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Attorney General  
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Phoenix, Arizona 85007

Robert B. Corbin

January 5, 1981

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ARIZONA ATTORNEY GENERAL

INTERAGENCY  
Mr. James R. Carter  
Director  
Arizona Commission of Agriculture  
and Horticulture  
1688 West Adams  
Phoenix, Arizona 85007

Re: I81-015(R80-230)

Dear Mr. Carter:

In your letter of October 27, 1980, you asked whether personnel of the Arizona Commission of Agriculture and Horticulture may possess firearms for their personal protection in the enforcement of the Arizona Native Plant Law, A.R.S. §§ 3-901 to -908. A.R.S. § 3-903.G sets forth the exercise of power with respect to enforcement of native plant law:<sup>1/</sup>

When any power or authority is given by any provision of this article to any person, it may be exercised by any deputy, inspector or agent duly authorized by such person. Any person in whom the enforcement of any provision of this article is vested has the power of a peace officer as to such enforcement, which shall include state, federal or Indian agencies with which cooperative agreements have been made by the commission to enforce any provisions of this article. (Emphasis added.)

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1. A.R.S. 3-906 provides that a native plant enforcement officer may "make arrests without warrant. . . ."

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The Arizona Criminal Code defines peace officers as follows:

In this title, unless the context otherwise requires:

. . . .

20. "Peace Officer" means any person vested by law with a duty to maintain public order and make arrests.

For purposes of the Arizona Criminal Code, personnel of the Arizona Commission of Agriculture and Horticulture would be considered peace officers. They would therefore be entitled to possess firearms, subject, of course, to pertinent restrictions.

In A.R.S. § 13-3102, the following restrictions pertain to the carrying of weapons:

- A. A person commits misconduct involving weapons by knowingly:
  1. Carrying a deadly weapon except a pocket knife concealed on his person; or
  2. Carrying a deadly weapon concealed within immediate control of any person in or on a means of transportation; or
  3. Manufacturing, possessing, transporting, selling or transferring a prohibited weapon; or
  4. Possessing a deadly weapon if such person is a prohibited possessor; or
  5. Selling or transferring a deadly weapon to a prohibited possessor; or
  6. Defacing a deadly weapon; or
  7. Possessing a defaced deadly weapon knowing the deadly weapon was defaced; or
  8. Unless specifically authorized by law, entering any public establishment or attending any public event and carrying a deadly weapon on his person after a reasonable request by the operator of the establishment or the sponsor of the event or his agent to remove his weapon and place it in the custody of the operator of the establishment or the sponsor of the event; or
  9. Unless specifically authorized by law, entering an election polling place on the day of any election carrying a deadly weapon.

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. . . . .  
C. Subsection A. paragraphs 1,2,3,7,8  
and 9 of this section shall not apply to:

1. A peace officer or any person  
summoned by any peace officer to assist and  
while actually assisting in the performance  
of official duties;

. . . . .  
F. Subsection A, paragraph 1 of this  
section shall not apply to a weapon or  
weapons carried in a belt holster, which  
holster is wholly or partially visible, or  
carried in a scabbard or case designed for  
carrying weapons which scabbard or case is  
wholly or partially visible or carried in  
luggage. Subsection A, paragraph 2 of this  
section shall not apply to a weapon or  
weapons carried in a case, holster or  
scabbard in a means of transportation or a  
storage compartment, trunk, pack, luggage,  
or glove compartment of a means of  
transportation.

Any person in this State may carry a deadly weapon, subject to  
the limitations contained in subsections (A)(1) to (9) and  
(F). Because personnel of your Commission are peace officers,  
they are not subject to the limitations in subsections  
(A)(1),(2),(3),(7),(8), and (9). This exception only applies,  
however, when your personnel are actually engaged in their  
official duties as peace officers. Strickland v. State, 37  
Ariz. 368, 378, 294 P.2d 617, 621 (1930).

Additionally, the following provisions of The Arizona  
Criminal Code set forth the situations when a peace officer may  
use physical force and deadly physical force. A.R.S. § 13-409  
states:

Justification; use of physical force in  
law enforcement

A person is justified in threatening or  
using physical force against another if in  
making or assisting in making an arrest or

detention or in preventing or assisting in preventing the escape after arrest or detention of that other person, such person uses or threatens to use physical force and all of the following exist:

1. A reasonable person would believe that such force is immediately necessary to effect the arrest or detention or prevent the escape.
2. Such person makes known the purpose of the arrest or detention or believes that it is otherwise known or cannot reasonably be made known to the person to be arrested or detained.
3. A reasonable person would believe the arrest or detention to be lawful.

A.R.S. § 13-410 provides:

Justification; use of deadly physical force in law enforcement

A. The use or threatened use of deadly physical force by a person against another is justified pursuant to § 13-409 only if a reasonable person effecting the arrest or preventing the escape would believe the suspect or escapee is:

1. Actually resisting the discharge of a legal duty with deadly physical force or with the apparent capacity to use deadly physical force; or
2. A felon who has escaped from lawful confinement; or
3. A felon who is fleeing from justice or resisting arrest with physical force.

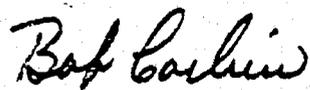
B. Notwithstanding any other provisions of this chapter, a peace officer is justified in threatening to use deadly physical force

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when and to the extent a reasonable officer believes it necessary to protect himself against another's potential use of physical force or deadly physical force.

Your personnel are therefore permitted to use physical force to arrest a suspect, but are not permitted to use deadly physical force to do so. A.R.S. § 13-409.1. Your personnel would be entitled to use deadly physical force in arresting a suspect in the following situations: (1) if the suspect resists arrest using deadly physical force to do so or with the apparent capacity to use such force, A.R.S. § 13-410.A.1; and (2) when they reasonably believe it necessary to protect themselves against the suspect's use of physical force or deadly physical force, A.R.S. § 13-410.B.

Sincerely,



BOB CORBIN  
Attorney General

BC:cp