

# OFFICE OF THE ATTORNEY GENERAL

95-00122



JEFF SESSIONS  
ATTORNEY GENERAL  
STATE OF ALABAMA

FEB 17 1995

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (334) 242-7300

Honorable Joe W. Whisante  
Sheriff  
Madison County Courthouse  
100 Northside Square  
Huntsville, AL 35801

Sheriffs - Pistol Permits -  
Firearms

A sheriff cannot authorize an honorary sheriff to carry a pistol in any vehicle or concealed on or about his person unless the person obtains a license as required by Code of Alabama 1975, § 13A-11-73, et seq., and Act No. 92-501.

Dear Sheriff Whisante:

This opinion is issued in response to your request for an opinion from the Attorney General.

## QUESTION

If I, as sheriff, issue to residents of Madison County an "honorary" deputy sheriff card which purports to appoint them an honorary deputy sheriff, without complying with the provisions of Code of Alabama 1975, § 13A-11-75, and without collecting the total fee of \$10 provided by § 13A-11-75 and Act No. 92-501, does this "honorary" deputy sheriff card authorize the recipient to carry a pistol in any

vehicle or concealed on or about his person?

#### FACTS AND ANALYSIS

Your request states that it has been the practice in various counties of Alabama for the sheriff of the county to issue "honorary" deputy sheriff cards, which on their face purport to appoint the bearer a deputy sheriff. The persons who receive these cards are not employed by the sheriff as deputy sheriffs. The word "honorary" may or may not be used on the card. The recipients of these cards have considered that the card authorizes the person to carry a pistol without the necessity of obtaining the license required by Code of Alabama 1975, § 13A-11-73, et seq. In addition to the Code requirements, Act No. 92-501, relating to Madison County, provides for an additional fee of \$9 for issuing a license pursuant to Code of Alabama 1975, § 13A-11-75.

Three sections of the Code relate to the license required to carry a concealed pistol. Section 13A-11-73 states:

"No 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."

The exceptions to this provision are found in § 13A-11-74 which provides:

"The provisions of Section 13A-11-73 shall not apply to marshals, sheriffs, prison and jail wardens and their regularly employed deputies, policemen and other law enforcement officers of any state or political subdivision thereof, or the members of the army, navy or marine corps of the United States or of the national guard, or to the members of the national guard organized reserves or state guard organizations when on duty or going to or from duty . . ." (Emphasis added.)

Section 13A-11-75 states:

"The sheriff of a county may, upon the application of any person residing in that county, issue a qualified or unlimited license to such person to carry a pistol in a vehicle or concealed on or about his person within this state for not more than one year from date of issue, if it appears that the applicant has good reason to fear injury to his person or property or has any other proper reason for carrying a pistol, and that he is a suitable person to be so licensed. The license shall be in triplicate . . ."

The exceptions listed in § 13A-11-74 exclude sheriffs "and their regularly employed deputies" from having to obtain a pistol license. A sheriff cannot employ any person as a deputy sheriff who does not comply with Code of Alabama 1975, § 36-21-46, in regard to minimum standards for applicants and appointees for employment as law enforcement officers. Those persons to whom the "honorary" deputy sheriff cards have traditionally have been given would not come within the definition of "regularly employed deputies" and do not meet the minimum standards set forth in § 36-21-46. This office held in a previous opinion that a person appointed as a special deputy sheriff is not a regularly employed deputy and therefore must have a pistol permit in order to carry a concealed weapon on or about his person or in a motor vehicle. Opinion to Honorable J. Bryce Smith, Sheriff, Crenshaw County, dated January 31, 1983, A.G. No. 83-00153.

#### CONCLUSION

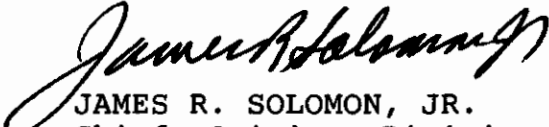
A sheriff cannot authorize an honorary sheriff to carry a pistol in any vehicle or concealed on or about his person unless the person obtains a license as required by Code of Alabama 1975, § 13A-11-73, et seq., and Act No. 92-501.

Honorable Joe W. Whisante  
Page 4

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to Brenda F. Smith of my staff.

Sincerely,

JEFF SESSIONS  
Attorney General  
By:

  
JAMES R. SOLOMON, JR.  
Chief, Opinions Division

JS/BFS

W/1.95/f