respect to persons or property the protection of which is the duty of such officers." The reference to probable cause indicates the Legislature had the peace officer powers associated with arrests in mind. Section 836 authorizes a peace officer to arrest a person "whenever he has reasonable cause to believe the person to be arrested has committed a public offense in his presence." Section 835a provides: "Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance" Section 833 provides: "A peace officer may search for dangerous weapons any person whom he has legal cause to arrest, whenever he has reasonable cause to believe that the person has a dangerous weapon" Of course the peace officer authority granted in this situation is limited to certain offenses, namely those concerning the protection of persons and property which it is the duty of the security officer to protect. The second situation for which section 830.4 grants peace officer authority to security officers is "when making an arrest pursuant to section 836 of the Penal Code as to any public offense with respect to which there is an immediate danger to person or property or of the escape of the perpetrator of the offense." Thus both situations for which section 830.4 grants "the authority of peace officers" involve arrests. We have already noted that the purpose of exempting peace officers from the concealed firearm strictures of section 12025 was to remove those restrictions for peace officers in recognition of the need peace officers have for concealed firearms in performing their duties particularly those relating to making arrests and preserving the peace. We perceive no reason why a security officer making an arrest in either of the situations mentioned in the second sentence of section 830.4 would not have the same need for a concealed firearm as a peace officer making an arrest in the same circumstances. Thus the same legislative concern which prompted the Legislature to exempt peace officers generally from the concealed firearm restrictions of section 12025 would apply with equal force to security officers who exercise the peace officer authority granted them in the second sentence of section 830.4. To harmonize the two statutes in a manner which effectuates the purpose of each we construe the words "peace officer" in section 12027 to include security officers while exercising the peace officer authority granted them by the second sentence of section 830.4.

Our final concern focuses upon the third sentence of section 830.4 which reads: "Such peace officers may carry firearms only if authorized by and under such terms and conditions as are specified by their employing agency." Chapter 1340, Statutes of 1980 placed this language in sections 930.3, 830.31 and 830.5 as well as 830.4 making it

applicable to more than 40 classifications of peace officers. We traced the legislative history of this provision in 64 Ops.Cal.Atty.Gen. 832 and concluded that a Department of Corrections peace officer, as defined in section 830.5, is permitted to carry concealed a concealable firearm without a license if authorized to do so by the Department of Corrections under such terms and conditions as are specified by the department. We observed on page 837 that:

"Nothing in this opinion is intended to detract from the right of a peace officer, as defined in section 830.5, to seek a license under sections 12050-12054 to carry concealed a concealable firearm, and, if licensed, to carry such firearm while not performing peace officer duties."

While that opinion indicated our view that the employer's authority to control the carrying of firearms by the peace officers it employed was limited we did not further examine the scope of that authority. We do so now.

The extent of the authority granted to the employing agency by the third sentence of section 830.4 is significant. By declaring "such peace officers may carry firearms *only if* authorized . . ." the statute prohibits the carrying of firearms without the requisite authorization. Thus the employing agency is empowered to prohibit the carrying of firearms by its security officers by simply withholding its authorization as well as to authorize them to carry firearms "under such terms and conditions" as it specifies. Further the authority granted extends to the carrying of any firearm including shotguns and rifles, not just handguns. The reason for authorizing an employing agency to control the carrying of firearms by its employees at a facility operated by the agency or at any place where the employees are acting within the scope and in the course of their employment is apparent. However, we see no reason why the employing agency would need or want to control the carrying of firearms by its peace officer employees at times and places unrelated to their employment. If the power granted the employing agency by the third sentence of section 830.4 is construed to extend to any time and place it would mean that the designated officers would need the authorization of their employing agency to carry rifles on hunting trips or even national guard training exercises. Further, such control would extend only to the designated officers and not to the nonpeace officer employees of the agency. We believe that the Legislature did not intend to grant the employing agency any such control over the nonemployment related conduct of its security officers. By granting the authority to the "*employing* agency" we think the Legislature meant it to apply only to employment related conduct. Such limitation is also suggested by the words "under such terms and conditions as are specified" since an employer's authority to impose terms and conditions on an employee's conduct is normally limited to the latter's employment related conduct. Thus we interpret the provision to be applicable only to employment related situations, i.e., to the carrying of firearms at the place of employment subject to control by the employing

agency and to the carrying of firearms by the employee any place while acting within the scope and in the course of his or her employment.

In most cases a peace officer's powers and duties are related to his peace officer employment. However, there are some responsibilities which the Legislature has given peace officers generally which do not usually relate to their peace officer employment. Section 142 requires "any peace officer" to receive custody of a person who has been arrested by a private person. (See 64 Ops.Cal.Atty.Gen. 886, 892-894.) Business and Professions Code section 25619 provides that "every peace officer" shall enforce the provisions of the Alcoholic Beverage Control Act and shall inform against persons whom they have reasonable cause to believe offend against its provisions. Failure to perform either of these responsibilities is made a misdemeanor by the statutes. There are other such statutes applicable to peace officers generally. (See, e.g., Health and Saf. Code, § 4477, and Fish and G. Code, § 10508.) Section 836 authorizes peace officers generally to make arrests in specified circumstances which need not relate to their peace officer employment duties. (See *People v. Derby, supra*, 177 Cal.App.2d 626.) When acting pursuant to such statutes in a manner unrelated to their peace officer employment, such officers are not subject to any rules imposed by their employing agencies since such agencies have no power to limit or change these statutorily created powers and duties. (64 Ops.Cal.Atty.Gen. 886.) We believe this applies to rules relating to the carrying of concealed firearms.

We conclude that the chief of the division does not have the authority to prohibit or allow security officers of the division to carry concealed firearms while off duty.
