



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL  
ATTORNEY GENERAL

February 11, 1975

The Honorable Jackie W. St. Clair  
Commissioner  
Texas Department of Labor and  
Standards  
Box 12157, Capitol Station  
Austin, Texas 78711

Opinion No. H-522  
  
Re: Status of Department  
of Labor and Standards as  
Peace Officers.

Dear Commissioner St. Clair:

The Texas Department of Labor and Standards is successor to the Bureau of Labor Statistics. V. T. C. S. art. 5151a. One of its responsibilities, entrusted to you as Commissioner, is the enforcement of the Labor Agency Law (V. T. C. S. art. 5221a-5), regulating the business of procuring employees for employers of common or agricultural workers. Section 12 of the Act provides, in part:

The Commissioner of the [Texas Department of Labor and Standards] and his deputies or inspectors are hereby empowered to enforce the provisions of this Act, and shall have the authority of peace officers in making arrests of any person or persons who violate, in their presence, any of the provisions of this Act . . . .

You have asked us four questions with reference to this provision:

1. Is this designation of peace officer status still valid since the current definition of peace officer in article 2.12, Texas Code of Criminal Procedure does not specifically mention employees of the Texas Department of Labor and Standards?

2. Are the employees of this Department charged with the responsibility of enforcing this Act entitled to carry handguns when acting as peace officers without violating Section 46.02, Texas Penal Code?

3. Are these employees subject to the training requirements for peace officers set forth in Article 4413 (29aa), V. C. S., by the Texas Commission on Law Enforcement Officer Standards and Education?

4. Are those employees of this Department who are hired prior to September 1, 1970, exempt from these training requirements?

Article 5221a-5, section 12, V. T. C. S., quoted at the outset, does not expressly designate the commissioner, his deputies and inspectors as peace officers. Rather, it states that they "shall have the authority of peace officers in making arrests of any . . . persons who violate, in their presence, any of the provisions of this Act."

The Labor Agency Law is a licensing act, and the offenses proscribed by article 5221a-5 are misdemeanors punishable by fine only, and none is a breach of the peace. The offenses include acting as a labor agent without a license (sec. 6), allowing persons of bad character to remain on the premises, publishing false advertising, sending unsolicited applicants for employment to employers, furnishing a female for an immoral purpose, furnishing employment to children in violation of child labor laws, splitting fees, and failing to advise an applicant for employment of the existence of a lockout or strike. (Sec. 7C).

At the time the Labor Agency Law was first enacted in 1949, (Acts 1949, 51st Leg., ch. 234, p. 434,) the "authority of peace officers in making arrests" for violation of offenses of the type proscribed by the act in their presence was to sign a complaint and obtain a warrant for the arrest of the offender. Article 212 of the Code of Criminal Procedure of 1925 provided:

A peace officer or any other person, may, without warrant, arrest an offender when the offense is committed in his presence or within his view, if the offense is one classed as a felony, or as an offense against the public peace. (Emphasis added.)

If the offense was not a felony or breach of the peace, a warrant was necessary. The arrest of a person without a warrant is an unreasonable seizure of his person unless it is expressly authorized by statute. Heath v. Boyd, 175 S. W. 2d 214, 215 (Tex. Sup. 1943). Thus, the provision giving the commissioner, his deputies and inspectors the same authority as peace officers apparently only gave them authority to seek a warrant and to execute it. Then, as now, a magistrate could name a person other than a peace officer to execute a warrant. Code Crim. Proc. arts. 15.01, 15.14 formerly Code Crim. Proc. arts. 218, 231 (1925).

Then, as now, a private person specially appointed to execute criminal process was designated as a peace officer. Code Crim. Proc. art. 2.12 formerly Code Crim. Proc. art. 36 (1925).

A private person specially appointed to execute criminal process has the rights and privileges of a peace officer and is entitled to carry a pistol. Jenkins v. State, 82 S. W. 1036 (Tex. Crim. App. 1904). However, his authority terminates when the purpose of the appointment is accomplished. O'Neal v. State, 22 S. W. 25 (Tex. Crim. App. 1893).

Thus, the provision giving those designated to enforce the Labor Agency Law "the authority of peace officers" gave them little more authority, if any, than any private citizen would have had. That is, an inspector could make a complaint, obtain a warrant of arrest, arm himself, and then execute it under the then-existing provisions of the 1925 Code of Criminal Procedure, just as any peace officer or private citizen could.

However, in 1967, article 14.01 of the Code of Criminal Procedure, dealing with arrest without a warrant, (formerly Code Crim. Proc. art. 212 (1925) ), was amended by adding the following:

(b) A peace officer may arrest an offender without a warrant for any offense committed in his presence or within his view.

By virtue of this 1967 amendment to the Code of Criminal Procedure, the statute giving those enforcing the 1949 Labor Agency Law the same authority as a peace officer in making arrests was apparently given substance for the first time, and the commissioner, his deputies and inspectors were thereby authorized to arrest violators of the Labor Agency Law without a warrant, if the offense is committed in their presence.

It is clear that, by operation of the statutes quoted above, an arrest made without a warrant by the commissioner, his deputies or inspectors for a violation of the Labor Agency Law committed in their presence would be lawful, and would not constitute an unreasonable seizure.

However, it is not at all clear whether the statutes were intended to make the commissioner, his deputies and inspectors peace officers for other purposes, such as excepting them from the prohibition against carrying handguns. Section 46.02 of the Texas Penal Code makes it unlawful to carry a handgun. Excepted from its provisions by section 46.03 (1) is a person "in the actual discharge of his official duties as a peace officer . . . ."

Article 2.12 of the Code of Criminal Procedure lists "Who Are Peace Officers." Officers of state agencies are specifically included as follows:

The following are peace officers:

. . . .

(4) rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety;

. . . .

(6) law enforcement agents of the Alcoholic Beverage Commission;

(7) each member of an arson investigating unit of . . . the state;

. . . .

(9) officers commissioned by the governing board of any state institution of higher education, public junior college or the Texas State Technical Institution;

(10) officers commissioned by the Board of Control;

(11) game management officers commissioned by the Parks and Wildlife Commission . . . .

Article 2.12 of the Code of Criminal Procedure has been the subject of frequent amendments adding new categories to the list of peace officers, having been amended in 1967, 1971, and 1973. However, there is nothing to indicate that this is an exclusive listing or that it is intended to repeal other statutes specifically authorizing or designating certain persons as peace officers.

For example, section 8.05 of the Election Code provides that election judge "may appoint special peace officers to act as such during the election . . . ." A water control and conservation district "may employ its own peace officers." Water Code § 51.132. A statute provides that in enforcing the weights and measures laws, the Commission of Agriculture "his deputy, sealers or inspectors, and all local sealers and their deputies in the performance of their official duties, shall have the same power as peace officers in this State." V. T. C. S. art. 5710. Another statute provides that ". . . juvenile officers shall be vested with all the power and authority of police officers or sheriffs incident to their offices." V. T. C. S. art. 5142. See Attorney General Opinion O-7332 (1946).

While we do not believe that article 2.12 of the Code of Criminal Procedure is an exclusive listing of those who are peace officers, and other persons may be designated as peace officers or be given "the same power as" or "all the power and authority of" peace officers in separate statutes, we cannot ignore the fact that when the Legislature has intended to make certain persons peace officers it has spoken with clarity and specificity in doing so. On the other hand, the language of section 12 of article 522la-5, is not clear as to what extent, if any, it gives the commissioner, his deputies and inspectors authority to act as peace officers beyond making lawful arrests.

In the absence of a more definite designation of the commissioner, his deputies and inspectors as peace officers, or a more specific granting to them of "all" or "the same" power and authority of peace officers, we are not inclined to interpret the language of this statute as authorizing them to carry handguns in the regular course of their duties in inspecting for possible violations of the Labor Agency Act. See Attorney General Opinion H-228 (1974) (deputy game wardens not peace officers). In the words of the Texas Supreme Court, when faced with a statute of doubtful meaning: "if the Legislature had so intended, a few plain words would have expressed that intention . . . ." State v. Moore, 57 Tex. 307, 320 (1882).

Thus, the answer to your first question is that section 12 of article 522la-5 does not designate the commissioner, his deputies or inspectors as peace officers, but does authorize them to make valid arrests without warrant for violations of the Labor Agency Law committed in their presence. It follows that since these persons are not peace officers, they are not excepted from the prohibition against carrying handguns contained in article 46.02, of the Penal Code.

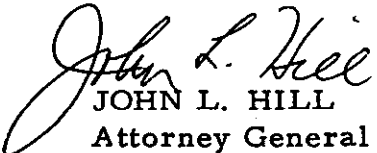
In view of our negative answer to your first question, it is not necessary to discuss your third and fourth questions concerning training for peace officers.

#### SUMMARY

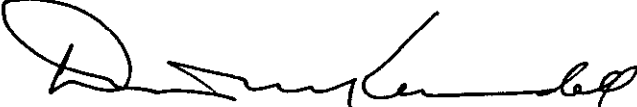
The Commissioner of the Department of  
Labor and Standards, his deputies or inspectors


have the authority to arrest for violations of the Labor Agency Law committed in their presence but are not made "peace officers" and they have no authority to carry handguns.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
DAVID M. KENDALL, First Assistant

  
C. ROBERT HEATH, Chairman  
Opinion Committee

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