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September 13, 2004

Honorable Thomas M. Smith
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Jailers — Detention Officers — Peace
Officers — Tuscaloosa County

A city or county jailer, detention officer, or corrections officer is a "peace officer" within the meaning of sections 13A-6-21 and 13A-6-22 of the Code of Alabama if the officer has the power to arrest and is required by the terms of employment as a primary duty to give his or her full time to the preservation of public order and the protection of life or property or the detection of crime. Adherence to APOST standards and the power to arrest are prerequisites to being considered a "peace officer."

Dear Mr. Smith:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

Is a city or county jailer, detention officer, or corrections officer a "peace officer" within the meaning of sections 13A-6-21 and 13A-6-22 of the Code of Alabama?

If the answer to Question One is "yes," then are APOST certification and/or the conference of arrest

powers a prerequisite to being considered a “peace officer”?

FACTS AND ANALYSIS

Sections 13A-6-21 and 13A-6-22 define assault in the second and third degree. As part of the definition of assault in the second degree, section 13A-6-21 includes persons who, “with intent to prevent a peace officer, *as defined in Section 36-21-60*, or emergency medical personnel or a firefighter from performing a lawful duty, he or she intends to cause physical injury and he or she causes physical injury to any person.” ALA. CODE § 13A-6-21 (Supp. 2003) (emphasis added). Section 13A-6-22 defines the crime of assault in the third degree to include persons who, “with intent to prevent a peace officer from performing a lawful duty, he causes physical injury to any person.” ALA. CODE § 13A-6-22 (Supp. 2003).

Section 36-21-60 of the Code defines a “peace officer” as follows:

A person duly sworn as a peace officer of the State of Alabama possessing powers of arrest and employed by the state, any political subdivision thereof, or any municipal corporation therein who is required by the terms of employment, whether the employment exists by virtue of election or appointment, to give full time to the preservation of public order and the protection of life or property or the detection of crime in the state. The term shall include enforcement officers for conservation laws, full-time coroners, and any pardon, parole, or probation officer, but shall not include any district attorney, assistant district attorney, assistant attorney general, commissioner, deputy commissioner, or any municipal inspector, county inspector, or state inspector.

ALA. CODE § 36-21-60(11) (2001).

As you point out in your request, the Alabama Supreme Court addressed the question of whether a jailer would be considered a “peace officer” under the peace officer immunity statute. In the case of *Howard v. City of Atmore*, 2004 WL 318482 (Ala. 2004), a jailer claimed immunity under section 6-5-338(a) of the Code of Alabama. That section provides as follows:

Every peace officer, except constables, who is employed or appointed pursuant to the Constitution or statutes of this state, whether appointed or employed as

such peace officer by the state or a county or municipality thereof, or by an agency or institution, corporate or otherwise, created pursuant to the Constitution or laws of this state and authorized by the Constitution or laws to appoint or employ police officers or other peace officers, and whose duties prescribed by law, or by the lawful terms of their employment or appointment, include the enforcement of, or the investigation and reporting of violations of, the criminal laws of this state, and who is empowered by the laws of this state to execute warrants, to arrest and to take into custody persons who violate, or who are lawfully charged by warrant, indictment, or other lawful process, with violations of, the criminal laws of this state, shall at all times be deemed to be officers of this state, and as such shall have immunity from tort liability arising out of his or her conduct in performance of any discretionary function within the line and scope of his or her law enforcement duties.

ALA. CODE § 6-5-338(a) (Supp. 2003).

In holding a jailer to be a “peace officer” within the meaning of the immunity statute, the *Howard* Court specifically focused on the language requiring only that the conduct arise out of the performance of one’s duties.

In interpreting criminal statutes, the statute must be sufficiently clear to give reasonable notice of the prohibited conduct and to apprise the judge and jury of the proper standards for determining guilt. *Bolin v. State*, 96 So. 2d 582 (Ala. 1957). The intent of the Legislature as it appears on the face of a criminal statute must be strictly construed as a person is not required to speculate as to the meaning of a statute. *Id.*

The statute defining second-degree assault specifically states that the crime applies only to peace officers defined by section 36-21-60. The statute for third-degree assault references only “peace officers.” The Alabama Supreme Court has stated that to qualify as a “peace officer,” as defined by section 36-21-60(11), a person must: (1) have the power to arrest and (2) be required by the terms of employment as the officer’s primary duty to give his or her full time to the preservation of public order and the protection of life or property or the detection of crime. *Moody v. Ingram*, 361 So. 2d 513 (Ala. 1978). Not all jailers or corrections officers in city and county jails have the power to arrest. If the jailer or correctional officer has the power to arrest, then he or she would be considered a “peace officer.”

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Turning to your second question, it is a prerequisite that the jailer or correctional officer have the power to arrest before he or she would be considered a "peace officer" within the meaning of the assault statutes. If the officer has the power to arrest, then he or she is also, by definition, a law enforcement officer. ALA. CODE § 36-21-40(4) (Supp. 2004). As such, the jailer or correctional officer is required to comply with APOST standards. ALA. CODE § 36-21-46 (a) (2001).

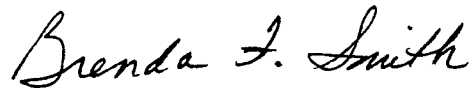
CONCLUSION

A city or county jailer, detention officer, or corrections officer is a "peace officer" within the meaning of sections 13A-6-21 and 13A-6-22 of the Code of Alabama if the officer has the power to arrest and is required by the terms of employment as a primary duty to give his or her full time to the preservation of public order and the protection of life or property or the detection of crime. Adherence to APOST standards and the power to arrest are prerequisites to being considered a "peace officer."

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ben Albritton of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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