



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTON  
ATTORNEY GENERAL**

February 1, 1989

Honorable Fred Toler  
Executive Director  
Texas Commission on Law  
Enforcement Officer  
Standards and Education  
1606 Headway Circle, Suite 100  
Austin, Texas 78754

LO-89-9

Dear Mr. Toler:

You ask the following questions:

(1) Is a 'sexton,' as that term is used in Article 912a-26, V.T.C.S., a 'peace officer,' as that term is used in Sec. 415.001(4) of the Government Code?

(2) Is a 'cemetery association,' as that term is used in Articles 912a-1 through 912a-34, V.T.C.S., a 'law enforcement agency,' as that term is used throughout Chapter 415 of the Government Code?

(3) Who is the 'chief administrative officer' of a cemetery, as that term is used in Sec. 415.012(c) of the Government Code?

Article 912a-26, V.T.C.S., provides:

The sexton, superintendent or other person in charge of a cemetery shall have, and is hereby granted, all and equal powers, functions, duties and authority granted by law to a police officer within the city in which such cemetery is located, or if such cemetery be located outside of a city, to a constable and/or sheriff of the county or counties wherein the same is situated, for

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the purpose of maintaining order, enforcing the rules and regulations of the cemetery association, the laws of the State and the ordinances of such city and he shall be charged with the enforcement thereof within the cemetery over which he has charge, and within such radius of the same as shall be necessary to protect the cemetery property.  
(Emphasis added.)

A review of chapter 415 of the Government Code reflects that the Texas Commission on Law Enforcement Officer Standards and Education is empowered to perform functions such as establishing minimum standards for licensing of peace officers, maintaining training programs and requiring weapons proficiency by persons seeking certification as peace officers.

Peace officer and public security officer are defined in section 415.001(4) of the Government Code<sup>1</sup> as follows:

'Peace officer,' for the purposes of this Act, means any person employed or appointed as a peace officer under law, including but not limited to a person so designated by Article 2.12, Code of Criminal Procedure, or by Section 51.212 or 51.214, Education Code.  
'Public security officer,' for the purposes of this Act, means any person employed or appointed as an armed security officer by the

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1. Acts 1987, 70th Legislature, chapter 758, section 2, House Bill 559, at 2711, purports to amend section 6(h) of article 4413(29aa) [now this section] without reference to the repeal of said article by Acts 1987, 70th Legislature, chapter 147, section 6(a), at 534.

Section 311.031(c) of the Government Code provides:

The repeal of a statute by a code does not affect an amendment, revision, or reenactment of the statute by the same legislature that enacted the code. The amendment, revision, or reenactment is preserved and given effect as part of the code provision that revised the statute so amended, revised, or reenacted.

state or any political subdivision of the state, but does not include security officers employed by private security companies who contract with the state or any political subdivision of the state to provide security services for the entity.'

A "sexton" is not one of the classifications of persons recognized as a peace officer under article 2.12 of the Code of Criminal Procedure nor does a "sexton" come within the security officers provisions of section 51.212 or 51.214 of the Education Code. However, section 415.001 does not limit peace officer to those defined in article 2.12 and sections 52.212 or 51.214, but also includes "any person employed or appointed as a peace officer under law."

While we are unable to find any statute delineating the duties of a "sexton," we can conclude that his primary responsibility in the instant context is the care and operation of the cemetery. "Sexton" is defined in Webster's Ninth New Collegiate Dictionary 1079 (1983) as "a church officer or employee who takes care of the church property and at some churches rings the bell for services and digs graves." We do not believe that a "sexton," as that term is used in articles 912a-26, is a "person employed or appointed as a peace officer under law" under Government Code, section 415.001.

You ask whether a "cemetery association" is a "law enforcement agency" as that term is used throughout chapter 415 of the Government Code.

Article 912a-1, V.T.C.S., defines "cemetery association" to mean "any corporation now or hereafter organized, or any association not operated for a profit, which is or shall be authorized by its articles to conduct any one or more or all of the businesses of a cemetery."

While "law enforcement agency" is not included within the terms defined in section 415.001 of the Government Code, we believe its use in other sections in chapter 415 furnishes an insight into its meaning in the context of this chapter.

Section 415.055 of the Government Code provides:

(a) The commission shall adopt rules to allow a law enforcement agency to petition for a provisional license for an officer if

the agency substantiates that it has a manpower shortage. (Emphasis added.)

Section 415.001 defines "officer" to mean "a peace officer or law enforcement officer."

Section 415.064 of the Government Code provides:

The commission may not adopt or enforce rules that set the date of appointment of a peace officer at a later date than the date that appears on employment records of the hiring law enforcement agency. (Emphasis added.)

While the use of the term "law enforcement agency" may very well have a broader meaning in chapter 415 of the Government Code than the one given such term in chapter 79 of the Human Resources Code relating to "missing children and missing persons," it is noted that "law enforcement agency" is defined in section 79.001 as follows:

(8) 'Law enforcement agency' means a police department of a city in this state, a sheriff of a county in this state, or the Department of Public Safety.

The duties imposed on a "cemetery association" as reflected by articles 912a-1 through 912a-34, V.T.C.S., relate to the acquisition of the property for a cemetery and its operation. The fact that a "sexton" is granted powers of a police officer, sheriff or constable within the cemetery and within the radius necessary to protect its property does not constitute a "cemetery association" a law enforcement agency as that term is used throughout chapter 415.

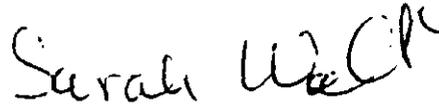
In your third question you ask who is the "chief administrative officer" of a cemetery as that term is used in section 415.012(c) of the Government Code. Section 415.012(c) provides:

The chief administrative officer of a law enforcement agency or licensed training school is the person responsible for compliance with the reporting standards and procedures prescribed by the commission.

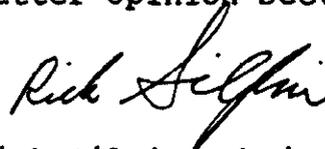
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Our conclusion that a "cemetery association" is not a law enforcement agency and the fact that a cemetery is clearly not a "licensed training school" obviates the necessity of answering your third question.

Very truly yours,



Sarah Woelk, Chief  
Letter Opinion Section



Rick Gilpin, Chairman  
Opinion Committee

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APPROVED: OPINION COMMITTEE

SW/RG/TGD/bc

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