



Arizona Peace Officer Standards and Training Board

2643 East University Drive Phoenix, Arizona 85034-6914 Phone (602) 223-2514

June 8, 2022

The Honorable Mark Brnovich
Arizona Attorney General
2005 N. Central Avenue
Phoenix, AZ 85004

Re: Request for Formal Legal Opinion

Attorney General Brnovich:

The Arizona Peace Officer Standards and Training Board, in an open meeting, on May 18, 2022, directed me to request a formal legal opinion from your office. At issue is, what is the legal authority, if any, granted to a Sheriff, to appoint an individual, to exercise the powers of a peace officer, without certification by the AZPOST Board?

More specifically the two questions are as follows:

- #1 Can a Chief Deputy of a county, who is not certified as a peace officer by the AZPOST Board, exercise the authority, and perform the duties of a peace officer? Or, does a noncertified Chief Deputy have no greater police powers than that of any citizen?
- #2 A.R.S. 11-441 enables a Sheriff to “command the aid of as many inhabitants of the county as the Sheriff deems necessary” and to request the “aid of volunteer posse”. When a Sheriff selects any person to aid the Sheriff, in this capacity, does the person exercise the authority of a peace officer or does the person have no greater authority than that of any citizen?

DISCUSSION

A.R.S. 41-1823(B) requires certification of most persons before they can exercise the powers of peace officers. Section B provides:

Except for agency heads duly elected as required by the constitution and persons given the authority of a peace officer pursuant to section 8-205, 11-572, 12-253, 13-916 or 22-131, no person may exercise the authority or perform the duties of a peace officer unless he is certified by the board pursuant to section 41-1822, subsection A, paragraph 3.

The intent of the legislature in requiring certification of peace officers was to protect public safety. As noted in a 1995 formal opinion from your office, “The potential for constitutional violations and actual injuries is extreme, which is why certification requires, among other things, the qualifications

The Honorable Mark Brnovich

June 8, 2022

Page 2

to include "physical, mental and moral fitness". Moreover, untrained, and inexperienced individuals, should not make arrests, conduct searches, or engage in the other duties required of true police officers." Opinion No. I95-009 (R95-07) (August 30, 1995); see also Opinion No. 70-24 (September 18, 1970) (the Attorney General opined that any title or position involving the use of the term "deputy sheriff" is required to be occupied by a properly trained and qualified peace officer).

The Arizona legislature, in its statutes, is clear that the authority of a peace officer to detain, arrest, use force, and conduct police investigations is distinct from that of a citizen. A peace officer, by statute, is authorized to read criminal history information, to conduct police investigations, and has arrest authority and use of force authorities specific to law enforcement. Some examples include a comparison of arrest by a peace officer (ARS 13-3883) with the arrest authority of a citizen (ARS 13-3884); another comparison concerns a peace officers authority to use physical and deadly force ARS 13-409, 410, ARS 13-3881 with that of a citizen. There are also a host of traffic laws in Title 28 which authorizes peace officers, and not citizens, to stop, and detain, for civil and traffic offenses.

Thank you for your consideration of this request.

A handwritten signature in black ink, appearing to read 'M. Giordano', with a stylized flourish at the end.

Matt Giordano
Executive Director