

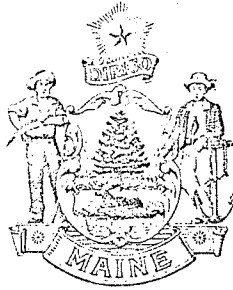
MAINE STATE LEGISLATURE

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79-57

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

March 26, 1979

The Honorable Glen Torrey
Maine House of Representatives
State House
Augusta, Maine 04333

Dear Representative Torrey:

You have requested an opinion as to whether or not Section 1002 of Title 30 requires a sheriff's office to provide aid to a local law enforcement agency upon the request of a local officer. For the reasons stated below, we answer in the negative.

Section 1002 of Title 30 constitutes a statutory version of the common law doctrine of posse comitatus. That doctrine empowered the sheriff of a county to summon the aid of bystanders for the arrest or apprehension of persons subject to criminal process, usually in the form of an arrest warrant. While there is some authority, based on the history of the statute, for the proposition that local law enforcement officers may also avail themselves of this power, the authorities indicate that the law of posse comitatus applies to such requests only for the aid of private citizens. The effect of a request for aid is to empower private citizens to act in concert with the officer; other officers are already so empowered. Village of Schofield v. DeLisle, 204 Wis. 84, 235 N.W. 396 (1931); Fisher, Laws of Arrest §160 (1967).

There is an additional reason why the statute would be inapplicable to most situations in which a local agency requests the aid of a sheriff's office. That reason stems from the fact that most such requests would probably be communicated by telephone or radio. At common law the authority of a sheriff or other officer to request aid was limited to

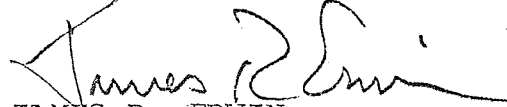
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the area within hearing distance of the requesting officer. 4 Wharton's Criminal Law and Procedure §1582 (1957); Fisher, Laws of Arrest §158 (1967). Thus any request to a person outside that area, whether or not that person is a law enforcement officer, is not within the authority granted by the law of posse comitatus.

Since Section 1002 of Title 30 is the current statutory version of the common law doctrine of posse comitatus, we conclude that the statute does not encompass the situation which you describe.

Please let us know if we may be of any further service.

Very truly yours,



JAMES R. ERWIN

Assistant Attorney General

JRE:njm