

Classification of town marshal

Number: INFORMAL

Date: January 26, 2000

The Honorable Alfred Lawson, Jr.
Representative, District 8
311 House Office Building
Tallahassee, Florida 32399-1300

RE: LAW ENFORCEMENT OFFICERS--MUNICIPALITIES--MARSHALS--whether town marshal is a law enforcement officer. ss. 943.10, 943.13 and 790.001(8), Fla. Stat.

Dear Representative Lawson:

This is in response to your request for comment upon the law enforcement authority of a town marshal. Specifically, the question has arisen whether a town marshal is a law enforcement officer as defined by Florida law and whether the marshal has the authority to enforce the Uniform Traffic Code, Chapter 316, Florida Statutes, pursuant to section 901.15, Florida Statutes.

The materials provided with your letter indicate that the City of Bristol's charter, in Article 87, confers the power of arrest upon the town marshal. Absent further information regarding the marshal's authority to bear arms or enforce the traffic laws of this state as those powers may have been vested by the city upon the marshal, this office is unable to offer a conclusive opinion as to whether the marshal is a law enforcement officer for those purposes. In an effort to be of assistance, however, the following general observations are made.

The term "law enforcement officer" is defined under various statutes for various purposes.[1] Pursuant to the "Department of Law Enforcement Act,"[2] a law enforcement officer is defined as

"any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. . . ."[3]

Minimum qualifications for employment or appointment as a full-time, part-time, or auxiliary law enforcement officer on or after October 1, 1984, require a person so engaged to:

- "(1) Be at least 19 years of age.
- (2) Be a citizen of the United States, notwithstanding any law of the state to the contrary.
- (3) Be a high school graduate or its "equivalent" as the commission has defined the term by rule.
- (4) Not have been convicted of any felony or of a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States. . . .
- (5) Have documentation of his or her processed fingerprints on file with the employing agency . . .

- . . .
- (6) Have passed a physical examination by a licensed physician, based on specifications established by the commission.
 - (7) Have a good moral character as determined by a background investigation under procedures established by the commission.
 - (8) Execute and submit to the employing agency . . . an affidavit-of-applicant form, adopted by the commission, attesting to his or her compliance with subsections (1)-(7). . . .
 - (9) Complete a commission-approved basic recruit training program for the applicable criminal justice discipline, unless exempt under this subsection
 - (10) Achieve an acceptable score on the officer certification examination for the applicable criminal justice discipline.
 - (11) Comply with the continuing training or education requirements of s. 943.135."[4]

A determination of whether an individual who has been appointed or is employed as a town marshal is a law enforcement officer depends upon the powers that have been vested in that person and the purpose for which the powers are exercised. If the sovereign power has granted the marshal the power to bear arms and to arrest, and the primary responsibility of the official is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of this state, then the marshal would be considered a law enforcement officer for such purposes.

Thus, the classification of an individual as a law enforcement officer depends upon the powers and responsibilities that the municipality has bestowed on the official. For example, in Attorney General Opinion 76-172, this office concluded that airport guards or police appointed by the board of county commissioners under section 332.08(2), Florida Statutes, as peace officers certified by the police standards and training commission, are law enforcement officers. Further, in Attorney General Opinion 88-47, state attorney investigators, as statutorily designated law enforcement officers, were found to have statewide authority to make warrantless arrests pursuant to section 901.15(11), Florida Statutes.[5] The factual determination of an officer's primary responsibility, however, is one that must be made by the employing agency.[6]

I trust these comments will be helpful in resolving the questions that have been raised.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tls

[1] See, e.g., s. 790.001(8)(a), Fla. Stat., defining "law enforcement officer" for purposes of Ch. 790, Fla. Stat., to mean "[a]ll officers or employees of the United States or the State of Florida, or any agency, commission, department, board, division, municipality, or subdivision thereof, who have authority to make arrests," and s. 901.15(13), Fla. Stat., recognizing that a law enforcement officer may arrest a person without a warrant when he or she is employed by the State of Florida

as a law enforcement officer as defined in s. 943.10(1), Fla. Stat., and: he or she has reasonable belief that a felony involving violence has been or is being committed and the person to be arrested has committed or is committing the felony; while engaged in the exercise of state law enforcement duties, the officer reasonably believes that a felony has been or is being committed; or a felony warrant for the arrest has been issued and is being held for execution by another peace officer.

[2] Chapter 943, Fla. Stat.

[3] Section 943.10(1), Fla. Stat.

[4] Section 943.13, Fla. Stat.

[5] Section 27.255(1), Fla. Stat., provides that "[e]ach investigator employed on a full-time basis by a state attorney and each special investigator appointed by the state attorney pursuant to the provisions of s. 27.251 is hereby declared to be a law enforcement officer of the state and a conservator of the peace. . . ."

[6] See Op. Att'y Gen. Fla. 72-281 (1972) (employee classified by employing agency as a "public safety officer," "patrolman," or "sergeant" and whose primary responsibilities combine those associated with police protection and fire fighting, must fall within purview of the Fire Fighters Standards Council or the Police Standards Council, a factual determination to be made by the employing agency).