



STEVE CLARK
ATTORNEY GENERAL

STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

OPINION 85-62

February 25, 1985

The Honorable Mike Beebe
State Senator
State Capitol Building
Little Rock, Arkansas 72201

HAND DELIVERED

Dear Senator Beebe:

By letter you have requested of our Office an opinion in respect to the term "law enforcement officer" found within Rule 1.6(a), Ark. R. Crim. P., Vol. 4A Ark. Stat. Ann. (Repl. 1977). This provision of our state's rules of criminal procedure reads, in pertinent part:

For the purpose of these rules, unless the context otherwise plainly requires:

(a) "Law enforcement officer" and "officer" mean any person vested by law with a duty to maintain public order or to make arrests for offenses. . .

The specific question you proffer is "whether or not a federal law enforcement official with power of arrest conferred by federal law is a law enforcement officer within the definition of Rule 1.6(a) of [the] Rules of Criminal Procedure."

The present rules became effective on 1 January 1976, and our research has found no direct Arkansas case authority addressing this particular question in regard to the foregoing rule. Nor have we found helpful case law interpretation of the term "law enforcement officer" in other Arkansas statutory provisions - i.e. Ark. Stat. Ann. §41-115(12) (Repl. 1977) (General definitions as used in this state's criminal code.); Ark. Stat. Ann. §42-1001(a) (Definitions as used in respect to required minimum standard requirements for law enforcement officers.)

In earlier Arkansas statutory provisions and some still current (see, Ark. Stat. Ann. §§43-402, 43-403 (Repl. 1977)), the reference is made to "peace officers". The commentary to Ark. Stat. Ann. §41-115 (Repl. 1977) points out that prior to Arkansas law defining "peace officers", their authorities, and duties was scattered and fragmentary.

The more recent efforts in defining analogous terminology is aimed at a more functional approach. Rule 1.6(a) is typical of this attempt at a "functional definition." See, Commentary to Article I, Ark. R. Crim. P. Vol. 4A Ark. Stat. Ann. (Repl. 1977). Given this conscious effort to define the questioned language, it would be the opinion of our Office, subject to future judicial interpretation, that the language in Rule 1.6(a) is broad enough to encompass a "federal law enforcement official with power or arrest conferred by federal law." Our opinion is further premised upon the acceptance that the dictates of Ark. Stat. Ann. §42-1007 (Repl. 1977) (minimum standard requirements for law enforcement officers) would not raise a legitimate legal barrier to an arrest made by a federal enforcement official in Arkansas.

For your further consideration, we would note that our research has found at least one other state that has addressed this issue more directly through legislation. See, Gilmore v. State, 666 S.W.2d 136 (Tex.App.7 Dist.1983); see also, United States v. Carter, 523 F.2d 476 (8th Cir. 1975) ("The authority of...Treasury agents to effect a warrantless arrest for a state offense is found in state law, consistent with constitutional requirements. There is no such authority under Federal law")

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Michael E. Wheeler.

Sincerely,


STEVE CLARK
Attorney General

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