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Robert R. Corbin

January 14, 1982

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ARIZONA ATTORNEY GENERAL

Mr. William H. Beers, Chairman  
Arizona Game and Fish Commission  
2222 West Greenway Road  
Phoenix, Arizona 85023

Re: I82-006 (R81-189)

Dear Mr. Beers:

In your letter of December 23, 1981, you asked whether the present Director of the Arizona Game and Fish Department is eligible to participate in the Public Safety Personnel Retirement System ("System"). We understand that the position of Director was not included as a covered position in the 1971 Joinder Agreement under which the Game and Fish Department participates in the System, but that the Commission now wants to extend coverage to the position of Director. You have advised us that the Administrator employed by the Fund Manager of the System has questioned the eligibility of the Director to participate in the System inasmuch as that position is not included in the 1971 Joinder Agreement.

Previously, this office analyzed those portions of the System law governing the method for calculating benefits payable to Game and Fish members with service time accrued before their membership in the System. See Atty.Gen.Op.No. 74-26. In that opinion, we made the following statement:

[T]he [Game and Fish] joinder agreement . . . establishes the classes of employees included in the Public Safety Personnel Retirement System. Presumably, the Game and Fish Commission determined at the time of the execution of the joinder agreement that only the classes of employment listed therein were eligible for membership in the Public Safety Personnel Retirement System, and that all other classes of employment in the Game and Fish Department did not meet the eligibility requirements for membership in the System. (Emphasis added.)

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Because of your request, we now should consider that statement in relation to the circumstances giving rise to your request.

Participation in the System is available to any "employee" who meets the qualifications to be a "member". See A.R.S. § 38-842. These terms are defined for coverage purposes; therefore, the question of eligibility is one of determining whether a particular individual or position fits within the definitions. "Fish and game wardens" regularly assigned to hazardous duty are included within the statutory definition of an employee. See A.R.S. § 38-842.12. Among the qualifications for being a "member" is that the "employee" be included in a group designated as eligible employees under a joinder agreement. See A.R.S. § 38-842.16. We noted in Atty.Gen.Op.No. 74-26 that this eligible group included the assistant director, chief of law enforcement, enforcement supervisor, regional supervisors, rangers-at-large, wildlife managers and wildlife assistants, with a comment that we presumed that all eligible employees were covered in the 1971 Game and Fish Department Joinder Agreement. On further reflection, however, we have determined that our presumption was not necessary to support our opinion in Atty.Gen.Op.No. 74-26, nor should the statement be read to mean that an employee is prohibited from changing the designation of eligible employees if circumstances warrant the change.

The Game and Fish Department is a state law enforcement agency with responsibility for enforcing laws enacted to protect wildlife. It has approximately 300 employees, of which 108 are commissioned peace officers appointed by the Director. This enforcement function and the responsibility of the Director are set forth in A.R.S. § 17-211.D:

The director shall have general supervision and control of all activities, functions and employees of the department and shall enforce all provisions of this title, including all commission rules and regulations. Game rangers and wildlife managers may, in addition to other duties:

1. Execute all warrants issued for a violation of this title.
2. Execute subpoenas issued in any matter arising under this title.

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3. Search without warrant any aircraft, boat, vehicle, box, game bag or other package where there is sufficient cause to believe that wildlife or parts thereof is possessed in violation of law.

4. Inspect all wildlife taken or transported and seize all wildlife taken or possessed in violation of law, or showing evidence of illegal taking.

5. Seize as evidence devices used illegally in taking wildlife and hold them subject to provisions of § 17-240.

6. Generally exercise the powers of peace officers with primary duties the enforcement of this title.

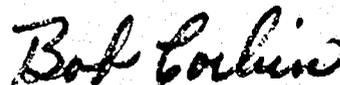
7. Seize devices that cannot be lawfully used for the taking of wildlife and are being so used and hold and dispose of same pursuant to § 17-240.

Reflecting the statutory mandate that the Director "enforce all provisions of this title," the Game and Fish Commission requires, as a condition of employment, that this individual be trained and act as a peace officer.

From the foregoing, we have concluded that the Game and Fish Commission reasonably could find that the position of Director of the Game and Fish Department is eligible for System membership.

We recommend that the Commission execute an amendment to the Game and Fish Joinder Agreement with the Fund Manager of the System to include the position of Director in the System.

Sincerely,



BOB CORBIN  
Attorney General

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