

VOLUME NO. 38

OPINION NO. 58

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING - Private patrol operator licenses and reserve officers;
LICENSES, OCCUPATIONAL AND PROFESSIONAL - Private patrol operator licenses and reserve officers;
PEACE OFFICERS - Reserve officers, private patrol operator license requirements;
MONTANA CODE ANNOTATED - Sections 7-32-201, 7-32-214, 7-32-216, 7-32-218, 37-60-105.

HELD: The provision of section 37-60-105(2), MCA, which exempts officers engaged in the performance of their official duties from the licensing requirements of the Private Investigators and Private Patrol Operators Licensing Act, applies to reserve officers as defined in section 7-32-201(5), MCA, regardless of the source of any income they may receive when they are serving on the orders and at the direction of the chief law enforcement administrator of the local government.

28 November 1979

Charles A. Graveley, Esq.
Lewis & Clark County Attorney
Lewis and Clark County Courthouse
Helena, Montana 59601

Dear Mr. Graveley:

You have requested my opinion concerning the applicability of the licensing requirements of the Department of Professional and Occupational Licensing to reserve officers. Specifically, you have asked whether reserve officers must be licensed as private patrol operators pursuant to the Private Investigators and Private Patrol Operators Licensing Act, Title 37, chapter 60, MCA, when they are performing law enforcement functions under the direction of the chief law enforcement administrator of the local government but are being paid a salary by a private concern. Lewis and Clark County Sheriff Charles M. O'Reilly joins you in requesting my opinion concerning this question.

Section 7-32-201, MCA, defines "reserve officer":

"Reserve officer" means a sworn, part-time, volunteer member of a law enforcement agency who is a peace officer as defined in 46-1-201(8) and has arrest authority as described in 46-6-401 only when authorized to perform these functions as a representative of the law enforcement agency.

It is my understanding that sheriffs are routinely contacted by public and private concerns to provide reserve officers to patrol various functions. When these functions are sponsored by a branch of the local government, reserve officers are often paid for their time by the local government. However, when the functions at which they serve are sponsored by private concerns, reserve officers are usually paid for their time by the private concern. In addition to these public and private functions, reserve officers are often called upon to volunteer their time without remuneration from any source.

Given this variety of functions, the question then becomes when, if ever, a reserve officer must be licensed as a private patrol operator in addition to fulfilling the statutory requirements with which he must comply to attain and maintain his reserve officer status.

The Private Investigators and Private Patrol Operators Licensing Act provides in section 37-60-105(2), MCA:

This chapter does not apply to:

(2) an officer or employee of the United States of America or this state or a political subdivision thereof while such officer or employee is engaged in the performance of his official duties;

(Emphasis added.) The answer to the question posed, then, depends on whether a reserve officer's "official duties" are determined with reference to the source of any income he may receive for performing them or with reference to the source of his authority to perform "official duties," i.e., the chief law enforcement officer of the political subdivision.

It is my opinion that the statutory provisions authorizing reserve officers and outlining their functions and limitations, clearly demonstrate the Legislature's intent to

exempt them from the Private Investigators and Private Patrol Operators Licensing Act.

Section 7-32-214, MCA, sets out a detailed and comprehensive training program which reserve officers are required to complete within two years of their original appointment. The program includes a minimum of 88 hours of course work in more than 15 specialized subject areas.

Section 7-32-216, MCA, strictly delimits the circumstances under which a reserve officer may serve. Specifically it provides:

(1) A reserve officer may serve as a peace officer only on the orders and at the direction of the chief law enforcement administrator of the local government.

(2) A reserve officer may act only in a supplementary capacity to the law enforcement agency.

(3) Reserve officers:

(a) are subordinate to full-time law enforcement officers; and

(b) may not serve unless supervised by a full-time law enforcement officer whose span of control would be considered within reasonable limits.

(Emphasis added.) This provision clearly ties a reserve officer's ability to act as a reserve officer to the authorization of the chief law enforcement administrator of the local government. This dependency on the source of one's authorization is again emphasized in section 7-32-218, MCA:

A reserve officer is vested with the same powers, rights, privileges, obligations, and duties as any other peace officer of this state upon being activated by the chief law enforcement administrator of the local government and while on assigned duty only.

(Emphasis added.) Each of these provisions reveals an intention to tie the duties, functions, powers, and obligations of reserve officers to the authority given them by the chief law enforcement officer. The source of their authority, then, and not the source of any income they might receive for performing these duties, is the factor which determines their status as reserve officers. This conclusion becomes even more evident when one considers the fact

that often times reserve officers are called upon to volunteer their time without any compensation from any source.

THEREFORE, IT IS MY OPINION:

The provision of section 37-60-105(2), MCA, which exempts officers engaged in the performance of their official duties from the licensing requirements of the Private Investigators and Private Patrol Operators Licensing Act, applies to reserve officers as defined in section 7-32-201(5), MCA, regardless of the source of any income they may receive, when they are serving on the orders and at the direction of the chief law enforcement administrator of the local government.

Very truly yours,

MIKE GREELY
Attorney General