

LETTER OPINION
95-L-159

July 18, 1995

Mr. John Goff
Cass County State's Attorney
Box 2806
Fargo, ND 58108-2806

Dear Mr. Goff:

Thank you for your letter concerning the authority of a state's attorney to employ licensed peace officers as investigators.

My review of North Dakota statutes fails to disclose any provision prohibiting a state's attorney from employing licensed peace officers as investigators. Such employment, however, would have to be authorized by the Board of County Commissioners. N.D.C.C. §§ 11-10-11, 11-11-11. These investigators would be county employees within the state's attorney's office.

The underlying issue presented by your inquiry relates to the authority that these investigators would possess when performing their duties. In other words, whether state's attorney's investigators, who are licensed by the Peace Officer Standards and Training Board, would possess full peace officer powers.

North Dakota statutes and court rules have defined certain powers possessed by peace officers. Although no statutory restrictions may exist for hiring an investigator, some limits on the scope of an investigator's authority are present in these statutes and court rules.

N.D.R. Crim. P. 41(c)(1) requires that a search warrant be directed to a "peace officer" authorized to enforce or assist in enforcing any law of this state. N.D.R. Crim. P. 4(c)(1) and 9(c)(1) also require that an arrest warrant be directed to peace officers of the state and shall be executed only by a peace officer. These restrictions do not apply to the service of a summons.

N.D.C.C. § 29-30.3-04(1) authorizes a "peace officer" to arrest a person without a warrant upon probable cause to believe the person is the subject of another state's arrest warrant. N.D.C.C. ch. 29-06 authorizes arrests by peace officers with or without a warrant or by a private person. Numerous references are made in this chapter to

Mr. John Goff
July 18, 1995
Page 2

the duties and responsibilities of peace officers in making arrests and taking into custody persons arrested by a private person. N.D.C.C. § 29-06-15 does authorize certain warrantless arrests by a "law enforcement officer." However, considering N.D.C.C. ch. 29-06 as a whole, and specifically N.D.C.C. § 29-06-02, which authorizes warrantless arrests by peace officers, it is my opinion that the term "law enforcement officer" in N.D.C.C. § 29-06-15(1) is intended to have the same meaning as the term "peace officer" in that chapter.

In addition to these statutes and court rules, N.D.C.C. § 12.1-05-07 limits the authority to use deadly force when making an arrest or preventing an escape, other than from a detention facility, to "a public servant authorized to effect arrests or prevent escapes."

The term "peace officer" is not defined in the North Dakota Rules of Criminal Procedure or N.D.C.C. chs. 29-06 or 29-30.3. This term is defined, however, in N.D.C.C. § 29-05-10. That section provides:

A peace officer is a sheriff of a county or his deputy, or a coroner, marshal, or policeman of a township or city, or any state or federal law enforcement officer.

This general definition of "peace officer" is not limited to N.D.C.C. ch. 29-05 or N.D.C.C. tit. 29, but also applies to uses of that term in other state laws unless a contrary intention plainly appears. N.D.C.C. § 1-01-09. Therefore, the general definition of a "peace officer" found in N.D.C.C. § 29-05-10 applies to the above-cited statutes and court rules. In other words, only those persons who come within that definition will be authorized to execute search warrants, effect arrests, or use deadly force to make an arrest or prevent an escape.

If a state's attorney's investigator is not a deputy, policeman, or state or federal law enforcement officer on assignment to a state's attorney office, it is my opinion that the investigator would not be a "peace officer" as defined in N.D.C.C. § 29-05-10. As a result, a state's attorney's investigator would not have the authority to act as a "peace officer" in the execution of arrest and search warrants and, as noted previously, may not be authorized to use deadly force within N.D.C.C. § 12.1-05-07.

This is not to say, however, that the state's attorney's investigator could not take witness statements, conduct investigations, or perform other duties as assigned by the state's attorney. In addition, an investigator employed by, or under contract with, a county and engaged in the performance of official duties would not be subject to the licensing requirements set forth in N.D.C.C. ch. 43-30 or by the Private Investigative and Security Board.

Mr. John Goff
July 18, 1995
Page 3

Other statutes may define the terms "law enforcement officer," "peace officer," or "police officer" more broadly than the general definition of "peace officer" in N.D.C.C. § 29-05-10. However, those definitions are limited to either the specific title or chapter in which they are found. See N.D.C.C. §§ 12-63-01(4), 12.1-01-04(17), 39-01-01(53), 62.1-01-01(7). Your letter also refers to N.D.C.C. § 44-08-16. This section defines a "law enforcement officer" as any "sheriff, sheriff's deputy, police chief, policeman, fireman, and any investigator or detective employed by a political subdivision on a salaried basis to perform police duties." However, N.D.C.C. § 44-08-16 specifically limits that definition to its use in N.D.C.C. § 44-08-17, which authorizes a political subdivision to purchase insurance on the life a law enforcement officer. This definition is limited solely to that section and has no application elsewhere in the North Dakota Century Code.

N.D.C.C. § 44-04-06, also mentioned in your letter, relates to a duty of a state's attorney, assistant state's attorney, sheriff, deputy sheriff, or peace officer to investigate and seek evidence of any violation of the liquor, gambling, cigarette, snuf, poolhall, bawdyhouse, prostitution, white slave, or habit-forming drug laws of North Dakota. This statute only imposes a duty upon these listed officials to investigate and report the violations and does not create any independent authority of a state's attorney to hire an investigator vested with full peace officer powers and responsibilities.

In summary, absent legislative change, a state's attorney's investigator who has not been deputized by the county sheriff, or who is not a "peace officer" within N.D.C.C. § 29-05-10 on assignment to a state's attorney's office, will not possess the authority to execute arrest or search warrants or come within the deadly force provision of N.D.C.C. § 12.1-05-07(2)(d). Although a state's attorney may hire an investigator as a county employee if authorized by the county commission, the investigator will not be vested with full peace officer powers even though that investigator may possess a peace officer license from the Peace Officer Standards and Training Board.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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