



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL
BOISE 83720-1000

LARRY ECHOHAWK
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

TELECOPIER
(208) 334-2530

NATURAL RESOURCES
TELECOPIER
(208) 334-2690

May 20, 1991

The Honorable Lewis E. Pratt
Valley County Sheriff
Box 1078
Cascade, ID 83611

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

Re: City Police Officers Operating Outside of City Limits

Dear Sheriff Pratt:

You have asked for an opinion regarding whether or not a prosecuting attorney has the authority to authorize city police officers to investigate criminal activity outside of the city limits. You have further asked for an opinion as to whether the city officer acting at the behest of the prosecutor must be deputized as a deputy sheriff, and what power the city officer has regarding the making of arrests. You have also asked whether such a practice conflicts with Idaho Code § 31-2202, setting forth the duties of the county sheriff. Finally, you have requested an opinion concerning the issue of liability for misconduct on the part of the city officer who acts under the direction of the prosecutor.

These questions have arisen as a result of the Valley County Prosecuting Attorney's recent decision to utilize McCall city police officers in a criminal investigation outside the city limits, but within Valley County. The prosecutor has relied upon Idaho Code § 31-2227 for such a procedure. That section provides in pertinent part:

Irrespective of police powers vested by
statute in state, precinct, county, and

The Honorable Lewis E. Pratt
Valley County Sheriff
May 20, 1991
Page 2

municipal officers, it is hereby declared to be the policy of the state of Idaho that the primary duty of enforcing all the penal provisions of any and all statutes of this state, in any court, is vested in the sheriff and prosecuting attorney of each of the several counties. When in the judgment of such county officers, they need assistance from precinct and municipal peace officers within the county, they are authorized and directed to call for such and such local officers shall render such assistance.

This statute was passed in 1951. No prior statute of a similar nature was found in Idaho law. Because no legislative history exists from that time period, it is impossible to discern the precise reason the statute was passed.

It is clear that the statute grants to a prosecutor the power to enlist the help of city police officers whenever he or she feels it is necessary. When statutes are plain and unambiguous, they are to be accepted as found and are to be construed as they read. No construction of such statutes is necessary or even proper. Roe v. Hopper, 90 Idaho 22, 408 P.2d 161 (1965); Koon v. Bottolfsen, 68 Idaho 185, 191 P.2d 359 (1948). Therefore, it is the opinion of this author that the prosecuting attorney has the authority to request assistance in performing investigations under Idaho Code § 31-2227 without the approval, and even against the wishes, of the county sheriff. There is no requirement that a city officer must be deputized by the sheriff.

That a prosecuting attorney has the authority to investigate crime is beyond question. Clearly, the legislature intended to give prosecutors a dominant position in law enforcement. Such a position would be worthless without an investigative power. State v. Winne, 96 A.2d 63 (N.J. 1953); McKittrick v. Wymore, 132 S.W.2d 979 (Mo. 1939). Moreover, a prosecutor has an ethical duty to investigate each case in order to ensure that justice is done. ABA Standards for Criminal Justice, The Administration of Criminal Justice 88 (1974). Hence, if in a prosecutor's judgment he or she needs help in investigating a case, the legislature allows for the utilization of municipal police officers.

The Honorable Lewis E. Pratt
Valley County Sheriff
May 20, 1991
Page 3

While it is the function of the sheriff to gather evidence leading to an arrest, it is the function of the prosecutor to obtain a conviction where appropriate. Investigative help toward the achievement of that goal is not in conflict with the powers and duties of the sheriff. In this light, it can be seen that Idaho Code § 31-2227 does not conflict with Idaho Code § 31-2202, which sets forth the duties of the county sheriff. A statute is to be interpreted in such a manner as to harmonize and reconcile it with other statutes. Sampson v. Layton, 86 Idaho 453, 387 P.2d 883 (1963).

However, the fact that a prosecutor has the legal ability to enlist city officers in an investigation does not end the analysis. The practical effects of such a practice should be considered, because once the city officers agree to act on behalf of the county prosecutor an agency relationship is created. Thornton v. Budge, 74 Idaho 103, 257 P.2d 238 (1953).

First, it should be recognized that the prosecuting attorney's investigative function is limited, by definition, to investigations. Such activities as service of arrest warrants, transportation of prisoners and service of search warrants are to be carried out by peace officers under Idaho law. Prosecutor's investigators do not fit the definition of peace officers under Idaho Code § 19-5101. Nor are they certified as peace officers by the POST Council. Municipal peace officers may not act as such outside of the city limits unless they are in fresh pursuit. Idaho Code § 50-209. Hence, it can be readily seen that a prosecutor may not usurp the duties of the sheriff by the utilization of § 31-2227. A prosecutor must be ever mindful against blurring the important distinction between peace officers and investigators.

Further, it is important to remember that a prosecutor only has complete immunity from malicious prosecution and civil rights actions for activities engaged in as a judicial officer. When a prosecutor engages in an investigation, he or she only has qualified immunity, based upon a good faith standard. Imbler v. Pachtman, 424 U.S. 409, 47 L.Ed.2d 128, 96 S.Ct. 984 (1976); Maxfield v. Thomas, 557 F.Supp. 1123 (D.C. Idaho 1983). Therefore, a prosecutor (and the county commissioners) must be prepared to bear the financial burden of any actions taken by the city police officers acting under the prosecutor's control.

The Honorable Lewis E. Pratt
Valley County Sheriff
May 20, 1991
Page 4

Of course, any property damage or injury caused by the city officers will be held against the county as well. This is troubling, as the county will have no control over the training and discipline of city officers. Further, if city equipment is damaged, or a city police officer injured, the county will be responsible to the city and the officer.

Nor is the municipality relieved of responsibility for actions taken by city officers under the direction of the prosecutor. An agency relationship will still exist between the city and its employees, particularly when city uniforms, vehicles and equipment are used. Even if the officers were to act in plain clothes with county equipment on their own time, the city could still face a claim of negligent training of the officers.

In summary, a prosecuting attorney may enlist the help of city officers in the investigation of criminal activity outside of city limits. Although this statutory power is predicated upon "need," the statute leaves the decision as to when the need exists to the prosecutor. While it is certainly good practice to involve the sheriff in the decision making process, this is not required. The sheriff may not interfere with this decision on the ground that the city officers have not been deputized. The city officers may not go beyond investigative activities and act as if they were deputized peace officers.

Because of the various issues that may arise regarding liability, it is highly recommended that whenever possible the county commissioners and a representative of the city government be included in the decision as to whether to utilize § 31-2227.

Yours very truly,



MICHAEL KANE
Deputy Attorney General
Chief, Criminal Law Division

MK/mkf