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EMPLOYMENT LAW LETTER



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Concealed firearms: Are custodial deputies exempt from permit requirement or not?

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In California, a person cannot carry a concealed weapon without a permit. However, there are exemptions from that rule, including one for peace officers. The California Legislature created the peace officer exemption in part to benefit people serving in that capacity because they may face threats of violence to themselves or their families while they aren't working.

Stanislaus County requires its custodial sheriff deputies to obtain a permit to carry a concealed weapon while they are off duty. The custodial sheriff deputies challenged the county's rule, asking the court to allow them to lawfully carry concealed firearms off duty without obtaining a concealed carry permit.

Prohibition on carrying concealed weapons and the exception

Section 25400 of the California Penal Code prohibits the carrying of concealed firearms. Section 25450 sets forth the "peace officer exemption," which exempts from the prohibition any peace officer listed in Penal Code Sections 830.1 and 830.2, whether they're active or honorably retired. Penal Code Section 830.1 expressly lists custodial deputies as peace officers.

However, in 2002, the California attorney general issued an opinion that custodial deputies do not have peace officer status or authority when they are away from county detention facilities, appearing at community service events, participating in the Sheriff's Honor Guard, or conducting recruitment background

checks or internal affairs investigations. Thus, the issue in this litigation was whether the peace officer exemption applies to custodial sheriff deputies when they are off duty.

Court's ruling

Custodial sheriff deputies' duties generally include responsibility for the custody, care, supervision, security, and transportation of inmates. Custodial deputies in Stanislaus County escort, receive, register, control, supervise, and care for inmates in the Stanislaus County Jail or another county facility. People working in sergeant custodial positions supervise the work of personnel and inmates assigned to the Stanislaus County Jail or another county facility and administer the work furlough, alternative work, and home detention programs.

Relying on the 2002 Attorney General Opinion, the trial court held that the peace officer exemption to the prohibition on carrying concealed firearms doesn't apply to custodial deputies while they are off duty. In reviewing the trial court's decision, the court of appeal began by closely examining the statutes surrounding the peace officer exemption. The court noted that Section 25450 exempts any peace officer listed in Section 830.1 and further explained that Section 830.1 expressly provides that custodial deputies are peace officers.

The court next reasoned that although the statute lists some peace officers by type or class, some types of peace officers receive the exemption only when they are engaged in a specific duty or activity. The court explained that difference demonstrates that if the legislature wanted to limit the exemption to times when a peace officer was acting in the course of duty, it did so explicitly.

Finally, the court noted that the exemption wasn't meant to cover peace officers only when they're working because Section 25450 exempts peace officers whether they are active or honorably retired. That means the exemption applies to individuals who are peace officers, including custodial deputies, not just officers who are on duty.

The court of appeal also addressed the 2002 Attorney General Opinion, which stated that language in Penal Code Section 830.1 limiting the scope of authority for custodial peace officers causes them to lose their peace officer status at the moment they go off duty. The court disagreed with the attorney general's interpretation because Section 830.1 states, without qualification, that a custodial deputy is a peace officer and then defines the extent of the officer's authority.

The court explained that although Section 830.1 may limit a custodial officer's authority, that doesn't mean he isn't a peace officer while he's off duty. Additionally, the court noted that nothing in that section of the Penal Code states that custodial deputies lose their status as peace officers while they're off duty.

Based on that analysis, the court concluded that custodial deputies are exempt from the law prohibiting the carrying of concealed firearms. As a result, they need not obtain a permit to carry a concealed firearm while they're off duty. *Stanislaus County Deputy Sheriffs' Association v. County of Stanislaus* (California Court of Appeal, 5th Appellate District, 8/11/16).

Bottom line

Although this case involves peace officers, all employers encounter opinions from government agencies that affect their business at some point. Many of those opinions (e.g., opinion letters from the California Department of Industrial Relations) aren't laws or regulations, but employers are still strongly encouraged to give great weight to interpretations by governmental agencies. Often, an opinion will indicate how the agency will rule if it is adjudicating a dispute, or the opinion may be given weight by a court. Employers are advised to act cautiously and consult with legal counsel before taking actions that are inconsistent with opinions from California or federal agencies.

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