

TO BE FILED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION

of

GEORGE DEUKMEJIAN
Attorney General

John T. Murphy
Deputy Attorney General

:
:
:
:
:
:
:
:
:
:
:
:

No. 81-709

NOVEMBER 10, 1981

THE HONORABLE WILLIAM D. CURTIS, DISTRICT ATTORNEY OF
THE COUNTY OF MONTEREY, has requested an opinion on the following question:

Is a Department of Corrections peace officer, as defined in Penal Code
section 830.5, permitted to carry concealed a concealable firearm without the license
required by Penal Code section 12025?

CONCLUSION

A Department of Corrections peace officer, as defined in Penal Code section
830.5, is permitted to carry concealed a concealable firearm without the license required
by Penal Code section 12025, if authorized to do so by the Department of Corrections under
such terms and conditions as are specified by the Department.

ANALYSIS

Penal Code section 12025¹ prohibits a person from carrying a concealable firearm concealed within a vehicle or on his person without a license. The provisions for licensing are set out in Penal Code sections 12050 through 12054.²

The licensing requirement does not apply or affect peace officers identified in section 12027. In pertinent part, section 12027 excepts the following peace officers:

“(a) Peace officers listed in section 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 officers to assist in making arrests or preserving the peace while he is actually engaged in assisting such officer.”

Classes of peace officers are listed in sections 830.1, 830.2, 830.31, 830.4, 830.5, 830.6 and 830.8(b) Section 830.5³ includes parole officers and correctional officers

¹Section 12025 provides in pertinent part:

“(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 upon the person without having a license to carry such firearm as provided in this chapter is guilty of a misdemeanor, and if he has been convicted previously of any felony or of any crime made punishable by this chapter, is guilty of a felony.”

“(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, except any person, having been convicted of a crime against the person, property or a narcotics or dangerous drug violation, 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 public offense and is punishable by imprisonment in a state prison, or by imprisonment in a county jail not to exceed six months, or by fine not to exceed five hundred dollars (\$500), or by both such fine and imprisonment, and if he has been convicted previously of any felony or of any crime made punishable by this chapter, is guilty of a felony.”

²Unless otherwise indicated, all further references to statutory provisions will be references to the Penal Code.

³Section 830.5 provides in its entirety:

“The following persons are peace officers whose authority extends to any place in the state while engaged in the performance of the duties of their respective employment and for the purpose of carrying out the primary function of their employment or as required under Sections 8597, 8598, and 8617 of the Government Code. Such peace officer(s) may carry firearms only

of the Department of Corrections and any employee of the Department designated as a peace officer by the Director of Corrections.

In 63 Ops. Cal. Atty. Gen. 385 (1980), we concluded that Department of Corrections peace officers, as specified in section 830.5, were exempt by operation of section 12027 from the prohibition against carrying concealed a concealable firearm without the appropriate license. Our reasoning was that these persons were other duly appointed peace officers” within the meaning of section 12027 and the Legislature did not limit the licensing exception, as it had in cases of other categories of peace officers, to periods of time when such peace officers were engaged in the performance of their duties of employment. As stated in 63 Ops. Cal. Atty. Gen. 385, 388–389 (1980):

“We note that when the Legislature has determined to limit the exception of section 12027 to a person while such person is acting in the course of a certain duty, it has done so. Thus, subdivision (a) of section 12027 provides: that a person summoned by any peace officer to assist in making an arrest or preserving the peace is exempt ‘while he is actually engaged in assisting such officer.’ Likewise, subdivision (c) exempts members of the armed forces ‘when on duty.’ Subdivision (e) exempts certain guards and messengers ‘while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.’ Likewise, subdivisions (f), (g) and (h) exempt members of shooting clubs, licensed hunters or fishermen, and members of antique gun clubs during the period they are engaged in such activities. Had the Legislature wanted to place a similar restriction on peace

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

(a) A parole officer of the Department of Corrections or the Department of the Youth Authority, probation officer, or deputy probation officer. Except as otherwise provided in this subdivision, the authority of such parole or probation officer shall extend only (1) to conditions of parole or of probation by any person in this state on parole or probation, (2) to the escape of any inmate or ward from a state or local institution, (3) to the transportation of such persons, and (4) to violations of any penal provisions of law which are discovered in the course of and arise in connection with his employment.

(b) A correctional officer employed by the Department of Corrections or any employee of the Department of the Youth Authority having custody of wards or any employee of the Department of Corrections designated by the Director of Corrections or employee of the Board of Prison Terms designated by the Secretary of the Youth and Adult Correctional Agency or employee of the Department of Youth Authority designated by the Director of the Department of the Youth Authority, any superintendent, supervisor, or employee having custody of wards in an institution operated by a probation department, and any transportation officer of a probation department.”

officers and restrict their section 12027 exemption to duty hours, presumably it would have done so as in the case of the other classes referred to in that section.”

At the time this opinion was issued section 830.5 contained no reference to the matter of firearms. Consequently, our analysis was limited to the applicability of section 12027 to Department of Corrections peace officers. However, section 830.5 and sections 830.3, 830.31 and 830.4 were subsequently amended, effective September 30, 1980, to incorporate such a reference (Stats. 1980, c. 1340, pp. 614–615, § 13). Added to these statutes was a provision that the peace officers defined therein “may carry firearms only if authorized and under terms and conditions as are specified by their employing agency.” This amendment was one of several resulting from Senate Bill No. 1447 (1979–1980 Reg. Sess.), which restructured the peace officer statutes.

Senate Bill No. 1447, when introduced on February 7, 1980, and insofar as it was intended to amend section 830.5, did not contain initially the above or a similar firearms provision. The original bill, however, proposed that sections 830.3 and 830.4 incorporate the following language. “[N]otwithstanding Sections 12027 and 12031, such peace officers shall carry firearms under such terms and conditions as specified by their employing agencies.”⁴ By amendment in the Senate on March 10, 1980, this provision was added to section 830.5 with a modification in wording: “[N]otwithstanding Sections 12027 and 12031, such peace officers may carry firearms only under such terms and conditions as are specified by their employing agency.” In all three sections “may” was now used in place of “shall.” This amendment also set out a new section 830.31, identifying other categories of peace officers, and containing the above firearms provision.

The bill was amended in the Assembly on May 14, 1980, and the firearms provision in sections 830.3, 830.31, 830.4 and 830.5 was changed to read: “In accordance with Sections 12027 and 12031, such peace officers may carry firearms, but only under such terms and conditions as are specified by their employing agency.” A further amendment was made in the Assembly on June 17, 1980. This time the language in sections 830.3, 830.31 and 830.4 was revised as follows: “Such peace officers may carry firearms only if authorized and under terms and conditions as are specified by their employing agencies.” In contrast, the language in section 830.5 was changed to read: “[s]uch peace officers may carry firearms, but only under reasonable terms and conditions as are specified by their employing agency.” Nevertheless, by a June 28, 1980, Assembly amendment, this latter language was discarded and the wording used in sections 830.3, 830.31 and 830.4

⁴Section 12031 concerns prohibiting the carrying of loaded firearms and contains an exception for peace officers similar to section 12027.

was used in section 830.5 as well. Accordingly, the final version of the bill, which became the law, settled on this provision: “Such peace officer[s] may carry firearms only if authorized and under such terms and conditions as are specified by their employing agency.

The digest of Senate Bill No. 1447 by Legislative Counsel (Stats. 1980, c. 1340, pp. 606–607) recognized that prior law exempted “peace officers from specified prohibitions against the carrying of loaded or concealed firearms.” The new law, the digest noted, would revise “peace officer exceptions for carrying loaded or concealable firearms.”

The meaning of the above firearms provision is plain, clear and unambiguous. First, Department of Corrections peace officers may carry firearms. This is consistent with section 12027 which exempts “other duly appointed peace officers” from the licensing provisions.⁵ It is also in harmony with section 832, which directs that every person described as a peace officer in chapter 4.5 of title 3, part 2 of the Penal Code receive “a course of training in the carrying and use of firearms.” Secondly, the authority to carry firearms is nevertheless qualified, i.e., such peace officer may carry firearms *only if authorized and under such terms and conditions* as are specified by the Department of Corrections. Thus, the agency may prohibit or limit the carrying of firearms. This is consistent with section 832 which states: “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.”⁶

The firearms provision of section 830.5 does not distinguish between firearms carried concealed or openly, or between firearms which are concealable or otherwise. Consequently, the act of carrying concealed a concealable firearm is within the purview of the statute.

In addition to giving the Department the authority to allow or disallow the carrying of firearms by its officers and the authority to set terms and conditions if it permits such carrying, section 830.5 provides that Department of Corrections peace officers’ authority extends “to any place in the state while engaged in the performance of the duties of their respective employment and for the purpose of carrying out the primary purpose of their employment or as required under Sections 8597, 8598, and 8617 of the Government

⁵It is also consistent with section 1203.1 which excludes such peace officers from the prohibition against carrying a loaded firearm.

⁶In *California State Employees’ Assn. v. Enomoto* (1981) 118 Cal. App. 3d 599, 602–604, state parole agents contended that the Department of Corrections was required to furnish them with service revolvers as safety equipment under the California Occupational Health and Safety Act (OSHA). The court, however, sustained a departmental policy prohibiting parole agents from carrying firearms except with prior permission.

Code.”⁷

A statute should be construed as a whole, giving effect to every word and clause. (Code Civ. Proc., § 1858; *Carleson v. Unemployment Ins. Appeals Bd.* (1976) 64 Cal. App. 3d 145, 155–156.) Reading this employment provision together with the firearms provision, we conclude that the Department’s authority and control over its peace officers carrying firearms, including the concealed carrying of concealable firearms, extends to all times when the officers identified in section 830.5 are acting as peace officers.

Section 830.5 and section 12027 concern peace officers and firearms. The sections can be harmonized. (See *People ex rel. Younger v. Superior Court of Alameda County* (1976) 16 Cal. 3d 30, 40.) As we have seen, section 12025 imposes criminal sanctions upon a person who, without a license, carries concealed a concealable firearm and section 12027 exempts “duly qualified peace officers” from this licensing requirement. However, we do not interpret section 12027 as giving a peace officer authority to carry concealed a concealable firearm if his or her employing governmental agency prohibits or restricts such act. (See *Peterson v. Long Beach* (1979) 24 Cal. 3d 238, 246; *San Jose Peace Officers Assn. v. San Jose* (1978) 78 Cal. App. 3d 935, 947; *Long Beach Police Officers Assn. v. City of Long Beach* (1976) 61 Cal. App. 3d 364, 372; *Stribling v. Mailliard* (1970) 6 Cal. App. 3d 470, 473–474.) If the peace officer has such authority from his employing governmental agency, he is not required to obtain a license. However, if he has not received such authority, he must secure a license if he chooses to carry concealed a concealable firearm or face the prospect of violating section 12025. This is consistent with our conclusion in 62 Ops. Cal. Atty. Gen. 508 (1979) that a reserve peace officer, as defined in section 830.6, was subject to the licensing requirement of section 12025 when not performing duties as a reserve officer.

Following issuance of our opinion in 63 Ops. Cal. Atty. Gen. 385 (1980), *supra*, section 830.5 was amended in an apparent response to the opinion. The Legislature is deemed to be cognizant of the construction we place upon statutes. (*Henderson v. Board of Education* (1978) 78 Cal. App. 3d 875, 883.) As Legislative counsel stated, there was an intent to revise the exceptions for the concealed carrying of concealable firearms.

Accordingly we modify our opinion in 63 Ops. Cal. Atty. Gen. 385 by reason of the subsequent change in the law. Department of Corrections peace officers, as defined in section 830.5, still need not secure licenses, under Penal Code sections 12050–12034, in order to carry concealed concealable firearms. However, the exemption in section 12027

⁷The Government Code provisions relate to expanded peace officer duties arising in a war emergency, a state of emergency or a local emergency.

is now qualified by the authority of the Department of Corrections, under section 830.5, to allow or disallow the concealed carrying of concealable firearms or to set the terms and conditions of such carrying by its officers without a license while acting as peace officers.

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. (See 62 Ops. Cal. Atty. Gen. 508 (1979), *supra*.) Should the Department of Corrections prohibit or limit its officers from carrying concealed concealable firearms, the licensing exception of section 12027(a) does not independently grant authority to the contrary. We conclude that the Legislature, by the amendment of section 830.5, has made the carrying of firearms by Department officers while acting as peace officers a matter of departmental policy.
