



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

CRAWFORD C. MARTIN
ATTORNEY GENERAL

January 4, 1971

Honorable Robert R. Farmer
Assistant Criminal District
Attorney
Brazoria County Courthouse
Angleton, Texas 77515

Opinion No. M-767

Re: Whether or not members of Pearland (a city of less than 10,000) auxiliary police are "peace officers", whether or not city council has authority to appoint auxiliary police, whether or not such officers are subject to the requirements of Article 4413 (29aa).

Dear Mr. Farmer:

In your recent letter you ask the following questions:

1. Is an auxiliary officer appointed under Article 998, Vernon's Civil Statutes, * a peace officer pursuant to Article 4413 (29aa)?
2. Does the city council have the power to appoint auxiliary officers under Article 998?
3. Do said officers have to be certified as required under the provision of Article 4413 (29aa)?

In three separate opinions, Numbers O-5621 (1946), WW-997 (1961), and M-282 (1968), this office uniformly held that auxiliary police officers of a city of a population of less than 10,000 are "peace officers" as that term is used in these statutes. More directly in line with the questions you present is the discussion in Attorney General's Opinion No. M-282, supra, dealing with the authority of an auxiliary police officer to carry a pistol. The precise question there was as follows:

*All references to Articles are to Vernon's Civil Statutes.

- "1. May the City of Port Neches, not being covered by the Civil Service Act (Art. 1269m, V.A.C.S.) and having a population of less than 10,000 organize an auxiliary police force when the members thereof do not receive compensation, and may these members carry weapons in the performance of their duties?"

To this question Opinion M-282 replied in part as follows:

"In line with the Attorney General's Opinion No. WW-997 (1961), supra, which the Legislature has not seen fit to void in the seven years since its issuance, it is the opinion of this office that if the members of your proposed police force, by whatever name such force may be designated, are appointed under the provisions of, and in compliance with the requirements of Article 998, or similar home rule charter provisions, they will be peace officers and as such, while in the actual discharge of their official duties, will be, by the provisions of Article 484, specifically exempted from the prohibitions of Article 483; and accordingly, your first question is answered in the affirmative."

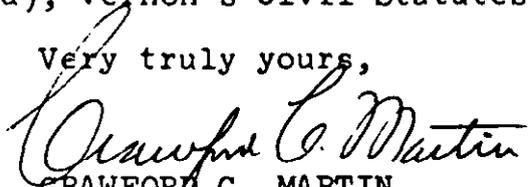
Adhering to the rationale of that opinion, your first question is answered in the affirmative. Similarly, it follows that the city council of Pearland does have the power to appoint auxiliary police officers under Article 998, Vernon's Civil Statutes.

While any peace officer, including an auxiliary officer, may be appointed on a temporary basis under the provisions of Section 6(b) of Article 4413 (29aa), Vernon's Civil Statutes, without qualifying under said Act, such temporary officer must qualify and be certified within one year of his appointment to maintain his status as a peace officer.

S U M M A R Y

The City Council of Pearland does have the authority to appoint auxiliary police pursuant to Article 998, Vernon's Civil Statutes; and such officers during their tenure are "peace officers" and must comply with the certification requirements of Article 4413 (29aa), Vernon's Civil Statutes.

Very truly yours,


CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by Max P. Flusche, Jr.
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Kerns Taylor, Chairman
W. E. Allen, Co-Chairman

Ray McGregor
Lonny Zwiener
John Reese
Gordon Cass

MEADE F. GRIFFIN
Staff Legal Assistant

ALFRED WALKER
Executive Assistant

NOLA WHITE
First Assistant Attorney General