



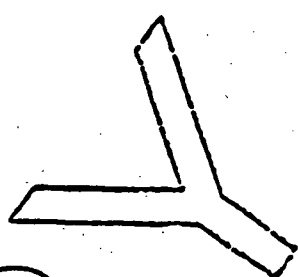
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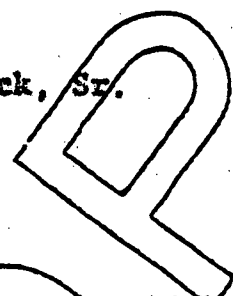
July 28, 1981

FILE NO. 81-022

**CRIMINAL LAW:
Probation Officers -
Unlawful Use of Weapons**



Honorable Robert H. Rennick, Sr.
State's Attorney
Stark County
Toulon, Illinois 61483



Dear Mr. Rennick:

I have your letter in which you inquire whether a probation officer is a "peace officer" as defined in section 2-13 of the Criminal Code of 1961 (Ill. Rev. Stat. 1979, ch. 38, par. 2-13), and thus exempted from the prohibitions set forth in subsections 24-1(a)(3), (4) and (10) of the Criminal Code of 1961 (Ill. Rev. Stat. 1979, ch. 38, pars. 24-1(a)(3), (4), (10)), which relate to the unlawful use of weapons. For the reasons hereinafter stated, it is my opinion that a probation officer is not a peace officer, and that he is therefore subject to the restrictions set forth in subsections 24-1(a)(3), (4) and (10) of the Criminal Code of 1961.

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Subsections 24-1(a)(3), (4) and (10) of the Criminal Code of 1961 provide that certain acts constitute the unlawful use of weapons:

"(a) A person commits the offense of unlawful use of weapons when he knowingly:

* * *

(3) Carries on or about his person or in any vehicle, a tear gas gun projector or bomb or any object containing noxious liquid gas or substance; or

(4) Carries concealed in any vehicle or concealed on or about his person except when on his land or in his own abode or fixed place of business any pistol, revolver, stun gun or taser or other firearm; or

* * *

(10) Carries or possesses in a vehicle or on or about his person within the corporate limits of a city, village or incorporated town, except when on his land or in his own abode or fixed place of business, any loaded pistol, revolver, stun gun or taser or other firearm.

A 'stun gun or taser', as used in this paragraph (a) means any device which is powered by electrical charging units, such as, batteries, and which, fires one or several barbs attached to a length of wire and which, upon hitting a human can send out current capable of disrupting the person's nervous system in such a manner as to render him incapable of normal functioning.

* * *

"Peace officers" are exempted from these provisions by section 24-2(a)(1) of the Criminal Code (Ill. Rev. Stat. 1979, ch. 38, par. 24-2(a)(1)):

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"(a) Subsections 24-1(a)(3), 24-1(a)(4) and 24-1(a)(10) do not apply to or affect any of the following:

(1) Peace officers or any person summoned by any such officers to assist in making arrests or preserving the peace while he is actually engaged in assisting such officer.

* * *

Section 2-.5 of the Criminal Code of 1961 provides that the definitions and descriptions contained in article 2 are controlling throughout the Criminal Code "except when a particular context clearly requires a different meaning" (Ill. Rev. Stat. 1979, ch. 38, par. 2-.5). Section 2-13 of the Code defines "Peace officer" as:

"'Peace officer' means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses."

In the case of Arrington v. City of Chicago (1970), 45 Ill. 2d 316, 318, the Supreme Court of Illinois held that jail guards are not peace officers. The court based its decision on the fact that the duties of jail guards are confined to a specific time and place. They have no general power to arrest and maintain order:

"

* * *

A peace officer is defined as 'any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses * * *' (Ill. Rev. Stat. 1969, ch. 38, par. 2-13.) He has the duty to maintain public order wherever he

may be; his duties are not confined to a specific time and place as are those of a prison guard. It is for this reason, and not because a peace officer may be subject to attack, that he is allowed to carry a weapon at all times.

* * *

In the case of People v. Perry (1975), 27 Ill. App. 3d 230, 234-235, the Illinois Appellate Court in deciding that private Chicago Housing Authority guards were not peace officers, offered the following definition of "peace officer":

* * *

We conclude that the term 'peace officer' as defined in section 2-13 and as interpreted by the supreme court in Arrington includes only those individuals who are required by their employment to give full time to the preservation of public order. In so deciding we do not mean to suggest that the definition of a peace officer is absolutely rigid and cannot be expanded by the legislature. * * *

* * *

"AN ACT providing for a system of probation, etc."
(Ill. Rev. Stat. 1979, ch. 38, par. 204-1 et seq.) provides for the appointment of probation officers and prescribes their duties and qualifications. Under section 12 of the Act (Ill. Rev. Stat. 1979, ch. 38, par. 204-4), the duties of a probation officer include:

(1) Investigating the case of any person to be placed on probation;

(2) Notifying the court of any previous conviction for criminal or previous probation of any defendant placed on or seeking probation;

(3) Preserving a complete and accurate record of cases investigated;

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(4) Taking charge of and watching over all persons placed on probation;

(5) Developing and operating programs of reasonable public service work for any persons placed on probation or supervision;

(6) In case a probationer moves to another county, alerting that county's probation officer of the probationer's move; and

(7) Performing such other duties as are provided for in the Act or by rules of court, and such incidental duties as implied from those expressly required.

Under section 11 of the Act (Ill. Rev. Stat. 1979, ch. 38, par. 204-3), a probation officer has limited arrest powers:

"Probation officers, in the exercise of their official duties, and sheriffs, constables and police officers, may, anywhere within the state, arrest on view any probationer found by them violating any of the conditions of his probation, and it shall be the duty of the officer making such arrest immediately to take said probationer before the court having jurisdiction over him for further order."


There is nothing in sections 11 or 12 of the Act which gives probation officers either the power or duty to maintain public order. Furthermore, a probation officer has no power to arrest except while in the exercise of his official duties and then, only when he actually views a probationer violating the conditions of his probation.

From the above discussion, it is clear that probation officers are not, by virtue of their office or public employ-

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ment, required to give full time to the preservation of public order. It is therefore my opinion that probation officers are not peace officers, and thus, are subject to the restrictions found in subsections 24-1(a)(3), (4) and (10).

Very truly yours,


ATTORNEY GENERAL