

LETTER OPINION
80-148

January 14, 1980 (OPINION)

Mr. Walter R. Hjelle
Commissioner
North Dakota State Highway Department
Capitol Grounds
Bismarck, North Dakota 58505

Dear Mr. Hjelle:

This is in reply to your letter of January 3, 1980, relative to a proposed firearms policy for truck regulatory officers. You state the following facts and questions:

In view of the attached opinions and that conclusion reached by Mr. Milhollen, I would ask your office for an opinion as to whether or not truck regulatory officers constitute peace officers for the purpose of carrying firearms. Secondly, I would ask you to review the 'Administrative Order Book-Section 'B' ' dealing with firearms, and ask you if it meets the current statutory requirements as to proficiency, training, etc.

At the present time, none of the truck regulatory officers carry firearms or any other type of weapon that would serve as protection under threatening circumstances. For some reason, we have experienced a series of incidents that have caused me great concern. We have had officers physically assaulted; their lives threatened; one patrol car forced off the highway by a semitractor trailer rig, with the car being demolished; and also had a patrol car damaged by shotgun fire.

To respond to the issue of whether truck regulatory officers are authorized to carry firearms, it is necessary to set forth those statutes which regulate the carrying of firearms by individuals in North Dakota.

12.1-26-05. CARRYING LOADED FIREARM IN VEHICLE - PENALTY. No person, other than a law enforcement officer as defined in section 12.1-01-04, shall be permitted to keep or carry a rifle or shotgun with cartridge in the chamber in the passenger compartment of any motor vehicle within any city in this state. Any person violating the provisions of this section shall be guilty of a class B misdemeanor.

* * *

62-01-05. CARRYING PISTOLS PROHIBITED - EXCEPTIONS. Except as otherwise provided in this section no person without a license shall carry a pistol, either openly or concealed, in any vehicle or on or about his person, save on his own land, in his own abode or fixed place of business, or on a target range. This prohibition, however, shall not apply to:

1. Marshals, sheriffs, prison or jail wardens or their regularly employed deputies, policemen, or other law enforcement officers of any state or political division thereof;
2. Members of the armed forces of the United States when on duty or when going to or from duty;
3. The members of the national guard, organized reserves, or state guard organizations, when on duty or going to or from duty;
4. Officers or employees of the United States duly authorized to carry a pistol;
5. Any person engaged in manufacturing, repairing, or dealing in pistols or the agent or representative of such person possessing, using, or carrying a pistol in the usual or ordinary course of such business;
6. Any common carrier; or
7. Any person permitted by law to possess a pistol while carrying such pistol unloaded and in a secure wrapper from the place of purchase to his home or place of business, or to a place of repair, or back to his home or place of business, or in moving from one place of abode or business to another.

* * *

62-03-01. CARRYING CONCEALED WEAPONS OR FIREARMS PROHIBITED. No person, other than a police officer, shall carry concealed about his person any of the following weapons or firearms unless they are carried in the prosecution of or to effect a lawful and legitimate purpose:

1. Any instrument or weapon of the kind usually known as a blackjack, slung shot, billy, sandclub, sandbag, bludgeon, metal knuckles, knife with a blade of five inches >12.7 centimeters! or more, switchblade knife of any length, mechanically opening knife of any length, or any sharp or dangerous weapon which may be employed in the attack or defense of a person.
2. Any gun or dangerous firearm whether the same is loaded or unloaded.

Each of these statutes outlines those conditions under which firearms may be kept or carried by a person. Those persons who violate these statutes are subject to criminal prosecution. However, each statute provides for a "law enforcement" exception to the prohibitions contained therein. In order to respond to your question concerning the carrying of firearms by truck regulatory officers, it is necessary to determine whether the truck regulatory officers fall within these "law enforcement" exceptions.

In examining section 12.1-26-05 it is noted that a "law enforcement officer" is exempted from the prohibition against the keeping or carrying of a rifle or shotgun with cartridge in the chamber in the passenger compartment of any motor vehicle. Section 12.1-01-04(18) sets forth the definition of a "law enforcement officer":

"Law enforcement officer" or "peace officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.

If a truck regulatory officer is to be included in the "law enforcement" exception of section 12.1-26-05, then he must be covered by the definition of a law enforcement officer as that term is defined under section 12.1-01-04(18). To determine this issue, we must look to section 24-01-13 as that statute provides the basic statutory authority for truck regulatory officers.

24-01-13. ENFORCEMENT OF HIGHWAY LAWS - VEHICLE SIZE AND WEIGHT CONTROLLED. The commissioner and each officer and inspector of the state highway department, designated by him, shall enforce the provisions of chapter 49-18, and shall have general police powers with respect to enforcement of all laws pertaining to the use of motor vehicles and trailers, other than passenger cars and motorcycles, upon the highways, roads and streets of this state and may:

1. Classify highways and enforce limitations as to weight and load of vehicles thereon as provided for under section 39-12-01.
2. Issue special written permits authorizing the operation of oversized or overweight vehicles as provided for under section 39-12-02.
3. Prohibit the operation, or may impose restrictions on vehicular use of highways during certain seasons of the year as provided for under section 39-12-03.

In the enforcement of all laws pertaining to the use of motor vehicles and trailers upon the highways, it is assumed here and throughout this opinion that such truck regulatory officers must engage in investigations. If this is a correct assumption, then it appears that a truck regulatory officer would constitute a "law enforcement officer" under title 12.1. Therefore, a truck regulatory officer would not be subject to criminal prosecution for the keeping or carrying of a rifle or shotgun with cartridge in the chamber in the passenger compartment of any motor vehicle in this state under section 12.1-26-05.

In examining section 62-01-05, it is apparent that the "law enforcement" exception is stated using the words "law enforcement officers". In section 62-03-01, the law enforcement exception is stated using the words "police officer". Nowhere in title 62 are either of these terms defined. In fact, only the term "law enforcement officer" is defined elsewhere in the Century Code (under

section 12.1-01-04(18)). A search for a statutory definition of the term "police officer" has been unsuccessful. The issue at this point is whether a truck regulatory officer constitutes a "law enforcement officer", as that term is used in section 62-01-05, and a "police officer", as that term is used in section 62-03-01.

Absent statutory definitions of these terms under title 62, this office is of the opinion that the definition of "law enforcement officer", as stated in section 12.1-01-04(18), should be applied to these terms. Although the definitions under section 12.1-01-04 are restricted as to their use under title 12.1, it would appear that this particular definition should be used in interpreting the "law enforcement" exceptions found in sections 62-01-05 and 62-03-01. To ignore these terms or to simply back away from an attempt to specify what is meant by these terms would only serve to cause confusion to those persons who attempt to enforce these statutes. Furthermore, it would appear to be illogical to allow a truck regulatory officer to carry a rifle or shotgun in a motor vehicle, in his capacity as a "law enforcement officer" under title 12.1, while refusing to allow the same officer to carry pistols, concealed weapons or firearms due to the lack of a definition of "law enforcement officers" and "police officer" under title 62.

In questioning the carrying of firearms by truck regulatory officers, your letter uses the term "peace officers". Section 29-05-10 sets forth the definition of a peace officer.

29-05-10. "PEACE OFFICER" DEFINED. A peace officer is a sheriff of a county or his deputy, or a coroner, constable, marshal, or policeman of a township or city.

Clearly, a truck regulatory officer does not constitute a "peace officer" as that term is defined by section 29-05-10. However, the laws of North Dakota dealing with the subject of the carrying of firearms, concealed weapons, and pistols by law enforcement officers do not use the term "peace officers". For that reason, we have chosen not to use the definition of "peace officer" in responding to your question.

The second question contained in your letter is a request for a review of the "Administrative Order Book-Section 'B'" dealing with firearms as to statutory requirements concerning training. The statutory training requirements you speak of are the Minimum Standards of Training Prior to Carrying a Sidearm as promulgated by the North Dakota Combined Law Enforcement Council pursuant to section 12-61-03(8) of the North Dakota Century Code. The Sidearm Safety and Proficiency Test, as outlined under Rule 18-03-01-03 of the Minimum Standards, and the training requirements of your Administrative Order Book do not appear to correspond. It is suggested that these Minimum Standards, a copy of which is enclosed with this opinion, be reviewed in the formulation of your firearms policy.

Sincerely,

ALLEN I. OLSON

Attorney General