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Honorable Kenneth L. Joiner
County Administrator
Calhoun County Commission
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Peace Officers Standards & Training Act –
Peace Officers – Animal Control Officers –
Arrest – Weapons - Badges

To perform the acts of a law enforcement officer, an animal control officer that takes the oath of a deputy sheriff must be certified by the Alabama Peace Officers Standards and Training Commission (“APOSTC”).

Section 3-1-16 of the Code of Alabama does not require an animal control officer to recite the deputy sheriff’s oath. The decision regarding whether an animal control officer will be permitted to take the deputy sheriff’s oath is one that may only be determined by the governing authority. Animal control officers that are not commissioned by the governing body to be law enforcement officers do not have arrest powers other than those of a private citizen pursuant to section 15-10-7 of the Code of Alabama.

Only if a governing body commissions its animal control officers to be law enforcement officers may such officers attend APOSTC training.

Animal control officers that are not commissioned to be law enforcement officers should solicit the support of law enforcement officers in making arrests and issuing citations. Because animal control officers do not have statutory authority permitting the issuance of citations, noncommissioned

animal control officers are not authorized to issue citations. Further, noncommissioned animal control officers may not prepare Alabama incident offense reports.

Animal control officers that are not commissioned to be law enforcement officers may carry a sidearm as long as such officers follow the same procedures as are required of other citizens. Further, such officers may not have badges. Instead, noncommissioned animal control officers may wear uniforms that have an emblem affixed to the uniform showing that he or she is an animal control officer.

The authority of a commissioned animal control officer is limited to enforcing laws regarding animals. As discussed earlier, APOSTC certification is mandatory for law enforcement officers. Even though the authority of animal control officers is limited, commissioned animal control officers must become APOSTC certified to be able to competently and correctly perform various acts of law enforcement such as arrests.

An animal control officer that is not commissioned to become a law enforcement officer has the same authority as any other citizen to make arrests as outlined above in section 15-10-7 of the Code of Alabama.

Dear Mr. Joiner:

This opinion of the Attorney General is issued in response to your request on behalf of the Calhoun County Commission.

QUESTION ONE

If a person is employed by a county pursuant to section 3-1-16 of the Code of Alabama and takes an oath as required to be taken by a deputy, must he or she be certified by the Alabama Peace Officers Standards

and Training Commission pursuant to section 36-21-40(4) of the Code of Alabama and APOSTC Rules 650-x-8-.01 through 650-x-8-.04?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that Calhoun County has hired an animal control officer and an assistant animal control officer. Questions have arisen regarding certification requirements and the scope of authority for these officers.

Section 3-1-16 states as follows:

The county commissions of the respective counties of this state may employ a suitable person or persons who shall be charged specially with the duty of enforcing all laws for the prevention of cruelty to animals, and to fix the compensation of such officer or officers, which shall be paid in the same manner as other salaries of county employees are paid, and such officer or officers, upon taking the oath as required to be taken by deputy sheriffs, shall be vested with all powers now vested by law in deputy sheriffs.

ALA. CODE § 3-1-16 (1996) (emphasis added).

The statutes regarding the Alabama Peace Officers Standards and Training Commission are found at section 36-21-40, *et seq.* of the Code. ALA. CODE § 36-21-40 to 36-21-52 (2001). APOSTC is given the authority to promulgate bylaws, rules, and regulations to carry out their assigned functions and duties, which include, but are not limited to, the regulation and improvement of training for law enforcement officers. ALA. CODE § 36-21-45(3), (7), (8), (9), (11) (1991). Section 36-21-40(4) defines "law enforcement officers" as follows:

(4) LAW ENFORCEMENT OFFICER. A policeman, deputy sheriff, deputy constable and other official who has authority as such official to make arrests. The term includes Alabama state troopers or members of the state Department of Public Safety, enforcement officers of the Public Service Commission, and the Alabama Board of Corrections.

ALA. CODE § 36-21-40(4) (Supp. 2006).

Based on section 3-1-16 of the Code of Alabama, once an animal control officer takes the same oath as a deputy sheriff, an animal control officer is vested with all the powers vested by law in a deputy sheriff. A deputy sheriff, "in many respects, has powers coextensive with those of a sheriff." *Ward v. State*, 17 Ala. App. 170, 172, 82 So. 660, 662 (1919); *McGee v. Eastis*, 1831 WL 625 *2 (Ala. 1831). As such, deputy sheriffs have the authority, among other things, to ferret out crime, to apprehend, and to arrest criminals. ALA. CODE § 36-22-3(4) (1991).

Based on the definition of a law enforcement officer in section 36-21-40(4) of the Code of Alabama, an animal control officer does not become a law enforcement officer until he or she has authority to make arrests. An animal control officer does not have the power to arrest and does obtain the authority to make arrests until the county for which the officer works commissions that person to be a law enforcement officer. By becoming commissioned and taking the oath of a deputy sheriff, an animal control officer becomes an "official who has authority as such official to make arrests." ALA. CODE § 36-21-40(4) (2006).

Satisfactory completion of APOSTC certification standards and requirements is mandatory for persons applying for employment as law enforcement officers. ALA. Code § 36-21-46 (2001). An applicant may, however, be provisionally appointed for a maximum period of six months. *Id.*

Your request points to APOSTC Rules 650-x-.01 through 650-x-8-.01. These rules apparently established guidelines for persons exempt from the minimum standards requirements. Because these rules were repealed on September 29, 1983, these rules are inapplicable to the current matter.

CONCLUSION

To perform the acts of a law enforcement officer, an animal control officer that takes the oath of a deputy sheriff must be certified by APOSTC.

QUESTION TWO

May a person be employed by a county pursuant to section 3-1-16 of the Code of Alabama and not take an oath as required to be taken by a deputy, and thus not have arrest powers other than those of a private person pursuant to section 15-10-7 of the Code of Alabama?

FACTS AND ANALYSIS

Section 15-10-7 of the Code of Alabama specifies the conditions and instances in which a private person may arrest another person. That section states as follows:

(a) A private person may arrest another for any public offense:

(1) Committed in his presence;

(2) Where a felony has been committed, though not in his presence, by the person arrested; or

(3) Where a felony has been committed and he has reasonable cause to believe that the person arrested committed it.

(b) An arrest for felony may be made by a private person on any day and at any time.

(c) A private person must, at the time of the arrest, inform the person to be arrested of the cause thereof, except when such person is in the actual commission of an offense, or arrested on pursuit.

(d) If he is refused admittance, after notice of his intention, and the person to be arrested has committed a felony, he may break open an outer or inner door or window of a dwelling house.

(e) It is the duty of any private person, having arrested another for the commission of any public offense, to take him without unnecessary delay before a judge or magistrate, or to deliver him to some one of the officers specified in Section 15-10-1, who must forthwith take him before a judge or magistrate.

ALA. CODE § 15-10-7 (1996).

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000).

Section 3-1-16 of the Code of Alabama states that “upon taking the oath as required to be taken by deputy sheriffs, [animal control officers] shall be vested with all powers now vested by law in deputy sheriffs.” ALA. Code § 3-1-16 (1996). Accordingly, animal control officers are not vested with the powers of a deputy sheriff until the oath that is administered to deputy sheriffs is taken. Nothing in Section 3-1-16, however, requires the oath of deputy sheriffs to be taken by animal control officers. Each governing body is responsible for making the determination regarding whether its animal control officers will be commissioned as law enforcement officers, i.e., receive the deputy’s oath or regulatory officers/inspectors who do not receive the deputy’s oath.

CONCLUSION

Section 3-1-16 of the Code of Alabama does not require an animal control officer to recite the deputy sheriff’s oath. The decision regarding whether an animal control officer will be permitted to take the deputy sheriff’s oath is one that may only be determined by the governing authority. Animal control officers that are not commissioned by the governing body to be law enforcement officers do not have arrest powers other than those of a private citizen pursuant to section 15-10-7 of the Code of Alabama.

QUESTION THREE

If the answer to Question Two is in the affirmative, must the person who is employed by a county pursuant to section 3-1-16 of the Code of Alabama, but that does not take an oath as required to be taken by a deputy and does not have arrest powers other than those of a private person, be certified by the APOSTC?

FACTS AND ANALYSIS

As mentioned in Question One, APOSTC certification is only for law enforcement officers. A law enforcement officer is an officer who has the authority, as such official, to make arrests. ALA. CODE § 36-21-40(4) (2006).

As discussed in Question Two, animal control officers do not have the authority to choose whether to take the oath of a deputy sheriff. Instead, the decision regarding whether an animal control officer will be a commissioned law enforcement officer shall be made by the governing body. That governing body should clearly specify in the job description for such officers whether that person will be a commissioned law enforcement officer.

Likewise, if a governing body does not commission its animal control officers to be law enforcement officers, i.e., take the oath of deputy sheriffs, then such animal control officers may not receive APOSTC training.

CONCLUSION

Only if a governing body commissions its animal control officers to be law enforcement officers may such officers attend APOSTC training.

QUESTION FOUR

If Question Two is answered in the affirmative and it is determined that the person employed need not be certified by APOSTC, may the person write non-traffic uniform citations, and if so, what may the person do if someone issued a citation refuses to sign it showing that he or she agrees to appear in court, and may the person prepare Alabama incident offense reports?

FACTS AND ANALYSIS

There is no specific statutory authority that authorizes animal control officers to issue citations. This Office has determined that the issuance of citations is a function to be completed by a law enforcement officer. Opinion to Honorable J. David Stout, Mayor, City of Fort Payne, dated July 9, 1997, A.G. No. 97-00221. As such, any authority an animal control officer may have to issue citations would result from his or her authority as a law enforcement officer.

Your question further contemplates whether a noncommissioned animal control officer may write uniform non-traffic citations. A uniform non-traffic citation is a citation given for violations that do not constitute traffic violations. As stated earlier, only law enforcement officers or officers with specific statutory authority are authorized to issue citations. As such, a noncommissioned animal control officer may, like any other citizen, go before a district court magistrate, complete an affidavit, and cause a summons and complaint to be issued on the person committing the particular violation. *See, generally*, Opinion to Honorable Robert W. Ennis IV, City Attorney, City of Tuscaloosa, dated December 6, 2001, A.G. No. 2002-083.

Further, you question the authority of a noncommissioned officer to prepare an Alabama incident offense report. Incident offense reports are one of the

primary tools used by law enforcement agencies to: (1) record a police officer's activities and findings, (2) establish a permanent record of a case, (3) serve as a basis of prosecution, (4) explain how and where police officers and their equipment are used, (5) provide a basis for budget planning, (6) identify training needs, and (7) facilitate information exchanges between agencies. State of Ala. Criminal Justice Info. Ctr., *Alabama Law Enforcement Officers' Handbook* 20 (Aug. 2006). An officer is authorized to complete an incident offense report: (1) whenever police service or action is requested, (2) all complaints that involve a felony or a misdemeanor, (3) hit and run automobile accidents, and (4) any other situation designated by the head of the department. *Id.* Although law enforcement officers complete incident offense reports, citizens that either witness an offense or are a victim of an offense may inform a police officer of the incident, and this information would be recorded on an incident offense report. *Id.* at 32-41.

CONCLUSION

Animal control officers that are not commissioned to be law enforcement officers should solicit the support of law enforcement officers in making arrests and issuing citations. Because animal control officers do not have statutory authority permitting the issuance of citations, noncommissioned animal control officers are not authorized to issue citations. Further, noncommissioned animal control officers may not prepare Alabama incident offense reports.

QUESTION FIVE

If the answer to Question Two is in the affirmative and it is determined that the person employed need not be certified by APOSTC, may the person employed carry a sidearm in plain view, for the purpose of protecting himself or herself and others from dangerous animals and the purpose of euthanizing downed animals immediately, if necessary, and have a badge showing that he or she is an animal control officer or wear clothing with an emblem or wording showing that he or she is an animal control officer?

FACTS AND ANALYSIS

Noncommissioned animal control officers may carry a sidearm, if such officers follow the same procedures as any other citizen. Section 13A-11-73 prohibits a person from having a pistol in a car or concealed about his or her person without a license, except in instances where the person is located on his

or her land or in his or her abode or fixed place of business. ALA. CODE § 13A-11-73 (2006). A noncommissioned animal control officer who would not be traveling in a vehicle and has the authorization of the county commission may carry an unlicensed and unconcealed pistol in all places except where there are specific restrictions regarding the carrying of a firearm, i.e., airline passenger planes, sports stadiums, private property. ALA. CODE § 13A-11-75 (2006). This Office, however, notes that there may be liability issues that arise when county employees who are not commissioned officers carry sidearms.

Your question further contemplates whether noncommissioned officers may have a badge or wear clothing with an emblem. These items would contain wording showing that the person was an animal control officer. It has been a longstanding principle of this Office that agencies may provide uniforms that must be worn by employees. Opinion to Honorable Bob Childree, State Comptroller, dated April 23, 1999, A.G. No. 99-00177; Opinion to Honorable David S. Maxey, Attorney at Law, dated January 13, 1997, A.G. No. 97-00098; and Opinion to Ms. Caroline S. Cavanaugh, Director, Bureau of Publicity and Information, dated October 19, 1979, A.G. No. 80-00007. Badges, however, have been reserved for use by law enforcement personnel. *Childree* at 3. Regulatory and compliance officers may wear uniforms that have emblems affixed thereto if such an item is necessary for that person to safely and effectively carry out his or her duties. *Maxey* at 1.

CONCLUSION

Animal control officers that are not commissioned to be law enforcement officers may carry a sidearm, as long as such officers follow the same procedures as are required of other citizens. Further, such officers may not have badges. Instead, noncommissioned animal control officers may wear uniforms that have an emblem affixed to the uniform showing that he or she is an animal control officer.

QUESTION SIX

May a county employ a person whose duties are limited to enforcing laws concerning cruelty to animals, dogs running at large, rabid animals, and vicious animals in the person's employment contract, and if so, must the person be APOSTC certified since the person will not have general arrest powers that a deputy sheriff or other law enforcement officer has?

FACTS AND ANALYSIS

Conceivably, your question contemplates whether there can be a restriction on the authority of a law enforcement officer and whether such a restriction would negate the necessity for such an officer to receive APOSTC certification.

The authority for a county governing body to employ animal control officers comes from section 3-1-16 of the Code of Alabama. The authority of animal control officers is not unbridled. Instead, the statutory authority of such officers as prescribed in this Code section is limited to laws concerning animals. Given the plain language of the statute, the authority of a commissioned animal control officer that completes APOSTC certification is limited to the enforcement of laws dealing with animals.

CONCLUSION

The authority of a commissioned animal control officer is limited to enforcing laws regarding animals. As discussed earlier, APOSTC certification is mandatory for law enforcement officers. Even though the authority of animal control officers is limited, commissioned animal control officers must become APOSTC certified to be able to competently and correctly perform various acts of law enforcement such as arrests.

QUESTION SEVEN

If the answer to Question Six is in the affirmative and it is determined that the person employed need not be certified by APOSTC, what arrest powers may the person employed have, if any, other than those of a person who is not a law enforcement officer?

FACTS, ANALYSIS, AND CONCLUSION

As discussed previously, an animal control officer that is not commissioned to become a law enforcement officer has the same authority as any other citizen to make arrests as outlined above in section 15-10-7 of the Code of Alabama.

QUESTION EIGHT

If Question Six is answered in the affirmative and it is determined that the person employed need not

be certified by APOSTC, may the person write non-traffic uniform citations, and if so, what may the person do if someone issued a citation refuses to sign it showing that he or she agrees to appear in court, and may the person prepare Alabama incident offense reports?

FACTS, ANALYSIS, AND CONCLUSION

This issue was previously addressed in response to Question Four.

QUESTION NINE

If Question Six is answered in the affirmative and it is determined that the person employed need not be certified by APOSTC, may the person employed carry a sidearm in plain view, for the purposes of protecting himself or herself and others from dangerous animals and the purpose of euthanizing downed animals immediately, if necessary, and have a badge showing that he or she is an animal control officer or wear clothing with an emblem or wording that he or she is an animal control officer?

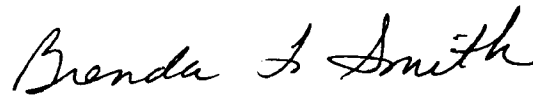
FACTS, ANALYSIS, AND CONCLUSION

This issue was previously addressed above in response to Question Five.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division