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OPINION NO. 85-118

May 28, 1985

Mr. Charles R. Singleton, Director
Alcoholic Beverage Control Division
P.O. Box C-500
Little Rock, AR 72203

Dear Mr. Singleton:

This letter is in response to your request for an Attorney General's opinion, in which you asked whether agents of the Alcoholic Beverage Control Enforcement Division were considered a "policeman" under Ark. Stat. Ann. §12-2347(a), or "public safety members" under Ark. Stat. Ann. §12-3302, subparagraph 2.05, and therefore qualify for death/disability benefits and retirement plans established by Acts of which these statutes form a part. I will deal with each of these statutes separately.

(1) It is my opinion that ABCE agents do not fall within the definition of "policeman" found in Ark. Stat. Ann. §12-2347(a), and do not qualify for death/disability benefits under §12-2348. Ark. Stat. Ann. §12-2347(a) (Repl. 1979) states as follows:

As used in this Act [§§ 12-2347 - 12-2350], the following words shall have these meanings ascribed to them: (a) "Policeman" shall mean any law enforcement officer who is a member of any regular or auxiliary police force, on a full or part time basis, or the Arkansas State Police; a sheriff or deputy sheriff, of any city of the first or second class; or any constable or night marshall [marshall] of any town of this State, while engaged in official duty. . . .

The statute further contains definitions of "fireman," "State Highway Employee," and "State Correction Employee." Section §12-2348 then provides death and disability benefits for these categories of persons under certain circumstances.

ABCE agents are not members of a "regular or auxiliary police force." Although Ark. Stat. Ann. §48-1319 does grant to ABCE agents the "powers, rights and protection" provided to other law enforcement officers, when read in context with other statutes from Act 159 of 1951 (§§ 48-1317, 48-1318, 48-1320), it seems clear that the "rights and protection" granted to ABCE agents by this statute relate to their enforcement of the ABC laws, rules and regulations. This statute does not its face grant to ABCE agents every benefit conferred upon members of a police force who are charged with the total range of law enforcement duties.

In addition, §48-1319 is a portion of an Act passed in 1951 (Act 159). Sections 12-2347 and 12-2348 began as portions of Act 43 of 1969. Had the General Assembly intended for the definition of "policeman" to include ABCE agents, or for the death and disability benefits provided in §12-2348 to be one of the "rights and protection" afforded to said agents, it could have easily provided for this in Act 43 of 1969, or one of the subsequent amendments to this Act passed in 1973, 1977 and 1981.

In 1981, the General Assembly amended §12-2348 to provide benefits for "Emergency Services Workers, or Forestry Commission Workers, or Wildlife officers of the Game and Fish Commission." (Act 890 of 1981). These persons have law enforcement powers in limited areas, just as ABCE agents have limited powers to enforce the liquor laws. Had the General Assembly intended to include ABCE agents under the death and disability benefit law, it could have done so here. The lack of inclusion signals a lack of intent to so include these agents.

The threshold consideration in construing the purpose and meaning of a statute is to ascertain and give effect to the intent of the legislature. Refunding Board of Arkansas v. Bailey, 190 Ark. 558, 80 S.W.2d 61 (1935); Duty v. City of Rogers, 225 Ark. 309, 500 S.W.2d 347 (1973); Shinn v. Heath, 259 Ark. 577, 535 S.W.2d 57 (1976). When the express terms of a statute are clear and unambiguous, the Courts are not permitted to construe it to mean anything contrary to what it says on its face. Refunding Board of Arkansas v. Bailey, supra; Vault v. Adkisson, 254 Ark. 75, 491 S.W.2d 609 (1973); Mears v. Arkansas State Hospital, 265 Ark. 844, 581 S.W.2d 339 (1979). Sections 12-2347 (a) and 12-2348 do not include ABCE agents in their coverage.

(2) It is my opinion that ABCE agents are not included within the definition of "public safety member" as stated in Ark. Stat. Ann. §12-3302, subparagraph 2.05 (Supp. 1983), which reads as follows:

2.05. "Public safety member" is a member whose covered employment is for personal services as a policeman or fireman. Policeman means any regular or permanent employee, whose primary duty is law enforcement, of a municipal police department, a county sheriff's office, or the Arkansas State Police, including probationary policemen; and shall also include wildlife officers of the Arkansas Game and Fish Commission; provided the term policeman shall not include any civilian employee of a police department, nor any person temporarily employed as a policeman during an emergency. Fireman means any regular or permanent employee, whose primary duty is fire fighting, of a fire department, including probationary firemen; provided the term fireman shall not include any civilian of a fire department, nor any person temporarily employed as a fireman during an emergency. (emphasis added).

Wildlife officers of the Arkansas Game and Fish Commission were added by Act 625 of 1983.

The same rules of statutory construction apply to this question as the ones discussed in section (1) of this letter. The definition of "policeman" in this statute is clearly limited to an employee of a "municipal police department, a county sheriff's office, or the Arkansas State Police." Furthermore, had the members of the General Assembly intended to include ABCE agents, they could have done so when they added wildlife officers of the Game and Fish Commission in 1983.

Should ABC desire to have its Enforcement agents included within the coverage of the various statutes discussed in this opinion, this should be done through legislative amendment.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Jeffrey A. Bell.

Sincerely,


STEVE CLARK

Attorney General

SC/JAB/ljm