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December 2, 1987

Kenneth D. Smith
State Brand Inspector
Department of Law Enforcement
2118 Airport Way
STATEHOUSE MAIL

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Certification of Brand Inspectors as Peace Officers and
the Requirement That They Attend the P.O.S.T. Academy

Dear Mr. Smith:

You have asked for our opinion as to whether brand inspectors should be considered peace officers and, if so, whether such inspectors are required to obtain P.O.S.T. certification which would include their successful completion of the P.O.S.T. Academy.

Conclusion

After reviewing this matter, it is our conclusion that state brand inspectors do qualify as peace officers in the state of Idaho, and as such, they are expected to obtain P.O.S.T. certification and complete attendance at the P.O.S.T. Academy in a timely manner.

Analysis

Within chapter 11 of title 25, Idaho Code, the legislature has outlined the duties of the state brand inspector and his deputies. Idaho Code § 25-1109 outlines those duties, as they relate to law enforcement, as follows:

Kenneth D. Smith
State Brand Inspector
December 2, 1987
Page 2

The state brand inspector and his deputies shall also have power and the duty to enforce all of the laws of the state for the identification, inspection and transportation of livestock and sheep and all laws of the state designed or intended to prevent the theft of livestock and sheep and shall have all of the authority and powers of peace officers vested in the director of the department of law enforcement, with general jurisdiction throughout the state.

Chapter 11 of title 25, Idaho Code, prescribes other duties of brand inspectors relating to the prevention and detection of certain crimes and the enforcement of penal laws. Fulfillment of these duties would necessarily require modern peace officer training in the laws of arrest, search and seizure, interviewing, preservation of evidence and the use of force. For example, brand inspectors may inspect any livestock in transit and impound such livestock when necessary. Idaho Code § 25-1405. Brand inspectors are required to enforce brand inspection laws and are authorized to arrest anyone found to be unlawfully in possession of such livestock. Idaho Code § 25-1414. In fact, chapters 11-15, 17, 19, 22 and 23 of title 25, Idaho Code, all contain penal laws relating to livestock which require enforcement by state brand inspectors.

We now turn to the question of whether brand inspectors must comply with the provisions of the Peace Officers Standards and Training Act. Idaho Code § 19-5101(d) defines peace officer as:

any employee of a police or law enforcement agency which is part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision.

It is evident that the duties of brand inspectors fall well within the definition of the term "peace officer" quoted above. These duties, by statute, primarily consist of the detection and prevention of crime, i.e., the theft of cattle and livestock. In accomplishing this, state brand inspectors, whose agency is within the department of law enforcement, are specifically responsible for enforcing penal laws within title 25 and title 18 of the Criminal Code.

Kenneth D. Smith
State Brand Inspector
December 2, 1987
Page 3

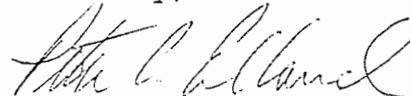
Once the conclusion is reached that Idaho state brand inspectors qualify as peace officers, it logically follows that such inspectors must be certified to act as peace officers within this state. Idaho Code §§ 19-5109(b) requires peace officers who are employed after January 1, 1974, to be P.O.S.T. certified within one year of employment. A peace officer who does not fulfill this requirement is statutorily prohibited from "exercising any power granted by any statute of this state to peace officers" Idaho Code § 19-5109(c). Moreover, P.O.S.T. rule 6,1,1 states:

Each and every officer must successfully complete the P.O.S.T. Basic Training Academy course within twelve (12) months from the date of their employment as a regularly employed officer.

This requirement of P.O.S.T. certification within one year of employment therefore applies to any brand inspector who was hired after January 1, 1974. Any inspector hired prior to that time is exempt from certification as set forth by Idaho Code § 19-5104(b).

In conclusion, we find that Idaho state brand inspectors qualify as peace officers under Idaho Code § 19-5101(d). Therefore, they must be properly certified in accordance with P.O.S.T. regulations, one of which requires their successful completion of the P.O.S.T. Academy within one year of the beginning of their employment.

Sincerely,



PETER C. ERBLAND
Deputy Attorney General
Chief, Criminal Law Division

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