



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

February 23, 1961

Mr. Joseph C. Ternus
County Attorney
Sinton, Texas

Opinion No. WW-997

Re: Whether members of an auxiliary police department, set up by city ordinance, and appointed by the Chief of Police with the approval of the City Commission, are authorized by law to carry pistols while on duty as an auxiliary police, and while off duty as such auxiliary police?

Dear Mr. Ternus:

The City of Taft has passed a city ordinance setting up an auxiliary police department. Such officers are subject to the orders of the Chief of Police of the City of Taft, and they work as city police officers as needed. They are appointed by the Chief of Police with the approval of the City Commission, and do not receive compensation which would amount to \$40 per month. You have asked the following questions concerning this situation:

1. Are the auxiliary police authorized by law to carry pistols under such circumstances?
2. Are the auxiliary police authorized to act as city police even though they are not receiving compensation in the amount of \$40 per month?

The Texas Penal Code reads as follows:

Article 483, Texas Penal Code:

"Whoever shall carry on or about his person, saddle or in his saddle bags, on in his portfolio or purse any pistol ... shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500) or by confinement in jail for not less than one (1) month nor more than one (1) year."

Article 484, Texas Penal Code:

"The preceding article shall not apply to ... any peace officer in the actual discharge of his official duty, ... nor to any deputy constable, or special policeman who receives a compen-

sation of forty dollars or more per month for his services as such officer, and who is appointed in conformity with the statutes authorizing such appointment; ..."

Article 484, Penal Code of Texas, shows the intention of the Legislature to prohibit special policemen from carrying pistols unless they receive forty dollars per month or more. Art. 995, Vernon's Texas Civil Statutes, governs the appointment of a special police force by the mayor. Such men are appointed by the mayor and take orders from the mayor.

The Auxiliary Police Department of the City of Taft is authorized by city ordinance and is subject to the orders of the Chief of Police of the City of Taft and its members are appointed by the Chief of Police with the approval of the City Commission. It is clear from the facts given that members of the Auxiliary Police Department of the City of Taft are not special police as contemplated by Art. 995, Vernon's Texas Civil Statutes. The members of the Auxiliary Police Department of the City of Taft are apparently appointed under authority of Art. 998, Vernon's Texas Civil Statutes, which provides for the appointment of police officers by city ordinance, fixing of the salary of police officers by the city council, fixing of the term of office and qualifications of police officers by ordinance and fixing the duties of police officers.

The members of the Auxiliary Police Department of the City of Taft are appointed in conformity with the laws governing the appointment of regular police officers and as such are entitled to all the rights and duties of any such police officer. Auxiliary police officers of an incorporated city or town are peace officers as that term is defined in Art. 36, Texas Code of Criminal Procedure, Attorney General's Opinion No. O-5621. The members of the Auxiliary Police Department of the City of Taft are authorized by law to carry pistols in the performance of their duty as peace officers in all instances where any other member of the regular police force would be authorized to carry a pistol.

There is no statute disqualifying a police officer because his salary is not up to a certain level and the fact that some of the policemen in the City of Taft receive less than \$40 per month is no reason to disqualify them as peace officers.

The Term "Auxiliary Police" is not defined or used in any statute of this State and the use of the term by the City of Taft to describe part of its regular police force should not be confused with the possible use of this term by other cities to describe its "Special" police force.

SUMMARY

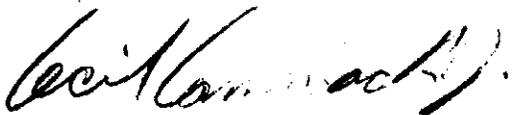
1. The members of the Auxiliary Police Depart-

ment of the City of Taft are authorized by law to carry pistols in the performance of their duties as peace officers in all instances where any other member of the regular police force of the City of Taft would be authorized to carry a pistol.

2. The members of the Auxiliary Police Department of the City of Taft are authorized to act as city police even though they are not receiving compensation in the amount of \$40 per month.

Yours very truly,

WILL WILSON
ATTORNEY GENERAL OF TEXAS

BY 
Cecil Cammack, Jr.
Assistant Attorney General

CC:br

APPROVED

OPINION COMMITTEE:

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REVIEWED FOR THE ATTORNEY GENERAL

BY: Morgan Nesbitt