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OPINION COMMITTEE

JERI YENNE

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CRIMINAL DISTRICT ATTORNEY  
BRAZORIA COUNTY

AUG 27 2001

OPINION COMMITTEE

RQ-0422-JC

August 23, 2001

Honorable John Cornyn  
Attorney General  
Attention: Susan Gusky  
Opinions Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

FILE # ML-42118-01  
I.D. # 42118

Re: Request for Attorney General Opinion

Dear Attorney General Cornyn:

As District Attorney of Brazoria County I seek your opinion regarding the authority of peace officers, who are employed by a governmental entity but who are working in an off duty status or holding an "extra job" for the purpose of providing security to a casino boat, when that vessel is 1) outside the local jurisdiction of the peace officer, 2) outside any county but inside the state, or 3) in international waters.

I.  
FACTUAL BACKGROUND

A vessel that docks at a port in Brazoria County and then sails into international waters for the purpose of gambling employs both in-county and out-of-county peace officers to act as security guards. Alcoholic beverages are served during the voyage. During a portion of the voyage, the officers are outside the geographical boundary of Texas as determined by the Submerged Lands Acts §4, 43 U.S.C.A. §1362. Texas' boundary only extends nine nautical miles or 10.359 statute miles seaward from the Texas coast. Additionally, they are also outside the United States territories or possessions as determined in the Outer Continental Lands Act. The United States has adopted a three mile limit (nine nautical miles) adjacent to its coast. The sea beyond this limit is called the high seas and forms no part of the territory of any nation. 43 U.S.C.A. § 1333(a)(3).

The Penal Code § 46.15(a)(1) specifically excepts police officers *when carrying a weapon in this state*, from committing an offense for carrying a weapon on premises licensed by the State to sell alcoholic beverages.

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Article 14.03 of the Code of Criminal Procedure allows an officer outside his jurisdiction to arrest, without warrant, a person who commits an offense within the officer's presence or view if the offense is a felony or a violation of Title 9, Chapter 42 Penal Code.

Articles 14.01 and 14.04 allow a police officer to arrest without a warrant an offender who has committed a felony or breach of peace in his presence or within his view.

## II. ISSUES PRESENTED

1. What is a peace officer's statutory authority outside the jurisdiction of the state?
2. Can a peace officer make a lawful arrest when he is a witness to or he learns from a credible witness of a felony committed on the "*high seas*"?
3. Can a peace officer employed by a governmental entity but working in off duty status or "extra job" capacity for the purpose of providing security to a casino boat, wear his uniform and badge as a symbol of authority when (1) outside his jurisdiction, (2) outside the state, (3) outside the country?
4. Can a off duty peace officer employed by a governmental entity but working in off duty status or "extra job" capacity for the purpose of providing security to a casino boat, legally carry a weapon in a place where alcoholic beverages are sold if (1) that boat is outside the State? (2) that boat is outside the country?
5. Does a peace officer maintain his status as a peace officer when outside the jurisdiction of the state/nation? (absent any agreement to the contrary)
6. Is a peace officer entitled to qualified immunity when he is outside the jurisdiction of the state/nation?
7. When can a police officer who is outside his jurisdiction, arrest without a warrant, someone who commits an offense within his presence that is not a felony, a breach of the peace or an offense under Section 49.02, Penal Code? (Article 14.03 (4)(d) C.C.P. limits the offenses but 14.01(b) allows an arrest for *any offense* committed in his presence or within his view). Furthermore, if 14.03 controls, and an arrest is made, which law enforcement agency had jurisdiction when the arrest was made?

Additionally, if the officer cannot arrest the individual, can they be detained, if so, by whom, and to what extent can an individual be held until the ship re-enters the State or docks at a port within the county?

8. What law enforcement entity has jurisdiction outside the boundaries of the county but within the boundaries of the state, i.e. the territorial waters of Texas?
9. Does the answer to any of these questions change if the ship is registered in the United States?
10. Does the answer to any of these questions change if the peace officer is engaged in off duty status for the casino boat and not under the supervisory control of any law enforcement agency?

### III. DISCUSSION OF ISSUES

1. The statutes are silent on the authority of a peace officer outside the state; limited authority is given to an officer outside his jurisdiction. There is no express or implied authority for a local or state officer in international waters. The United States Coast Guard is the entity authorized to make and enforce safety regulations concerning the structures and waters adjacent to the United States. 43 U.S.C.A. §1333(a)(3)(e)(1),(2). This regulation deals with structures such as artificial islands on the surface waters that present dangers to navigation and to person working on such structures. 407 S.W.2d 839,844, (Tex. Civ. App.-San. Antonio) 1996. It does not include cruise/casino ships. The conclusion would be that a peace officer is simply a private citizen once the vessel leaves the territory of the State, they have no express or implied authority.
2. Absent an international agreement, which only the federal government can make, a peace officer acting under authority given by the state would simply be a private citizen once they were in international waters. They would have no authority to detain, arrest, carry a gun, or act on any authority they had on land.
3. Outside their jurisdiction, the peace officer would seem to be under the accepted "rule" that a peace officer maintains that status at all times and therefore would be entitled to wear his uniform, and badge; however, outside the state and outside the country, the peace officer is simply a private citizen with no statutory authority.
4. Section 46.15(a)(1) allows an officer anywhere in the state to carry a weapon where alcoholic beverages are sold. Again, the statutes are silent as the whether or not a weapon can be carried in international waters. It would seem that once outside the state, a peace officer would have only the rights and privileges given any other private citizen in international waters.
5. Same response given for question 1.

6. A peace officer has qualified immunity when they are performing discretionary duties in good faith and acting within the course and scope of their employment. It seems difficult for an officer to be acting within the course and scope of employment when they have no authority to act in that particular jurisdiction; therefore, they would have no qualified immunity.
7. The express provision of 14.03 only allows an officer to arrest without a warrant in specific situations. Any other actions taken by a peace officer would appear to be outside the scope of his authority. The rules of statutory construction would dictate that the specific rules over the general and 14.03 is specific while 14.01 is general in nature.
8. The Coast Guard has limited jurisdiction for the territorial waters of the state and the Texas Rangers have peace officer jurisdiction anywhere within the state.
9. In civil matters the country where the ship is registered often dictates the choice of law.
10. There appears to be no common law precedents or statutes on point.

Very truly yours,

  
JERI YENNE

RJ:dp