

VOLUME NO. 43

OPINION NO. 12

FIREARMS - Special railroad peace officer's authority to carry concealed weapons;

PEACE OFFICERS - Special railroad peace officer's authority to carry concealed weapons;

TRANSPORTATION, PUBLIC - Special railroad peace officer's authority to carry concealed weapons;

CODE OF FEDERAL REGULATIONS - 49 C.F.R § 1201;

MONTANA CODE ANNOTATED - Sections 1-1-207, 44-4-901 to 44-4-903, 45-8-315 to 45-8-319, 46-1-201(8).

HELD: Special peace officers of a class I railroad are exempt from the prohibition against concealed weapons set out in section 45-8-316, MCA, but they may carry a concealed weapon only when on duty and when necessary for the protection of the property of the class I railroad employing the officer. The special peace officer must follow the permit procedure of section 45-8-319, MCA, in order to carry a concealed weapon at any other time.

May 19, 1989

David G. Rice
Hill County Attorney
Hill County Courthouse
Havre MT 59501

Dear Mr. Rice:

You have asked my opinion on the following:

Whether special peace officers of a class I railroad are exempt from the prohibition against carrying concealed weapons as set forth in section 45-8-316, MCA.

Generally, carrying a concealed weapon is a misdemeanor offense against public order on first conviction and a felony if convicted a second time. § 45-8-316, MCA. A concealed weapon is any weapon mentioned in sections 45-8-316 to 319, MCA, which is wholly or partially covered by the clothing of the person carrying it. § 45-8-315, MCA. Exceptions to the offense defined in section 45-8-316, MCA, are found in section 45-8-317, MCA:

Section 45-8-316, MCA, does not apply to:

- (1) any peace officer of the state of Montana;
- (2) any officer of the United States government authorized to carry a concealed weapon;
- (3) a person in actual service as a national guardsman;
- (4) a person summoned to the aid of any of the persons named in subsections (1) through (3);
- (5) a civil officer or his deputy engaged in the discharge of official business;
- (6) a person authorized by a judge of a district court of this state to carry a weapon; or
- (7) the carrying of arms on one's own premises or at one's home or place of business.

Pursuant to sections 44-4-901 and 44-4-902, MCA, the Attorney General is given discretionary authority to appoint qualified persons as special peace officers at the request of class I railroad corporations (as defined in 49 C.F.R. § 1201). The authority of these officers is limited by section 44-4-903, MCA:

A person appointed and sworn as a special peace officer shall when on duty have the power and authority of a peace officer but may exercise such power and authority only in the protection of the property of the class I railroad corporation employing him.

As used in the Montana Code Annotated, a peace officer is "any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority." §§ 1-1-207, 46-1-201(8), MCA.

Following the plain meaning of the statutes cited above, I conclude that special peace officers of class I railroads are excepted from the penalties described in section 45-8-316, MCA, but only to the extent permitted by section 44-4-903, MCA. In other words, special peace officers for class I railroads are permitted to carry concealed weapons, "but may exercise such power and authority only [when on duty and] in the protection of the property of the class I railroad corporation employing him." § 44-4-903, MCA. If a special peace officer is interested in carrying a concealed weapon beyond the scope authorized in section 44-4-903, MCA, he must obtain a Montana

district court judge's authorization described by sections 45-8-317(6) and 45-8-319, MCA.

THEREFORE, IT IS MY OPINION:

Special peace officers of a class I railroad are exempt from the prohibition against concealed weapons set out in section 45-8-316, MCA, but they may carry a concealed weapon only when on duty and when necessary for the protection of the property of the class I railroad employing the officer. The special peace officer must follow the permit procedure of section 45-8-319, MCA, in order to carry a concealed weapon at any other time.

Sincerely,

MARC RACICOT
Attorney General