

MEMORANDUM OF LAW

DATE: February 10, 1994

TO: Robert Osby, Fire Chief

FROM: City Attorney

SUBJECT: Background Investigations of Peace Officer Applicants

In a memorandum dated January 10, 1994, you requested an opinion as to whether a background investigation required by Government Code section 1029.1 is necessary prior to hiring a Fire Prevention Inspector. Based upon your memorandum, this background investigation takes approximately one year to complete and as a result causes "serious operational problems." After reviewing state statutes and case law, section 1029.1 does not apply to Fire Prevention Inspectors. Section 1029.1 applies to background investigations conducted by the Department of Corrections and the Department of the Youth Authority.

However, a "thorough background investigation" as required by Government Code section 1031(d) must be completed prior to hiring a Fire Prevention Inspector. The nature and duration of such a "thorough" check is undefined. The following is our brief analysis.

Section 1031(d) provides that, "each class of public officers or employees declared by law to be peace officers shall meet all the following minimum standards: ... (d) be of good moral character, as determined by a thorough background investigation (emphasis added.)" Consequently, if a Fire Prevention Inspector is a peace officer then a "thorough background investigation" must be completed prior to hire.

Penal Code section 830.37 defines which Fire Department personnel may qualify as peace officers. Section (a) indicates, "members of an arson-investigating unit ... of a fire department ... if the primary duty of these peace officers is the detection and apprehension of persons who have violated any fire law or committed insurance fraud." Section (b) states that "members other than members of an arson-investigating unit ... of a fire department ... if the primary duty of these peace officers, when acting in that capacity, is the enforcement of laws relating to fire prevention or fire suppression (emphasis

added)."

Fire Prevention Inspectors primary duties and responsibilities are to enforce laws relating to fire prevention or fire suppression and qualify as peace officers as defined in section 830.37. (See also *Martin v. Superior Court*, 230 Cal. App. 3d 1192, 1197-1198 (1991) which concluded that section 830.37 peace officers qualify as law enforcement officers within the meaning of Penal Code section 872 and may provide hearsay testimony to substantiate a finding of probable cause in a criminal proceeding.)

Since Fire Prevention Inspectors are peace officers as defined in section 830.37, the Fire Department must comply with the requirements in section 1031(d) and complete a "thorough background investigation" of the chosen applicants. In other words, the Fire Department will complete a "thorough background investigation" of a Fire Prevention Inspector as it deems appropriate. This "thorough background investigation" will be completed prior to hiring and training a Fire Prevention Inspector.

Finally, keep in mind that the hired Fire Prevention Inspector must satisfactorily complete the Peace Officer Standards and Training ("POST") introductory course prior to having the "powers of a peace officer." See Penal Code section 832(c). This requirement applies to all peace officers, including Fire Prevention Inspectors. See Penal Code section 832(a). POST will issue a certificate of completion when a Fire Prevention Inspector completes the course.

Don't hesitate to call if I can be of further assistance regarding this matter.

JOHN W. WITT, City Attorney

By

Elmer L. Heap, Jr.

Deputy City Attorney

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cc Maureen Stapleton, Assistant City Manager

Sharon Marshall, Deputy City Attorney

Monica Higgins, Fire Marshal

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