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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable J. Keith Nelson
Marion County Constable
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Constables – Pistols – Law Enforcement –
Municipalities – Marion County

A police chief may not prohibit a constable from performing a statutorily proscribed duty within the police jurisdiction where the jurisdiction of the police and the jurisdiction of the constable overlap.

A constable may perform those duties granted him or her by statute within the county.

A bonded constable may carry a pistol, concealed or unconcealed, in the county.

Dear Mr. Nelson:

This opinion of the Attorney General is issued in response to your request.

QUESTION 1

Can a chief of police stop a constable from doing any of his or her duties, including traffic enforcement, in the police jurisdiction?

FACTS AND ANALYSIS

Constables are statutory officers provided for at sections 36-23-1 through 36-23-9 of the Code of Alabama. ALA. CODE § 36-23-1 to 36-23-9 (2001). Constables are conservators of the peace and perform those duties set out at section 36-23-6 of the Code of Alabama. ALA. CODE § 36-23-5 & § 36-23-6 (2001).

Constables are deemed to have the inherent authority to arrest someone without a warrant for a breach of the peace committed in plain view. See *Spurlin v. State*, 46 Ala. App. 485, 487, 243 So. 2d 758, 760 (Ala. Crim App. 1969). Constables are also charged with the responsibility of enforcing the laws as they relate to motor vehicles. See ALA. CODE § 32-5-310 (1999). It should be noted that constables are not given the same type of immunity as other law enforcement officers. Section 6-5-338 of the Code provides immunity from tort liability for all peace officers except constables. ALA. CODE § 6-5-338 (2005).

As this Office stated in an opinion to Honorable Rodney M. Wolfinger, Russell County Constable, dated August 16, 2005, A.G. No. 2005-178, the aforementioned statutes contemplate a constable's district may include portions of a county that fall within the jurisdiction of a municipal police department. There is no language, however, contained in the grant of authority that specifically restricts a constable's authority within a police jurisdiction. Thus, there is no statutory basis of which this Office is aware that authorizes a chief of police to restrict the statutory authority of a constable. *Wolfinger* at 3.

CONCLUSION

A police chief may not prohibit a constable from performing a statutorily proscribed duty within the police jurisdiction where the jurisdiction of the police and the jurisdiction of the constable overlap.

QUESTION 2

Section 36-23-5 of the Code of Alabama states that a constable is deemed to be a conservator of the peace within the county. Does a constable have jurisdiction to perform any of his or her duties, including traffic law enforcement anywhere in the county, or is the constable limited to his or her elected precinct?

FACTS ANALYSIS

As conservator of the peace within the county, a constable may perform those duties granted him by statute within the county. In an opinion to Honorable Ronald E. Lybrand, County Constable, Weaver, dated August 30, 1989, A.G. No. 89-00415 at 3, this Office concluded that, pursuant to section 15-1-1 of the Code of Alabama, a constable has power of arrest within his or her county. ALA. CODE § 15-10-1 (1995). It must be remembered that a constable has the duty to enforce motor vehicle and traffic laws, but he or she is not charged with the duty to enforce all criminal laws. Opinion to Honorable

Hershel L. Mills, Constable, Northport, dated November 9, 1989, A.G. No. 90-00038.

CONCLUSION

A constable may perform those duties granted him or her by statute within the county.

QUESTION 3

Section 13A-11-52 of the Code states that a bonded constable may carry a pistol in the discharge of his or her duties. Can a constable openly carry a weapon anywhere in the constable's county?

FACTS AND ANALYSIS

Section 13A-11-52 of the Code of Alabama provides as follows:

Except as otherwise provided in this article, no person shall carry a pistol about his person on premises not his own or under his control; but this section shall not apply to any sheriff or his deputy or police officer of an incorporated town or city in the lawful discharge of the duties of his office, or to United States marshal or his deputies, rural free delivery mail carriers in the discharge of their duties as such, bonded constables in the discharge of their duties as such, conductors, railway mail clerks and express messengers in the discharge of their duties.

ALA. CODE § 13A-11-52 (2001).

This provision must be read with section 13A-11-73 of the Code of Alabama, which states that “[n]o person shall carry a pistol in any vehicle or concealed on or about his person, except on his land, in his own abode or fixed place of business, without a license therefor as hereinafter provided.” ALA. CODE § 13A-11-73 (2006). Section 13A-11-74 of the Code provides exceptions for those persons who must have a license to carry a pistol in a vehicle or concealed on his or her person. ALA. CODE § 13A-11-74 (2006). A bonded constable is exempt from the requirements of section 13A-11-73 by section 13A-11-74. *Lybrand* at 2. A bonded constable may carry a pistol, concealed or unconcealed.

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CONCLUSION

A bonded constable may carry a pistol, concealed or unconcealed, in the county.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

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