

Opinion No. 87-25

July 14, 1987

OPINION OF: HAL STRATTON, Attorney General

BY: Frank Murray, Assistant Attorney General

TO: Ronald S. Loyd, Acting Secretary State of New Mexico Transportation Department, P.O. Box 1028, Santa Fe, New Mexico 87504-1028

QUESTIONS

Are inspectors of the Motor Transportation Division of the New Mexico Department of Transportation required to attend a New Mexico Law Enforcement Academy approved course and receive certification from the Academy?

CONCLUSIONS

Yes.

ANALYSIS

Section 29-7-8 of the Law Enforcement Academy Act, Sections 29-7-1 to 29-7-12 NMSA 1978, provides:

A. Notwithstanding 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.

Section 29-7-7 NMSA 1978 of the New Mexico Law Enforcement Academy Act states: "Police 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).

Section 65-1-7 NMSA 1978 states: "The inspectors designated by the Motor Transportation Division have all the powers of **peace officers** in all cities, towns,

villages and counties in New Mexico with respect to any law or regulation which the Motor Transportation Division is empowered to administer or enforce." (emphasis added). Pursuant to Section 65-1-6 NMSA 1978, the Motor Transportation Division enforces Corporation Commission requirements found in Section 65-2-80 to 65-2-127 NMSA 1978 (formerly §§ 65-2-1 to 65-2-79). These requirements include the prevention and detection of crimes, such as the felonies or misdemeanors as set forth in Section 65-2-121. Division inspectors also are empowered to enforce transportation laws, including the Federal Motor Carriers Act, 49 U.S.C. §§ 10101 to 11902a, pursuant to Section 65-1-9 NMSA 1978. Violations of the Motor Transportation Act are misdemeanors enforced by these officers pursuant to Section 65-1-36 NMSA 1978. See also Sections 65-3-1, 65-3-4, 65-3-6, 65-4-16, and 66-2-12 (confirming Division inspectors law enforcement authority over violations by motor carriers). As peace officers, the Transportation Department's inspectors are permitted to make arrests and carry weapons, including concealed weapons, while on duty. *Cave v. Cooley*, 48 N.M. 478, 152 P.2d 886 (1944); Section 30-7-2 NMSA 1978.

The Supreme Court of New Mexico adopted the analysis that the duties performed primarily determine a person or agency's status as a law enforcement agency in *Anchondo v. Corrections Department*, 100 N.M. 108, 666 P.2d 1255 (1983). The case law has defined "law enforcement agency" as a body employing "law enforcement officers." See *Milizia v. United States Dept. of Justice*, 519 F. Supp. 338, 347 (D.C.N.Y. 1981); *Matter of Schmidt and Sons Inc.*, 399 A.2d 637, 79 N.Y. 344 (1979) (Alcoholic Beverage Control); *Criminal Injury's Board v. Gould*, 331 A.2d 55, 273 Md. 486 (1975); *State Division of Industrial Safety v. Superior Court for Los Angeles*, 43 C.A.3d 778, 117 Cal. Rptr. 726 (1974). While the entire department may not be a law enforcement agency, the division employs law enforcement or "police" officers. Inspectors of the Motor Transportation Division are responsible for enforcing the state's criminal and highway laws, which include both felonies and misdemeanors, and which laws are clearly penal. The division is in our opinion a Law Enforcement Agency and its inspectors fall within the definition of "police officer" in the Law Enforcement Academy Act.

Considering the foregoing it is our opinion that inspectors of the Motor Transportation Division, after commencement of employment, have 12 months in which to receive proper training and obtain their certification from the Academy, or forfeit their position.

Respectfully submitted,

ATTORNEY GENERAL

HAL STRATTON Attorney General