

"If a survey is made for the purposes of describing the parcel in a conveyance of title," that a certified copy of the survey "shall be recorded at the time of recording the conveyance."

With regard to your second question, there is no express indication in section 1(2) as to whose responsibility it is to file the survey. The only time a survey is required to be filed is "if one is made for the purposes of describing the parcel in a conveyance of title." In this instance, the survey is to be recorded "at the time of recording the conveyance of title." Since the legislature has not expressly imposed a duty upon the surveyor to record the survey it is a reasonable construction of the act would dictate that the one conveying the property is responsible for recording the survey.

In answer to your last question, the only limitation as to when the survey is to be recorded is set forth in section 1(2). If a survey is made for the purposes of describing property in a conveyance of title, the survey must be recorded at the time the conveyance of title is recorded. Since transfer of title is not recorded until the land contract has been performed, the survey need not be recorded until that time.

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CRIMINAL LAW: Constables carrying concealed weapons

CONSTABLES: Concealed Weapons

FIREARMS: Constables

Constables must apply to the Concealed Weapons Licensing Board of their county for a determination as to whether their individual situation falls within the meaning of the exception to the application of the concealed weapons licensing law permitting peace officers who are "regularly employed and paid" to carry concealed weapons without a license.

Opinion No. 4792

August 27, 1973.

Honorable Paul A. Rosenbaum
State Representative
The Capitol
Lansing, Michigan 48901

You referred to this office an inquiry from one of your constituents concerning the question of whether constables are exempt from the requirements of the concealed weapons licensing law; MCLA 28.426; MSA 28.93 and MCLA 750.227; MSA 28.424. There is, of course, a specific statutory exemption from the effect of the concealed weapons licensing law for any person who is 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, . . ." MCLA 23.432a; MSA 28.98(1).

MCLA 750.231; MSA 28.428 provides a comparable exemption for such peace officers from MCLA 750.227; MSA 28.424.

Under the Constitutions of 1850 and 1908, the office of Constable was a constitutional office. (See Const 1850, art XI, § 1; Const 1908, art VIII, § 18). In recognition of the constitutional status of the office of Constable, the Attorney General held in OAG, 1947-1948, No 537, p 409 (September 5, 1947) that it would be constitutionally impermissible for the Legislature to enact a restriction on the ability of constables to carry weapons. In subsequent opinions, this office has reaffirmed the peace officer status of constables (see OAG, 1952-1954, No 1563, p 33, September 3, 1952 and, 2, OAG, 1957-1958, No 3293, p 217, August 13, 1958). I see no occasion to alter these opinions that constables are peace officers. I do note, however, that under the Constitution of 1963, constables no longer have any constitutional status, all mention of this office having been entirely omitted. (See Const 1963, art VII, § 18, Convention Comment). Thus, constables are presently peace officers but have no special constitutional status as such. Any language in OAG, 1947-1948, No 537, p 407 (September 5, 1947) to the contrary is hereby overruled and superseded by the present opinion.

It is noteworthy that the language of the exception to the application of the concealed weapons law quoted at the outset of this Opinion does not extend to all peace officers, but rather only to such as are "regularly employed and paid." I recognize that constables, unlike most peace officers, are presently paid by a fee system rather than being on salary. This fact alone, however, does not provide an answer to the question of whether they are "regularly employed and paid" within the meaning of the statutory exception. If a constable does considerable work for the township, he may be "regularly" employed even though his compensation is figured on the basis of fees rather than as a fixed salary.

The key consideration in determining whether a particular constable comes within the statutory exception should be whether his work for the township is substantial rather than merely occasional. In order to come within the statutory exception, a constable's work for the township as constable should form at least a large part of his daily activities.

It is my opinion that the decision as to whether a particular constable fits within this exception is properly one for the Concealed Weapons Licensing Board of each individual county to make. Constables who believe they qualify for the exemption should apply to this Board for a review of their employment situation. Taking all relevant factors into account, this Board has the responsibility of determining whether the work done by an individual constable justifies his being considered "regularly employed and paid" within the terms of the statute and, therefore, exempt from the provisions of the concealed weapons licensing law. It is only in this way that those constables entitled to the exemption may be given reasonable certainty as to their exempt status while the public is assured that only authorized persons carry concealed weapons.

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