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tutions. It authorizes grants and loans only for academic facilities that will be used for defined secular purposes and expressly prohibits their use for religious instruction training or worship." *Tilton, supra*, at 679-680.

This congressional purpose to avoid governmental sponsorship, financial aid or involvement in the religious activities of recipient institutions is similar to the legislative purpose underlying the exclusion of facilities used for sectarian instruction or religious worship in N.J.S.A. 18A:72A-3.

December 1, 1977

RALPH P. SHAW, *Chief Examiner
and Secretary*
Department of Civil Service
State and Montgomery Streets
Trenton, New Jersey 08625

FORMAL OPINION 1977—No. 22.

Dear Mr. Shaw:

You have asked for our advice as to the legitimate duties and responsibilities of special police officers appointed in municipalities throughout the state. In particular, you have asked whether special police may consistent with the civil service laws perform the duties and responsibilities of regular permanent members of a municipal police force. Although your inquiry is directed toward local civil service jurisdictions, the issue has equal application to both civil service and non-civil service communities.*

We have been informed that special police officers perform a variety of police related work. In many instances they are used to perform general police duties in a fashion similar to members of the regular force. Some municipalities use special police officers to perform only certain specified police responsibilities such as acting as a police dispatcher. Other municipalities use them for spectator or traffic control, either on a regular basis such as school or church crossing guards or in emergent situations. Finally, special police officers are often used to provide additional protection and security for banks, taverns, construction projects, railroad yards and amusement or public parks.

It is necessary to consider the statute authorizing the appointment of special police officers, civil service law and police training statutes in making a determination as to the appropriate responsibilities of a special police officer. N.J.S.A. 40A:14-146 provides for the appointment of special police officers. The statute authorizes the governing body of any municipality to appoint special police personnel for terms not to exceed one year. They are declared "... not (to) be members of the police force" and they may be removed without cause or hearing. Special police officers may be furnished badges and charged a fee for the issuance of a certificate of appointment. Special police officers serve under the supervision of the municipal police chief

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and they are required to conform with rules and regulations applicable to the conduct and decorum of regular police officers.

The statute contains little guidance as to the scope of duties to be performed by special police officers. However, it provides that "... they ... not be members of the police force ..." and that they not carry weapons during off-duty hours. This would appear to reflect a legislative determination that special police officers should not be equated with the regular permanent members of a municipal police force. This proposition was reinforced in *State v. Jones*, 4 N.J. Super 599 (Law Div. 1949), *rev'd* on other grounds, 4 N.J. 207 (1949). A challenge was brought to the appointment of Jones as a regular police officer on the ground that he exceeded the maximum age limitation established by law. The court upheld the appointment by characterizing a prior appointment as a special policeman to have been one of a regular policeman. The court determined that the duties performed by Jones were not consistent with the limited responsibilities allocated to a special police officer. The court stated:

"The purpose of the statute is to permit the appointment of special guards or watchmen, having police powers, for guarding banks, railroad yards, warehouses, parks, school crossings, and other places where extra or special protection is required, and also to permit the appointment of special policemen to assist temporarily the regular police force during an emergency or during unusual conditions." 4 N.J. Super. at 608.

The court further pointed out that the statute did not "provide any authority to appoint a 'special policeman' to perform those duties which come within the scope of the usual and ordinary duties that are performed regularly by members of a municipal police force." *Supra* at 608. The court therefore concluded that the appointment of special policemen to perform during normal conditions the same duties which are performed by the members of the regular police force would undermine the statutory tenure protection afforded to regular members of a municipal police force.

Implicit legislative restriction on the use of special police officers is also provided by civil service law and by police training legislation. Special police officers are, under the terms of civil service law, exempt from competitive testing requirements. N.J.S.A. 11:22-2(q). There is, accordingly, no comprehensive mechanism provided for testing the qualifications and capabilities of these persons. Furthermore, the Legislature has enacted legislation dealing with the training of law enforcement personnel. N.J.S.A. 52:17B-66 *et seq.* No person may be a permanent police officer prior to the completion of a training course at an approved police training school. N.J.S.A. 52:17B-68. There is, however, no mandatory training provided by statute for special police officers and their qualifications and training are solely at the discretion of the chief of police of the appointing municipality. Accordingly, there is a further legislative indication that special police officers should not be used to perform on a full or part-time basis the usual and ordinary responsibilities of a regular member of a municipal police department.

It is apparent that it is the underlying legislative purpose to allow for the use of special police officers to provide intermittent or temporary assistance to the regular police force during unusual or emergency circumstances. This would not by definition include responsibilities coincident with those of regular police personnel. The use of special police officers as dispatchers or for other limited police responsibilities on a

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regular basis would be impermissible. Similarly, special police officers may not be used for spectator and traffic control or for other police related activities in the absence of unusual or emergency circumstances which require assistance to the regular police department. On the other hand, the use of special police officers for intermittent or unusual crowd control or traffic direction or to provide extra security as a supplement to the regular police force in individual cases would be appropriate. An unusual condition would include an unpredictable event such as a natural disaster, riot or major fire. It would also include a predictable circumstance which requires extraordinary temporary assistance to the regular police force in individual cases, such as the use of special police during the summer at a resort community to handle the seasonal influx of visitors, to direct heavy traffic and handle large crowds at regularly scheduled sporting events and rock concerts.

Finally, before a special policeman may be appointed, the chief of police of a municipality shall ascertain whether the applicant is eligible and qualified. Every special policeman shall thereafter be under the supervision and direction of the chief of police of the municipality wherein he is appointed. N.J.S.A. 40A:4-146. Inherent in this statutory provision dealing with the appointment, supervision and direction of special policemen is the requirement that municipalities provide adequate training and experience in firearms and in general police duties commensurate with the hazards of general police work. A municipality is generally empowered to adopt and enforce such rules and regulations consistent with the laws of the State, as it may deem necessary for the preservation of the public safety or welfare. N.J.S.A. 40:48-2. Although the uniform legislative scheme for the mandatory training of law enforcement personnel is restricted to those given a permanent appointment, it is incumbent on a municipality to independently provide in the public's interest for satisfactory training of special police designated to assist and/or supplement the regular police department.

This obligation is particularly compelling in training for the safe and proper handling and use of firearms. In *McAndrew v. Mularchuk*, 33 N.J. 172 (1960) a reserve patrolman was appointed by the Borough of Keansburg to work at elections, parades and to engage in regular patrol activity on foot and in police cars. The defendant police officer was never given any education nor was he required to submit to any training with respect to the use of his revolver. As a result, a young man was seriously wounded in an altercation outside of a local night club. The New Jersey Supreme Court in passing on the responsibility of the municipality for the actions of the reserve patrolman expressed its concern with the lack of training in the use and handling of firearms:

“Loaded revolvers are dangerous instruments. Their potentiality for infliction of serious injury is such that the law has imposed a duty to employ ‘extraordinary’ care in their handling and use. . . . Municipal entities must take cognizance of the hazards of sidearms. That knowledge casts an obligation on them when they arm or sanction the arming of reserve patrolmen for active police duty. The obligation is to use care commensurate with the risk to see to it that such persons are adequately trained or experienced in the proper handling and use of the weapons they are to carry. If the official in general authority in the police department sends or permits a reserve officer to go out on police duty without such training or experience, his action is one of negligent commission— of active wrongdoing—

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and if an injury results from an unjustified or negligent shooting by that officer in the course of performance of his duty, which is chargeable to the lack of training or experience, the municipality is liable." *McAndrew* at 183-184.

See also: *Peer v. Newark*, 71 N.J. Super. 12 (App. Div. 1961) aff'd 36 N.J. 300 (1962). Accordingly, the court held that the reserve police officer was legally responsible for the wounding of the plaintiff. Since the administrative control of the department was in the chief of police, the borough also was found liable for authorizing the reserve police officer to carry a revolver on duty without adequate training in its handling or use.

Consequently, municipalities should arrange to provide adequate training and experience in the handling and use of firearms and in carrying out general police responsibilities to avoid a serious risk of liability for injury caused by an act or omission of its special police appointees. N.J.S.A. 59:2-2. Also, training of special policemen will generally improve the caliber of local law enforcement and serve to satisfy a municipal responsibility to protect the safety and welfare of its citizens in their respective communities.

In conclusion, therefore, special police officers should not be appointed by municipalities to perform the regular responsibilities of a municipal police department on a continuous basis or on a full or part-time basis. This would include general police work, police dispatching and routine traffic and crowd control. Special police, on the other hand, may be appointed to serve on a temporary or intermittent basis for emergent or unusual conditions, to supplement the regular police department for traffic and crowd control and/or to provide extra security at summer resorts, parades, sporting events, riots, natural disasters and for other similar purposes.

Very truly yours,

WILLIAM F. HYLAND

Attorney General

By THEODORE A. WINARD

Assistant Attorney General

* In an opinion to you dated June 23, 1976 we advised that special police officers may be used in limited circumstances such as the provision of protection to "... banks and other commercial establishments, parks and school crossings, and to generally assist the regular police during emergency or unusual conditions." This was supplemented by our opinion to you dated June 21, 1977 wherein it was concluded that special police officers may be used by resort communities to handle the unusual influx of visitors and security problems during the summer season. The present opinion will further expand on our previous advice and provide a more comprehensive and definitive opinion on this subject.

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January 13, 1978

RALPH P. SHAW, *Chief Examiner and
Secretary
Department of Civil Service
East State and Montgomery Streets
Trenton, New Jersey 08625*

FORMAL OPINION 1977—No. 22—SUPPLEMENT

Dear Mr. Shaw:

In *Formal Opinion No. 22 - 1977* issued on December 1, 1977 we advised that special police officers should not be appointed by municipalities to perform the regular responsibilities of a municipal police force on a continuous or a full or part time basis. Several questions have arisen as to the effect of our opinion on the use of school crossing guards and police radio dispatchers throughout the State.

A school crossing guard is a civilian municipal employee who is generally responsible for the regulation and supervision of the movement of school children at street intersections. These job responsibilities have been classified by the Department of Civil Service in the job title, School Traffic Guard. A police radio dispatcher is similarly a civilian municipal employee whose principal job is to receive and relay messages to police patrol vehicles or to fire, ambulance and other emergency units. These job responsibilities have also been classified by the Department of Civil Service in the title, Police Radio Dispatcher, in the classified service.

The conclusion of *Formal Opinion No. 22 - 1977* was that special police should be appointed by municipalities to assist or supplement the regular police force only on an intermittent or temporary basis under unusual and emergency circumstances. This would not include the assignment of special police on a regular basis to perform the routine duties of traffic control at school crossings or as a police radio dispatcher. These duties fall within the inherent authority of a regular police department where the exercise of police powers is indicated. In other instances, supervision of children at school crossings and radio dispatching functions may be performed by school crossing guards or radio dispatchers as a civilian nonpolice related activity either in the Civil Service job classification appropriate to those responsibilities or in comparable positions in non-Civil Service communities.

In conclusion, therefore, *Formal Opinion No. 22 - 1977* was designed to deal exclusively with the role of special police. Traffic control at school crossings and police radio dispatching may appropriately be carried out on a regular basis either by regular members of a municipal police force or by appointed civilian school crossing guards and radio dispatchers in both Civil Service and non-Civil Service communities.

Very truly yours,
WILLIAM F. HYLAND
Attorney General

By THEODORE A. WINARD
Assistant Attorney General