

FORMAL OPINION

December 1, 1977

COLONEL CLINTON PAGANO
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West Trenton, New Jersey 08625

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FORMAL OPINION 1977 — No. 24

Gentlemen:

You have asked for an opinion with respect to the authority of the Civil Defense Auxiliary Police to carry firearms without a permit at times other than periods of emergency. As you know, New Jersey law generally prohibits the carrying of firearms without a permit. *N.J.S.A.* 2A:151-41. Nevertheless, certain classes of persons such as regularly employed federal, state and local law enforcement officers, members of the armed forces while on duty and others as specified in *N.J.S.A.* 2A:151-43 are exempt from this prohibition. Also exempt is "any jailer, constable, railway police or any other peace officer, when in the discharge of his duties." *N.J.S.A.* 2A:151-43(f). It is our conclusion based upon a construction of the Civil Defense and Disaster Control Act and the regulations promulgated by the Governor pursuant to the statutory scheme that the Civil Defense Auxiliary Police are "peace officers" within the meaning of *N.J.S.A.* 2A:151-43(f). As such, they are statutorily authorized to carry firearms when acting within "the discharge of [their] duties."

Our inquiry must thus focus upon the parameters of the official duties of auxiliary police officers. The auxiliary police in New Jersey are a volunteer force organized under the Civil Defense and Disaster Control Act. *App.* A:9-30, *et seq.* As noted in a previous Attorney General's Opinion, "the Act is broadly drawn to provide a system of protection to public rescue operations and maintenance of law and order in the event of emergency or local disaster . . ." Formal Opinion - 1961 No. 4. Toward this end, it is evident that members of the auxiliary police must "be adequately trained to supplement local police officers in safeguarding against emergency disasters." *Id.* In order to accomplish the purpose of the Act, the Governor is statutorily empowered to "make such orders, rules and regulations as may be necessary [c]oncerning the organization, recruiting, training, conduct, duties, and powers" of the auxiliary police. *App.* A:9-45.

Under the authority of this provision, Governor Meyner issued a proclamation on September 23, 1954, prescribing rules and regulations for the development and training of Civil Defense Auxiliary Police. The proclamation declared that such officers have full police power during any emergency as defined in the statute.¹ More importantly for the purpose of this opinion, the proclamation stated that "within time limits and rules and regulations to be prescribed by the State Civil Defense Director and with the approval of the governing body of any municipality the auxiliary police . . . may be attached to the local police force for the purpose of training [and] during such period . . . shall have all the powers of peace officers, police officers and constables except as may otherwise be prescribed by the municipality."

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Thus, it is clear that auxiliary police act in the discharge of their official duties when engaged in emergency disaster control as defined by statute and during periods of actual training.

The remaining question concerns the proper delineation of such training periods. Quite obviously, "training must be bona fide and not abused as to extent." Formal Opinion 1961 - No. 4. A municipality may not substitute civil defense auxiliary police for local or special police officers. Extension of the period of training to accomplish such a result would be unlawful and inconsistent with the purposes underlying the Civil Defense and Disaster Control Act. Further, Directive No. 30 which was issued on November 7, 1966 states that "the length of time the auxiliary police may be attached to the local police for training shall be determined by the governing body and the Civil Defense Director subject to the approval of the Chief of Police and as set forth in the Civil Defense and Disaster Control Auxiliary Police Code." The same directive provides that "the arming of the auxiliary police with weapons during such periods of training shall be determined by the governing body of the municipality subject to the approval of the Chief of Police."

Until this time, no specific rules and regulations were established to govern the extent of training of auxiliary police. As noted, Directive No. 30 leaves the determination of the time limitations to the Civil Defense Director and the municipality. While it may be desirable to have a degree of flexibility to meet differing community needs, it is important that statewide rules and regulations governing training be adopted in order to insure that the purposes of the Civil Defense and Disaster Control Act are not circumvented. A comprehensive directive has thus been prepared and approved and will be formally promulgated. Under the directive, each municipality must submit an annual plan for the proposed activities and manpower utilization of auxiliary police for the coming year. The plan must specify the man hours to be spent by each auxiliary police officer in each particular activity. The State Civil Defense Director is to review each plan to insure that such activities and manpower assignments are in furtherance of bona fide training and in keeping with the spirit of the Attorney General's Formal Opinion 1961 - No. 4. In addition to the annual plan, each municipality is to submit an annual report summarizing manpower utilization for the preceding year. The State Civil Defense Director is to monitor these reports to insure compliance with the annual plan as approved by him. The directive further requires local police to investigate the background of candidates for auxiliary police officers. Thereafter, such candidates must successfully complete a Civil Defense Basic Training Course as prescribed in the directive. Before being authorized to participate in on-the-job training assignments while armed, the governing body and the Chief of Police of the municipality must request authorization from the State Civil Defense Director. Such requests are to be included in the annual plan and must specifically detail the activities in which the auxiliary police are to be armed and the duration of the proposed activities. Auxiliary police must successfully complete the firearms training course prescribed by the Police Training Commission in order to be authorized to carry a weapon. Thereafter, such auxiliary police must be qualified semi-annually by a competent and sanctioned police firearms instructor. The annual report is to include, by individual auxiliary police officer, the number of man hours spent on assigned duties while armed.

In sum, it is our opinion that auxiliary police officers may carry firearms during

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those periods when acting within the discharge of their official duties subject to the guidelines about to be promulgated.

Very truly yours,
WILLIAM F. HYLAND
Attorney General of New Jersey
By: PETER H. BRENNAN
Deputy Attorney General

1. *App. A:9-33.1* provides that:

- (1) "Disaster" shall mean any unusual incident resulting from natural or unnatural causes which endangers the health safety or resources of the residents of one or more municipalities of the State, and which is or may become too large in scope or unusual in type to be handled in its entirety by regular municipal operating services.
- (2) "Local disaster emergency" shall mean and include any disaster, or the imminence thereof, resulting from natural or unnatural causes other than enemy attack and limited to the extent that action by the Governor under this act is not required.
- (3) "War emergency" shall mean and include any disaster occurring anywhere within the State as the result of enemy attack or the imminent danger thereof.
- (4) "Emergency" shall mean and include "Disaster" and "war emergency" as above in this section defined.

December 1, 1977

HONORABLE BURRELL IVES HUMPHREYS
Prosecutor of Passaic County
Court House
Paterson, New Jersey 07505

FORMAL OPINION 1977—No. 25

Dear Prosecutor Humphreys:

You have requested an opinion with respect to three questions which have been posed concerning individuals employed by certain municipal police departments in Passaic County whose salaries are drawn from funds provided by the Federal Comprehensive Employment and Training Act of 1973 (CETA), 29 *U.S.C.A.* §801 *et seq.* The individuals in question have been hired as members of their respective police departments and perform the regular duties of a police officer. However, in accordance with the provisions of CETA, their employment status is not permanent.¹ You have asked whether the identification card badge or other identifying insignia of a CETA-paid individual must clearly distinguish his status from that of a regular and permanent member of the police force in accordance with Chapter 131 of the Laws of 1977, *N.J.S.A.* 40A:14-146.6. Additionally, you have inquired whether and under what circumstances a CETA employee is authorized to carry a firearm. Finally, you have asked whether CETA officers fall within the scope of the Police Training Act, *N.J.S.A.* 52:17B-66 *et seq.* It is our conclusion based upon a review of the pertinent