

MEMORANDUM OF LAW

DATE: January 14, 1987

TO: Assistant Chief R. W. Burgreen, Police  
Department  
FROM: City Attorney  
SUBJECT: Issuing Licenses to Carry Concealed Weapons to  
Reserve Officers

You recently inquired whether or not all San Diego Police Department reserve officers may be issued licenses to carry concealed weapons. A memorandum to you from Sergeant L. J. Tipton states that reserve lieutenants and above are currently being approved for such licenses with no restrictions or conditions other than reaching that rank. Since off duty reserve officers are not covered by the peace officer exemption to the requirement of being licensed, we conclude that the current practice is improper and that all reserve officers should obtain a license duly issued pursuant to the requirements in the Penal Code in order to lawfully carry a concealed weapon while off duty.

Chapter 1, Title 2, of the California Penal Code is known as the "Dangerous Weapons Control Law." Section 12025 provides in part:

(b) Any person who carries concealed upon his or her person any pistol, revolver, or other firearm capable of being concealed upon the person without having a license to carry such firearm as provided in this chapter is guilty of a misdemeanor.

Section 12027(a) sets forth the exceptions to the requirements of section 12025, one of which refers to peace officers, as follows:

(a) Peace officers. Peace officers listed in section 830.1 or 830.2 whether active or honorably retired, other duly appointed peace

officers, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any such officers to assist in making arrests or preserving the peace while he is actually engaged in assisting such officer.

The list of peace officers in sections 830.1 and 830.2 does

not include reserve police officers. A reserve officer is a duly appointed peace officer but with limited peace officer powers and authority. Section 830.6 defines the limited peace officer status of reserve officers and states in part:

(a)(1) Whenever any qualified person is deputized or appointed by the proper authority as a reserve . . . city policeman . . . and is assigned specific police functions . . . such person is a peace officer; provided . . . that the authority of such person as a peace officer shall extend only for the duration of such specific assignment.

Thus, section 830.6 authorizes the appointment of reserve officers to carry out specific police functions for the duration of which the reserve officer has the authority of a peace officer. A reserve officer does not have peace officer status off duty.

To recap, Penal Code section 12025 prohibits carrying a concealed weapon without a license, but section 12027 provides that section 12025 does not apply to peace officers. Thus, reserve officers while on duty are not prohibited from carrying a concealed firearm without a license. However, while off duty, reserve officers do not have peace officer authority and, therefore, need a license to lawfully carry a concealed firearm. 62 Op. Att'y Gen. 508, 509 (1979). Failure to obtain a license could result in prosecution under Penal Code section 12025.

A reading of Penal Code section 12050(a) supports the above conclusion because it provides that the sheriff or police chief may issue a license to carry a concealed weapon, if good cause exists, to any person of good moral character, who lives in the county, for up to one year "or in the case of a peace officer appointed pursuant to section 830.6, three years from the date of the license." It appears obvious that the intent of the

legislature was that only if these conditions are met, and a license issued, may a reserve officer lawfully carry a concealed weapon while off duty. *Id.* at 510.

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By

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NBD:ls:520.1(x043.2)

cc Captain R. Slaughter

Sergeant L. J. Tipton

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