



Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert H. Corbin

May 27, 1981

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

INTERAGENCY

Mr. Aaron Kizer
Registrar of Contractors
1818 West Adams
Phoenix, Arizona 85007

Re: I81-077(R81-014)

Dear Mr. Kizer:

We are writing in response to your letter of January 21, 1981, in which you asked whether an investigator, vested with the authority to issue a citation to a violator of state contracting laws, is empowered with authority to arrest a violator who refuses to sign a citation. In our opinion, the authority to issue citations under A.R.S. § 32-1104.A.4 does not grant peace officer status to the Registrar's investigators and thus does not grant the power to arrest violators of state contracting laws.

A.R.S. § 32-1104.A.4 provides, in pertinent part, as follows:

A. The registrar, in addition to other duties and rights provided for in this chapter, shall:

. . . .

4. Employ such deputies, hearing officers, investigators and assistants, and procure such equipment and records as are necessary to enforce the provisions of this chapter. With respect to the enforcement of the provisions of § 32-1164,¹ the registrar or his investigators are vested

1. A.R.S. § 32-1164 makes certain violations of the contractors licensing laws and regulations a Class 1 Misdemeanor.

with the authority to issue a citation to any violators of this chapter in accordance with the provisions of § 13-3903.

By comparison, the power to arrest is granted to peace officers pursuant to A.R.S. § 13-3883. That statute incorporates the provisions of A.R.S. § 13-3903, as follows:

A peace officer may, without a warrant, arrest a person:

. . . .

4. When he has probable cause to believe a misdemeanor has been committed and probable cause to believe the person to be arrested has committed the offense. The person so arrested shall be released in conformity with the provisions of § 13-3903.

Thus, in lieu of a custodial arrest, a peace officer is authorized to issue a Citation and Complaint and release the arrested person. A.R.S. § 13-3903.C. Before being released however, the offender must give his written promise to appear. This is accomplished by having the offender sign the Citation and Complaint, pursuant to § 13-3903.C.3.2/

While the authority granted in A.R.S. § 32-1104.A.4 authorizes the registrar and his investigators to issue citations in accordance with the provisions of § 13-3903, it does not expressly grant the authority to arrest violators of the state contracting laws. A comparison of A.R.S. § 32-1104.A.4 with statutory provisions governing other state

2. A.R.S. § 13-3903.C.3 provides:

The arrested person in order to secure release as provided in this section, shall give his written promise so to appear in court by signing at least one copy of the written notice and complaint prepared by the arresting officer. The officer shall deliver a copy of the notice and complaint to the person promising to appear. Thereupon, the officer shall forthwith release the person arrested from custody.

Mr. Aaron Kizer
May 27, 1981
Page 3

agencies is illustrative of this point. For example, livestock inspectors have been granted peace officer status pursuant to A.R.S. § 24-261.D which provides in express terms that:

Inspectors shall have the powers of peace officers with respect to the provisions of this title and shall arrest any person who violates the livestock laws, and shall, upon reliable information that any person has violated such a law, make the necessary affidavits for arrest and examination of the person, and shall, upon warrants issued therefore, immediately arrest the person, make due return of the warrant, and notify the board.

Similarly, with respect to park rangers, A.R.S. § 41-511.09.A provides that:

The board may appoint one or more of its officers or employees as a park ranger law enforcement officer. Any person so appointed shall have the minimum qualifications established for peace officers and police officers pursuant to § 41-1822. Once so appointed, the officer or employee shall have the authority and power of a peace officer with the primary duties of enforcement of the provisions of this article and enforcement of rules and regulations adopted pursuant to this article, for the protection of the parks and monuments against damage and for the preservation of peace therein.

Peace officer status has also been granted to Attorney General investigators, pursuant to A.R.S. § 41-192.03, and air pollution control officers, pursuant to A.R.S. § 36-789.01.

On the other hand, the enforcement power of the State Weights and Measures Division is very similar to that of the Registrar's. A.R.S. § 41-2066.B provides the Weights and Measures Division with the following powers:

With respect to the enforcement of this chapter, the assistant director or inspectors are vested with the authority to

Mr. Aaron Kizer
May 27, 1981
Page 4

issue a citation to any violators of this chapter in accordance with the provisions of § 13-3903.

Like the authority granted to the Registrar in § 32-1104.A.4, there is no express authority to arrest or a designation of peace officer status. This point was brought out in A.G. Opinion No. 77-188 with the conclusion that Weights and Measures inspectors had not been given full peace officer powers with the authority to arrest. (Although 41-2066.B has been amended since that opinion, the conclusion was not affected).

Based on the above, the Registrar and his investigators are not empowered to arrest any individual who refuses to sign the Citation and Complaint issued under the authority of § 32-1104.A.4. In such a situation, the Registrar or his investigators would have to summon a peace officer, who could arrest pursuant to A.R.S. § 13-3883.4, and could take the individual into custody if he did not sign the citation as provided by A.R.S. § 13-3903.C. Or, in the alternative, the Registrar or his investigators could file a complaint under Rule 2.1, Arizona Rules of Criminal Procedure, and obtain a summons or warrant under Rule 3.1, Arizona Rules of Criminal Procedure.

Sincerely,



BOB CORBIN
Attorney General

BC:clp