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PEACE OFFICERS: Concealed Weapons.

CONCEALED WEAPONS. Police Officers.

SHERIFFS: Appointment of Deputies.

A person with restricted appointment as a sheriff's deputy must abide by the concealed weapon permit restrictions of the concealed weapons licensing board and may not carry a concealed weapon while off duty.

Opinion No. 4867

April 10, 1975.

Honorable Philip Mastin
State Representative
P. O. Box 119
Lansing, Michigan 48901

You have asked for my opinion regarding the following question:

"May sworn deputy sheriffs, having gun permits and deputy cards, carry their weapons while off duty?"

Your request was accompanied by clarifying materials indicating that your question pertains to members of Metropolitan Council No. 23, American Federation of State, County & Municipal Employees, AFL-CIO, who are uniformed officers serving as park rangers employed with the Huron Clinton Authority. According to the materials, they possess deputy cards and gun permits, both of which are restricted to one year while in the uniform of the Huron Clinton Authority. They have also attended a police academy.

The issuance of permits to carry concealed weapons is provided for by 1927 PA 372, § 6; MCLA 28.426; MSA 28.93, which states in part:

"(1) The prosecuting attorney, the sheriff and the director [of the Michigan State Police], or their respective authorized deputies, shall constitute boards exclusively authorized to issue licenses to applicants residing within their respective counties, to carry pistols concealed on the person and to carry pistols, whether concealed or otherwise, in any vehicle operated or occupied by said applicants. The county clerk of each county shall be clerk of such licensing boards, which boards shall be known in law as 'the concealed weapon licensing board.' No such license to carry a pistol concealed on the person or to carry a pistol, whether concealed or otherwise, in any vehicle operated or occupied by the person applying for such license, shall be granted to any person unless he is 18 years of age or over, a citizen of the United States, and has resided in this state 6 months or over, and in no event shall such license be issued unless the application is first approved in writing by the township supervisor, when the applicant resides in that part of the county not included within an incorporated city or village, or by the commissioner or chief of police or marshall when the applicant resides in an incorporated city or village having an organized department of police, and unless it appears that the applicant has good reason to fear injury to his person or

property, or has other proper reasons, and that he is a suitable person to be so licensed, and in no event to a person who has been convicted of a felony or confined therefor in this state or elsewhere during the 8-year period immediately preceding the date of such application or has been adjudged insane unless he has been restored to sanity and so declared by court order."

It is to be noted that the sheriff is by statute a member of the county concealed weapons licensing board.

1927 PA 372, § 12a, MCLA 28.432a; MSA 28.98(1) contains an exemption for certain peace officers:

"Section 6 does not apply to a peace officer of a duly authorized police agency of the United States or of the state or any subdivision thereof, who is regularly employed and paid by the United States or the state or such subdivision, nor to a person regularly employed by the state department of corrections and authorized in writing by the director of corrections to carry a weapon concealed while in the official performance of his duties or while going to or returning from such duties . . ." [Emphasis added]

The carrying of a pistol without a license or, if licensed, carrying in a place or manner inconsistent with restrictions upon such license is a statutory felony under the provisions of 1931 PA 328 § 227; MCLA 750.227; MSA 28.424, as follows:

"A person who shall carry a dagger, dirk, stiletto, or other dangerous weapon except hunting knives adapted and carried as such, concealed on or about his person, or whether concealed or otherwise in any vehicle operated or occupied by him, except in his dwelling house or place of business or on other land possessed by him; and a person who shall carry a pistol concealed on or about his person, or, whether concealed or otherwise, in a vehicle operated or occupied by him, except in his dwelling house or place of business or on other land possessed by him, without a license to carry the pistol as provided by law or if licensed, carrying in a place or manner inconsistent with any restrictions upon such license, shall be guilty of a felony, punishable by imprisonment in the state prison for not more than 5 years, or by fine of not more than \$2,500.00."

1931 PA 328, § 227, *supra*, does not apply "to any peace officer of a duly authorized police agency of the United States or of the state or any subdivision thereof who is regularly employed and paid by the United States or the state or such subdivision . . ." 1931 PA 328, *supra*, § 231.

However, 1931 PA 328, § 227(a), *supra*, makes clear that not all persons engaged in protecting the person or property of others may carry pistols at all times. This section provides:

"Any person licensed in accordance with law to carry a pistol because he is engaged in the business of protecting the person or property of another, except peace officers of the United States, the state or any subdivision of the state railroad policemen appointed and commissioned under the provisions of Act No. 114 of the Public

Acts of 1941, being sections 470.51 to 470.61 of the Compiled Laws of 1948 or those in the military service of the United States, who shall have a pistol in his possession while not actually engaged in the business of protecting the person or property of another, except in his dwelling house or on other land possessed by him, is guilty of a felony. This section shall not be construed to prohibit such person from carrying an unloaded pistol to or from his place of employment by the most direct route."

It is noteworthy that the language of the exception to the application of the statutes concerning concealed weapons quoted above does not extend to all peace officers, but rather only to those of a "*duly authorized police agency of the United States or of the state or any subdivision thereof who is regularly employed and paid by the United States or the state or such subdivision.*"

By virtue of having been deputized, are uniformed officers employed by the Huron Clinton Authority peace officers within the statutory exception?

In *People v Bissonette*, 327 Mich 349, 356; 42 NW2d 113, 116 (1950), the Court, referring to various state officers authorized, under some circumstances, to exercise the powers of peace officers, stated:

"The authority of such officers appointed for certain purposes is circumscribed by the statutory provisions which also define their duties."

The statutory provision for the appointment by a sheriff of deputies is R.S. 1846, c 14, § 70; MCLA 51.70; MSA 5.863, which reads:

"Each sheriff may appoint 1 or more deputy sheriffs at his pleasure, and may revoke such appointments at any time; and persons may also be deputed by any sheriff, by an instrument in writing, to do particular acts, who shall be known as special deputies and each sheriff may revoke such appointments at any time. No sheriff shall be responsible for the acts, defaults and misconduct in office of any deputy sheriff. Such appointed deputy or deputies, other than special deputies, before entering upon the duties of their office shall execute and file with the county clerk an official bond running to the people of this state in the amount of at least \$2,500.00 as shall be prescribed by the board of supervisors of the county . . ."

It has been held that the above statute gives the sheriff of each county the power to prescribe the rules and regulations whereby employment as a deputy may be continued, and that the sheriff may prohibit certain deputies from carrying weapons while off duty. In *Eaton County Deputy Sheriffs Association v Eaton County Sheriff*, 37 Mich App 427, 430; 195 NW2d 12 (1971), the court stated:

"We find that the exemption of peace officers from obtaining licenses to carry concealed weapons in no way limits the power inherent in the office of sheriff to promulgate rules and regulations pertaining to the employment of deputies. MCLA § 750.231 (Stat Ann 1971 Cum Supp § 28.428) merely provides that §§ 224 and 227

do not apply to peace officers. Therefore, the officers may carry concealed weapons without being guilty of a felony."

"However, in our opinion, MCLA § 750.231 in no way limits the power of the sheriff to make rules and regulations which, in his opinion, improve the quality of law enforcement and increase the safety of the citizens in the community."

Thus, while the sheriff may prohibit deputies whom he employs from carrying concealed weapons while off duty, they may carry concealed weapons without being guilty of a felony because of their employment as deputies. They remain police officers within the exception to the concealed weapons statutes.

While noting that the powers of peace officers have not been specifically defined by the statute law of this state, the Court stated that the term "peace officers" generally includes sheriffs and their deputies, constables, marshals, members of the police force of cities, and other officers whose duty is to enforce and preserve the public peace. *People v Bissonette, supra*, at 356.

But the status of uniformed officers serving as park rangers in the employment of the Huron Clinton Authority differs from that of deputies employed by the sheriff. The sheriff has restricted their appointment to "one year while in the uniform of the employment of the Huron-Clinton Authority."

I find that the sheriff has authority to so restrict his appointment of deputies. They serve at his pleasure and persons may also be deputed, by an instrument in writing, to do particular acts. R.S. 1846, c. 14, Section 70, *supra*.

Once out of uniform and off the job, uniformed officers serving as park rangers for the Huron Clinton Authority may not exercise the powers of a deputy sheriff nor can they be considered peace officers.

I, therefore, find that they do not fall within the statutory exception as peace officers, must apply to the county concealed weapons licensing board for a permit to carry a concealed weapon, and are limited by the restrictions of such permits.

You indicate that the individuals in question have received permits to carry a concealed weapon restricted to "one year while in the uniform of the employment of the Huron Clinton Authority."

It is my opinion, therefore, that individuals with restricted appointments as sheriff's deputies must abide by the permit restrictions laid down by the concealed weapons licensing board and may not carry a concealed weapon while off duty.

FRANK J. KELLEY,
Attorney General.