



February 21, 2002

The Honorable Chris D. Prentice
Hale County Attorney
500 Broadway, Suite 80
Plainview, Texas 79072-8050

Opinion No. JC-0468

Re: Whether the designated representative of an authorized agent of the Texas Natural Resource Conservation Commission is a peace officer for purposes of sections 7.193 and 26.215 of the Texas Water Code (RQ-0438-JC)

Dear Mr. Prentice:

You have requested our opinion as to whether the designated representative of an authorized agent of the Texas Natural Resource Conservation Commission (the “TNRCC”) is a peace officer for purposes of sections 7.193 and 26.215 of the Texas Water Code. For the reasons set forth below, we conclude that he is not such a peace officer.

Chapter 366 of the Texas Health and Safety Code relates to on-site sewage disposal systems. The TNRCC is charged with administration of this chapter. *See* TEX. HEALTH & SAFETY CODE ANN. §§ 366.002(2), .011(2) (Vernon 2001 & Supp. 2002). Section 366.014 provides:

Subject to the requirements of Section 366.071(b), the commission or an authorized agent may designate a person to:

- (1) review permit applications, site evaluations, or planning materials; or
- (2) inspect on-site sewage disposal systems.

Id. § 366.014 (Vernon Supp. 2002). “Authorized agent” is defined as “a local governmental entity authorized by the commission to implement and enforce rules under this chapter.” *Id.* § 366.002(1). According to subsection 366.071(b), “[a] person designated by an authorized agent under Section 366.014 must hold a license issued by the commission under Chapter 37, Water Code.” *Id.* § 366.071(b). You indicate that Hale County is an “authorized agent” of the TNRCC for purposes of chapter 366 and that it has designated a county employee as its “designated representative” under

section 366.014. You ask whether that individual is empowered to act as a peace officer under sections 7.193 and 26.215 of the Water Code.¹

Chapter 7.193 of the Water Code provides:

For purposes of this subchapter, the authorized agents and employees of the Parks and Wildlife Department are peace officers. Those agents and employees are empowered to enforce this subchapter the same as any other peace officer and for that purpose have the powers and duties of peace officers assigned by Chapter 2, Code of Criminal Procedure.

TEX. WATER CODE ANN. § 7.193 (Vernon 2000).

Likewise, section 26.215 provides:

For purposes of this subchapter, the authorized agents and employees of the Parks and Wildlife Department are constituted peace officers. These agents and employees are empowered to enforce the provisions of this subchapter the same as any other peace officer, and for such purpose shall have the powers and duties of peace officers as set forth in the Code of Criminal Procedure, 1965, as amended.

Id. § 26.215.

In our opinion, it is evident that sections 7.193 and 26.215 of the Water Code apply only to “the authorized agents and employees of the Parks and Wildlife Department.” *See id.* §§ 7.193, 26.215. As we have noted, the individual of whom you inquire is a designated representative of an authorized agent—Hale County—of the TNRCC. Section 366.071, Health and Safety Code, requires that a “person designated by an authorized agent under Section 366.014 must hold a license issued by the commission under Chapter 37, Water Code.” TEX. HEALTH & SAFETY CODE ANN. § 366.071(b) (Vernon Supp. 2002). Chapter 37 of the Water Code relates to “[o]ccupational [l]icensing [a]nd [r]egistration” by the TNRCC. TEX. WATER CODE ANN. ch 37 (Vernon Supp. 2002). Section 37.003 provides that “[a] person may not engage in a business, occupation, or profession described by,” *inter alia*, section 366.071 of the Health and Safety Code, “unless the person holds the appropriate license or registration issued by the commission.” *Id.* § 37.003. Chapter 37 has no relation in general to the Parks and Wildlife Department, or specifically, to sections 7.193 or 26.215 of the Water Code. Chapter 37 declares the TNRCC, not the Parks and Wildlife Department, to be

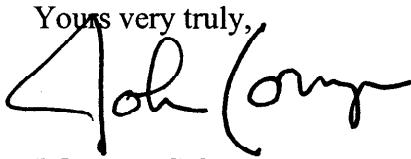
¹*See Letter from Honorable Chris D. Prentice, Hale County Attorney, to Susan Denmon Gusky, Chair, Opinion Committee, Office of the Attorney General (Sept. 18, 2001) (on file with Opinion Committee) [hereinafter Request Letter].*

the entity authorized to issue licenses under that chapter. Furthermore, chapter 37 does not state that persons licensed thereunder are peace officers.

A statute that is plain and unambiguous will ordinarily be construed according to its literal language. *Bd. of Ins. Comm'r's v. Guardian Life Ins. Co.*, 180 S.W.2d 906, 909 (Tex. 1944); *see also Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999); *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991) (en banc). We conclude, therefore, that the designated representative of an authorized agent—Hale County—of the TNRCC under chapter 366, Health and Safety Code, is not a peace officer for purposes of sections 7.193 and 26.215 of the Water Code.

S U M M A R Y

The designated representative of an authorized agent of the Texas Natural Resource Conservation Commission under chapter 366, Texas Health and Safety Code, is not a peace officer for purposes of sections 7.193 and 26.215 of the Texas Water Code.

Yours very truly,

JOHN CORNYN
Attorney General of Texas

HOWARD G. BALDWIN, JR.
First Assistant Attorney General

NANCY FULLER
Deputy Attorney General - General Counsel

SUSAN DENMON GUSKY
Chair, Opinion Committee

Rick Gilpin
Assistant Attorney General, Opinion Committee