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Opinion No. 05-029

Law Enforcement Officers Safety Act of 2004

QUESTIONS

1. Do part-time and reserve police officers in Tennessee meet the definition of “qualified law enforcement officer[s]” in the Law Enforcement Officers Safety Act of 2004?
2. Can an agency prohibit their part-time and reserve police officers from carrying firearms off duty and thus preclude them from the benefits of the Law Enforcement Officers Safety Act of 2004?

OPINIONS

1. Part-time or reserve status does not disqualify officers from being considered qualified law enforcement officers for the purpose of the Law Enforcement Officers Safety Act of 2004.
2. An agency can prohibit the off-duty carrying of firearms by part-time or reserve police officers. If officers are not authorized by their agency to carry a firearm off duty, then they are arguably not entitled to the protection of the Law Enforcement Officers Safety Act of 2004.

ANALYSIS

The Law Enforcement Officers Safety Act of 2004 exempts qualified law enforcement officers from state laws prohibiting the carrying of concealed firearms under certain circumstances. “Qualified law enforcement officer” is defined as an employee of a governmental agency who

- (1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest;
- (2) is authorized by the agency to carry a firearm;
- (3) is not the subject of any disciplinary action by the agency;
- (4) meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;

- (5) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- (6) is not prohibited by Federal law from receiving a firearm.

18 U.S.C. §926B.

All persons employed or utilized as part-time or reserve police officers in Tennessee after January 1, 1989, must meet the qualifications of Tenn. Code Ann. §38-8-106. Part-time and/or reserve officers are defined as persons “employed by any municipality or any political subdivision of the state of Tennessee whose primary responsibility is to support the full-time police officer in the prevention and detection of crime, apprehension of offenders, and assisting in the prosecution of offenders for appropriate remuneration in measure with specifically assigned duties and/or job description.” Tenn. Code Ann. §38-8-101(2).

The Law Enforcement Officers Safety Act requires employment by a governmental agency. As a general rule, persons who are not compensated for their services are not considered employees. Tenn. Code Ann. § 38-8-101(2) distinguishes between part-time and reserve police officers employed for remuneration from special deputies who are defined as volunteers. Part-time and reserve officers employed as defined by Tenn. Code Ann. §38-8-106 would be considered employed for the purpose of the Law Enforcement Officers Safety Act.

The Law Enforcement Officers Safety Act is not limited to full-time, as opposed to part-time or reserve, employees. Part-time or reserve status does not disqualify officers from being considered qualified law enforcement officers for the purpose of the Law Enforcement Officers Safety Act of 2004.

In order to qualify for the benefits of the Law Enforcement Officers Safety Act, officers must be authorized by their agency to carry a firearm. The question posed is whether the agency can prohibit the off-duty carrying of firearms by part-time or reserve police officers. The Act is silent on whether the authorization must extend to the off-duty carrying of firearms.¹ The Act does not purport to restrict an agency’s right to control the conduct of its own employees. An agency can prohibit the off-duty carrying of firearms by part-time or reserve police officers as a condition of employment. It is an open question whether officers not authorized by their agency to carry a firearm off duty are entitled to the benefits of the Law Enforcement Officers Safety Act of 2004.

¹Under Tennessee law full time police officers may carry firearms at all times and in all places within Tennessee, on-duty or off-duty. Tenn. Code Ann. §39-17-1350.

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