



STATE OF WEST VIRGINIA  
OFFICE OF THE ATTORNEY GENERAL  
CHARLESTON 25305

CHARLIE BROWN  
ATTORNEY GENERAL

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Ronald W. Dukate, Director  
Transportation Division  
Department of Finance and Administration  
Capitol Complex  
Charleston, West Virginia 25305

Dear Mr. Dukate:

We are in receipt of your letter of February 5, 1987, wherein you ask for an opinion as to whether the Commissioner of the West Virginia Public Service Commission (hereinafter referred to as "Commissioner"), is a "law enforcement official" as contemplated by W. Va. Code § 6-7-8. That Code section states:

"State law-enforcement officials, including, but not limited to, the director of the department of public safety, the adjutant general of the West Virginia national guard, the director of the office of emergency services, the director of the department of natural resources, the commissioner of the department of corrections, the state fire marshal, state fire administrator and officials of the state board of regents, as the discretion of the chancellor thereof, shall have the authority to use, and permit and allow or disallow their designated employees to use, publicly provided carriage to travel from their residence to their workplace and return \* \* \* ."

It appears that there exists no definition of a law enforcement official in West Virginia case law. Thus, we have to ascertain the legislative intent of this statute primarily from its own language. See Fruehauf Corporation v. Huntington Moving and Storage Co., 159 W. Va. 14, 217 S.E.2d 907 (1975) and Spencer v. Yerace, 155 W. Va. 54, 180 S.E.2d 868 (1971). In Code 6-7-8, the words "including, but not limited to," clearly indicate that the term law enforcement official includes other state officials of an equal or similar stature to those named. See State Human Rights Comm'n v. Pauley, 158 W. Va. 495, 212 S.E.2d 77 (1975). Certainly, the Commissioner is a peer of the other mentioned public servants with respect to his police powers. Code 24A-7-6 provides as follows:

"It shall be the duty of the department of public safety and the sheriffs of the counties in

West Virginia to make arrests and the duty of the prosecuting attorneys of the several counties to prosecute all violations of this chapter, and the commission employees designated by it as inspectors shall have all the lawful powers of peace officers to enforce this chapter in any county or city of this state."

See 56 Ops. Att'y Gen. 59 (1974).

An examination of the pertinent West Virginia Code sections reveals that all of the positions named in Code 6-7-8 have police powers. For example, Code 29-3-12(h) and 29-3-12(h)(1) establish the police powers of the state fire marshal. Code 20-1-7(10) describes the Director of the Department of Natural Resources as having the power and authority to "serve and execute warrants and processes, to make arrests and to otherwise effectively enforce the provisions of this chapter." Code 18-26-8a sets forth the West Virginia Board of Regents' authority to appoint security officers and the duties of those officers:

"It shall be the duty of any person so appointed and qualified, to preserve law and order on any premise under the jurisdiction of the board of regents and on any other street, road or thoroughfare, except controlled-access and open county highways, adjacent to or passing through such premises, to which he may be assigned by the president of the college or university. \* \* \* "


Thus, it is clear that it was the intent of the Legislature that all state officials having law enforcement responsibilities should be authorized to use and permit certain of their employees to use state vehicles as provided by statute.

Based on the foregoing, it is the opinion of this office that the Commissioner of the West Virginia Public Service Commission is a law enforcement official as contemplated by Code 6-7-8.

Very truly yours,

CHARLES G. BROWN  
Attorney General

By

  
Deputy

BRENDA HILL COLE