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July 21, 1987

OPINION
OF
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Opinion No. 87-34

To: New Mexico Livestock Board
7013 Central N.E.
Albuquerque, New Mexico 87108

By: Frank Murray
Assistant Attorney General

QUESTION:

Are inspectors for the New Mexico Livestock Board required to be certified by the New Mexico Law Enforcement Academy.

ANSWER:

Yes.

ANALYSIS:

The Livestock Board Act, Section 77-2-7 NMSA 1978, states that the Board may "employ inspectors and other personnel necessary to carry out the purposes of the Livestock Board Act. All inspectors appointed by the Board shall have the same powers as any other peace officer in the enforcement of the Livestock Board Act...." (emphasis added). Board inspectors are required to issue citations for violations of the Livestock Board Act, Section 77-2-22 NMSA 1978, which may include petty misdemeanor violations. Board inspectors are permitted to carry weapons, including concealed weapons if the board permits. Section 30-7-2 NMSA 1978 See also A.G. Opinion No. 63-117 (1963-64). They may also make arrests and execute warrants during their law enforcement activity. Cave v. Cooley, 48 N.M. 478, 152 P.2d 886 (1944).

The New Mexico Law Enforcement Training Act, Sections §29-7-1 to 29-7-12 NMSA 1978, requires that "police officers," as defined in section 29-7-7 NMSA 1978, be certified. Section 29-7-7 states "[p]olice officer means any full time employee of a law enforcement agency which is part of or administered by the State or any political subdivision thereof and which employee is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the state..." (emphasis added). Livestock Inspectors are responsible for enforcing criminal laws and for the prevention and detection of crime, and therefore fall within the definition of "police officer" in the Law Enforcement Academy Act.

The Livestock Board in its capacity of commissioning and employing peace officers, granting its employees law enforcement power and enforcing penal statutes is a law enforcement agency within the meaning of the Law Enforcement Training Act. Supra. See Matter of Schmidt & Sons Inc., 399 A.2d 637, 642, 79 N.J. 344 (1979) (alcoholic Beverage Control); Criminal Injuries Compensation Bd. v. Gould, 331 A.2d 55, 75, 273 Md. 486 (1975). "Law enforcement" refers to the enforcement of penal statutes. State Div. of Indus. Safety v. Superior Court for Los Angeles County, 43 C.A.3d 778, 117 Cal. Rptr. 726, 730 (1974); Malizia v. U.S. Dept. of Justice, 519 F.Supp. 338, 347 (D.C.N.Y. 1981). An agency's, and the officers, possession of law enforcement duties and powers is the decisive factor in determining whether its law enforcement officers are "police officers". See Anchondo v. Correction Department, 100 N.M. 108, 110, 111, 666 P.2d 1255, (1983)

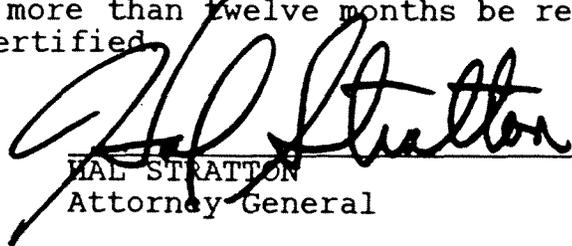
Section 29-7-8 of the Law Enforcement Academy Act state:

[N]otwithstanding any provision of any general, special or local law to the contrary, no person shall receive an original appointment on a permanent basis as a police officer to any law enforcement agency in this state unless such person:... (5) has met such other requirements as may be prescribed by the Board; and (6) has previously been awarded a certificate by the director attesting to such persons satisfactory completion of an approved basic law enforcement training program.

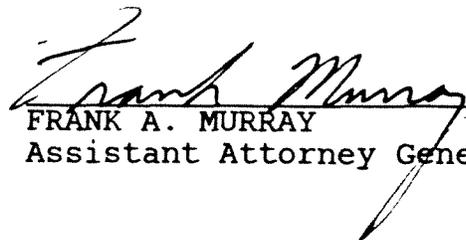
B. every person who is employed on a temporary basis by any law enforcement agency in this state shall forfeit his position as such unless within 12 months from the date of his employment he satisfactorily completes a basic

law enforcement training program and is awarded a certificate attesting thereto."

It is therefore our opinion that the Livestock Board in its capacity of enforcing the law is a "law enforcement agency" and its officers are "police officers," for purposes of section 29-7-7. Livestock inspectors have twelve months after employment in which to receive their certification from the Law Enforcement Academy or forfeit their positions. See also A.G. Opinion 87-25 (1987). We recommend that the commission of any officer who has worked for your department for more than twelve months be revoked until the officer is properly certified.



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