

OFFICIAL OPINION NO. 78-3, Scope of training under Chapter 23-3

January 6, 1979

Mr. Bernard Christenson, Executive Secretary

South Dakota Law Enforcement Officers

Standards and Training Commission

Criminal Justice Training Center

Pierre, South Dakota 57501

OFFICIAL OPINION NO. 78-3

**Scope of training under Chapter 23-3**

Dear Mr. Christenson:

You have requested an opinion from this office in regard to the following factual situation:

**FACTS:**

Several questions have come before the South Dakota Law Enforcement Officers Standards and Training Commission relative to the definitions of law enforcement officer in SDCL 23-3-27, and SDCL 22-1-2(20). In the definition of a law enforcement officer as contained in the new criminal code, it is specifically stated that security personnel of an airline or airport are law enforcement officers. The FAA says all security personnel at airports must have law enforcement authority with power of arrest.

There are also people who are responsible for detection and prevention of crime such as guards at the State Hospital at Yankton, the State Penitentiary at Sioux Falls, and the State Hospital at Redfield, and possibly others, who may fit within the above definitions.

At the present time, there are also some private security agencies operating in South Dakota under the assumption that they have law enforcement authority as they enforce city ordinances. For example, the Midwest Security handles the airport security at the Sioux Falls municipal airport.

It has now become more and more complex to decide who needs to be certified as a law

enforcement officer and who does not. It is requested that the Attorney General issue an opinion which would cover which people need to be certified under the guidelines of SDCL 23-3, and which definition of a law enforcement officer has priority under that law.

Based on the above facts, you ask the following questions:

QUESTIONS:

1. Which definition of law enforcement officer, SDCL 23-3-27, or SDCL 22-1-2, is controlling with respect to the issue of who needs to be certified under the Law Enforcement Officer Standards and Training Commission?
2. Do all individuals who have law enforcement authority have to be certified within their first year of employment under the provisions of SDCL 23-3?

IN RE QUESTION NO. 1:

SDCL 22-1-2(20) defines "law enforcement officer" as:

"Law enforcement officer," an officer or employee of the state or any of its political subdivisions or of the United States, or, while on duty, an agent or employee of a railroad or express company or security personnel of an airline or airport, who is responsible for the prevention or detection of crimes, for the enforcement of the criminal or highway traffic laws of the state, or for the supervision of confined persons convicted of a crime;

SDCL 23-3-27 defines a law enforcement officer as:

"Law enforcement officer" means any employee or officer of the state or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the criminal or highway traffic laws of this state.

It is my opinion that the definition of law enforcement officer in SDCL 23-3-27 is the definition which is controlling with respect to the training of law enforcement officers under Chapter 23-3. I do not believe that the Legislature intended by its definition of law enforcement officer in SDCL 22-1-2(20) to require that all such persons included within this broader definition of law enforcement officer be required to be certified under Chapter 23-3. SDCL 22-1-2(2) defines terms to be used in this title, that is, Title 22, and in other statutes which prescribe a penalty for a public offense. SDCL 23-3-27, and the requirements of Chapter 23-3, do not seem to me to fit within this defined scope and context of the

definitions in SDCL 22-1-2.

IN RE QUESTION NO.2:

With respect to your second question, it would be my opinion that employees or officers of the State or its political subdivisions who are responsible for the prevention and detection of crime and the enforcement of the criminal or highway traffic laws of the State, do have law enforcement authority and would need to be certified within their first year of employment. This does, in my opinion, include such people as guards at the State Hospital in Yankton, the State Penitentiary in Sioux Falls, the State Hospital in Redfield, and other similar situations. If, in fact, private security employees have been employed by a political subdivision to provide some law enforcement functions, then I believe that they would also fall within the purview of the provisions of Chapter 23-3. It is important to remember here, however, that it is essentially a factual determination that would need to be made in regard to specific situations as to whether or not an individual has been given law enforcement authority. If an individual has been given law enforcement authority by the State, or a political subdivision thereof, then it appears to me that the individual would be covered by SDCL 23-3-27 and the requirements of Chapter 23-3, relating to certification.

Respectfully submitted,

WILLIAM J. JANKLOW  
ATTORNEY GENERAL

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