

MEMORANDUM

State of Alaska Department of Law - Criminal Division

To: The Honorable Frank Rue
Commissioner
Department of Fish and Game

Date: June 25, 1998

File No.: 663-98-0327

Tel. No.: 465-3428

Subject: Department of Fish and Game
Employees Are Not •Peace Officers•
under AS 14.43.085 or
AS 01.10.060

From: Dean J. Guaneli
Chief Assistant Attorney General
Criminal Division

You have asked whether a Department of Fish and Game employee who is designated by the Commissioner of Fish and Game as a •peace officer• under AS 16.05.150 is also a •peace officer• under AS 14.43.085, so that a dependent can obtain free tuition at state supported educational institutions if the employee dies in the line of duty. The short answer to this question is no.

The definition of •peace officer• used in AS 14.43.085 is the general statutory definition of •peace officer• that appears in AS 01.10.060(7). A previous opinion by this office interpreted this definition in AS 01.10.060 and specifically addressed the question of whether a Department of Fish and Game employee falls under this Title 1 definition.¹

The previous opinion of this office states that •peace officer• under Title 1 has a •restricted meaning and includes law enforcement officers having full law enforcement authority within a particular jurisdiction.• 1977 Op. Att'y Gen. No. 36 at 3 (Sept. 18). The opinion found a •legislative intent to include only publicly employed law enforcement officers who have full police duties . . . and who spend substantially all of their working hours performing those functions.• *Id.* at 4.

¹ In Title 1, the general provisions of the Alaska Statutes, AS 01.10.060(7) states: •In the laws of the state, unless the context otherwise requires . . . (7) "peace officer" means (A) an officer of the state troopers; (B) a member of the police force of a municipality; (C) a village public safety officer; (D) a United States marshal or deputy marshal; and (E) an officer whose duty it is to enforce and preserve the public peace.• The 1977 opinion interprets former AS 01.10.060(6), which was amended and renumbered in 1990 to current AS 01.10.060(7). The 1990 amendments did not, however, alter the specific provisions interpreted in the 1977 opinion.

The opinion also specifically discussed fish and game employees:

Law enforcement officers within the category •peace officers• as used in AS 01.10.060(6) include, but are not limited to, state troopers, fish and wildlife protection officers and police officers employed by police departments of incorporated municipalities. This definition, however, also clearly anticipates that other persons may be considered peace officers by its reference to •other officers whose duty it is to enforce and preserve the public peace.• Thus, with respect to the executive branch of state government, the term •peace officer• is not restricted to commissioned officers employed by the Department of Public Safety.

For illustration purposes, fish and game biologists employed by the Department of Fish and Game are peace officers and have the full panoply of concomitant duties, if they are so designated by the commissioner of fish and game under AS 16.05.150 and are presently engaged in enforcing AS 16.05 and the regulations promulgated thereunder. The unifying principle throughout the various statutes pertaining to peace officer status does not depend so much on the department of state government which employs the peace officer, but instead upon the range of his authority and the present nature of his duties. In the fish and game biologist example, the designated employee would not only have to be designated by the commissioner but also actively participate during substantially all of his working hours in law enforcement activities in order to be considered a peace officer in the fullest sense. Thus, although the commissioner of fish and game may designate employees with the powers of a peace officer, such individuals do not automatically obtain full peace officer status within the meaning of AS 01.10.060(6) unless they function almost exclusively as a fish and game protection officer.

In summary, it is our view that the statutory framework of the Alaska Statutes viewed as a whole contemplates that for any publicly employed law enforcement officer to be considered a peace officer within the meaning of AS 01.10.060(6), he or she must be empowered with a full range of police duties and authority and must be currently functioning on essentially a full-time basis in that role.

Id. at 4-6 (footnotes omitted).

We believe the advice provided in 1977 is still valid and we see no reason to overrule the opinion. Indeed, the 1977 opinion has been relied on recently in answering other questions about •peace officer• status. *See Peace Officer Status of FBI Agents*, 1994 Inf. Op. Atty. Gen., Jan. 1, No. 663-94-0246.

In your letter requesting this opinion, you indicated that fish and game employees designated as peace officers under AS 16.05.150 are involved in many other activities besides enforcing the law, such as conducting surveys and inventories of fish and wildlife. This leads us to conclude that designated fish and game employees are not peace officers for purposes of AS 01.10.060 because they do not spend substantially all of their working hours on law enforcement duties.² Therefore, their dependents do not qualify for free tuition under AS 14.43.085.³

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² If, in fact, a Department of Fish and Game employee does spend substantially all of his or her working hours performing police functions, that person may have to obtain the training required, and be certified as a •police officer,• by the Alaska Police Standards Council. *See* AS 18.65.130 - 18.65.290 and 13 AAC 85.010 - 85.900.

³ Because the facts presented to us in your request did not encompass employees who might spend substantially all of their working hours on law enforcement on a seasonal basis, we do not express an opinion whether dependents of such an employee would qualify for the free tuition benefit if the employee is killed in the line of duty during such a seasonal assignment of law enforcement duties.