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Michael F. Kelly, Commissioner  
Department of Public Safety  
18 Meadow Road  
104 State House Station  
Augusta, ME 04333

RE: Law Enforcement Authority of and Training Requirements for  
Capitol Security Personnel

Dear Commissioner Kelly:

I am providing this letter in response to your request dated September 5, 2001 for an opinion from this office pursuant to 5 M.R.S.A. § 195 (1989) regarding the applicability of mandatory law enforcement training provisions to Capitol Security personnel. Specifically, you have asked:

1. Do the mandatory training provisions of 25 M.R.S.A. §§ 2804-C and 2804-E apply to full-time Capitol Security Officers?
2. To what extent can the Commissioner of the Department of Public Safety expand the law enforcement powers of full-time Capitol Security Officers pursuant to 25 M.R.S.A. § 2908, if those officers have not completed the training outlined at 25 M.R.S.A. § 2804-C?
3. Given the training requirements for full-time law enforcement officers, and the fact that Capitol Security Officers earn more than \$10,000 annually, "what are the choices that the Commissioner of Public Safety has to legally rectify this situation"?

Your questions require an examination of the language and history of statutes within Title 25 M.R.S.A. Chapter 341, The Maine Criminal Justice Academy, and Title 25 M.R.S.A. Chapter 351, Department of Public Safety.

The Law Court has repeatedly stated that the first canon of statutory construction is to "look first to the plain meaning of the statutory language as a means of effecting the legislative intent." If the meaning of the statute is plain, it must be interpreted "to mean exactly what it says." *Harding v. Wal-Mart Stores, Inc.*, 2001 ME 13 ¶9, 765 A.2d 73, 75 (internal citations omitted). The plain language of the relevant statutes leads me to

conclude that Capitol Security personnel whose positions may require them to perform law enforcement functions and who reasonably expect to earn more than \$10,000 annually are subject to the mandatory training provisions you cited.

*Applicability of Training Requirements to Capitol Security Personnel*

The tasks of the Bureau of Capitol Security are outlined in a series of statutes within Chapter 351 of Title 25. Section 2904, "Bureau of Capital<sup>1</sup> Security," authorizes the Commissioner of the Department of Public Safety to adopt rules, subject to the approval of the Governor, "governing the security regarding use and occupancy of all parks, grounds, buildings and appurtenances maintained by the State at the capitol area or other state controlled locations in Augusta." 25 M.R.S.A. § 2904(1) (1988). Section 2906 authorizes the Commissioner "to make and enforce rules, subject to the approval of the Governor, governing the use of public ways and parking areas maintained by the State at the capitol area or other state controlled locations in Augusta." 25 M.R.S.A. § 2906 (Supp. 2001). Section 2908 authorizes the Commissioner to "appoint and employ security officers, subject to the Civil Service Law." The law further provides, "The specific duties and powers of security officers appointed and employed are to patrol the public ways and parking areas, as defined by section 2905, to provide security for all parks, grounds, buildings and appurtenances maintained by the State in the capitol area and other state-controlled locations designated by the commissioner, and to enforce the rules promulgated pursuant to sections 2904 to 2907." 25 M.R.S.A. § 2908 (Supp. 2001).

The training statutes are found in Chapter 341 of Title 25. A law enforcement officer is defined as "any person who by virtue of public employment is vested by law with a duty to maintain public order, to prosecute offenders, to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes, to perform probation functions or to perform intensive supervision functions." 25 M.R.S.A. § 2801-A (5) (Supp. 2001). A full-time law enforcement officer is "any person who is employed as a law enforcement officer with a reasonable expectation of earning at least \$10,000 in any one calendar or fiscal year for performing law enforcement officer duties." 25 M.R.S.A. § 2801-A (4) (Supp. 2001).

Full-time law enforcement officers are subject to mandatory training requirements pursuant to 25 M.R.S.A. §§ 2804-C and 2804-E. Section 2804-C (1) (Supp. 2001) provides, in relevant part, that "As a condition to the continued employment of any person as a full-time law enforcement officer by a municipality, a county, the State or any other nonfederal employer, that persons must successfully complete, within the first 12 months of employment, a basic training course approved by the board [Board of Trustees of the Maine Criminal Justice Academy]." Section 2804-C "does not apply to any law enforcement officer certified as meeting the law enforcement training requirements or to any full-time law enforcement officer employed by a state agency, including the University of Maine System, as of July 1, 1990." 25 M.R.S.A. § 2804-C (5) (Supp. 2001). Section 2804-E (1) (Supp. 2001) provides, "As a condition to the continued

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<sup>1</sup> Spelling as in the original.

employment of a person as a law enforcement officer with the power to make arrests or the authority to carry a firearm in the course of duty by a municipality, county, the State or other nonfederal employer, that person must successfully complete in-service training as prescribed by the board [Board of Trustees of the Maine Criminal Justice Academy].”<sup>2</sup>

The primary duties and powers of security officers outlined in section 2908 do not appear to bring them within the definition of law enforcement officer found in the training statutes. However, if the Commissioner were to use the authority granted to him by 25 M.R.S.A. § 2908 to expand their duties and powers to “investigate, prosecute, serve process on and arrest violators of any law of this State,” the security officers would be acting as law enforcement officers, because their “public employment” would impose on them “a duty to maintain public order, to prosecute offenders, [and] to make arrests for crimes.” The Capitol Security Policy Manual your office supplied to me provides that Capitol Security personnel have “special police power,” including “the power to arrest.” Policy Manual, §2, Purpose and Role of Capitol Security.<sup>3</sup> Given this expanded authority, Capitol Security personnel are law enforcement officers subject to the training requirements of 25 M.R.S.A. §§ 2804-C and 2804-E.

The relevant statutory history is consistent with the plain language of the statutes. Security officers employed by the Department of Public Safety and whose law enforcement powers were limited to those specific in 25 M.R.S.A. § 2908 were explicitly exempted from the training requirements when the Law Enforcement Training Act was enacted in 1989. Laws 1989, c. 521 § 2 (LD 1142, pertinent portions effective July 1, 1990) (enacting the exemption as 25 M.R.S.A. § 2801-B (1)(D)).<sup>4</sup> However, this exemption was repealed by emergency legislation *and the exemption never went into effect*. Laws 1989 c. 936 §§ 3, 5 (LD 2413, emergency legislation effective July 1, 1990) (repealing the exemption). The appropriations section of Chapter 936 (Section 5), the same law repealing the exemption, provided funds “to establish 4 patrollers, classified as ‘watchpersons,’ as a unit within the Bureau of Capitol Security...” The Legislature thus considered security officers not law enforcement officers subject to training requirements, but “watchpersons,” or “patrollers.” Significantly, in the same year the Legislature eliminated the training exemption, it repealed and replaced 25 M.R.S.A. § 2908, removing the arrest authority previously granted to these security officers by the statute.<sup>5</sup> Laws 1989, c. 857 § 59 (L.D. 2427). The new law gave the Commissioner the

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<sup>2</sup> The Board of Trustees has addressed the training requirements in Chapter 5 of the rules of the Maine Criminal Justice Academy.

<sup>3</sup> The manual includes a number of provisions that indicate that capitol security officers are viewed by your department as invested with law enforcement duties and responsibilities, including section 3, Job Description and Task Statement; section 7, Use of Force; section 10(B), Vehicle Pursuit Policy; and section 13, Domestic Abuse.

<sup>4</sup> Title 25 M.R.S.A. § 2801-B (Supp. 2001) currently exempts the following from the mandatory training provisions of Chapter 341: probation officers employed by the Department of Corrections; agents or representatives of the Department of Conservation, Bureau of Parks and Bureau of Forestry; harbor masters; and municipal shellfish conservation wardens.

<sup>5</sup> The statute previously provided, “The Commissioner of Public Safety is authorized and empowered to appoint and employ, subject to the Civil Service law, security officers who shall have the powers of arrest of a sheriff in the Capitol Area, parks, grounds, buildings and

discretion to expand the powers of security officers to include arrest, but did not by statute vest that authority in the security officers. The watchpersons or patrollers of capitol security thus performed duties substantially different from those of full-time law enforcement officers.

Expansion of Capitol Security Personnel Powers pursuant to 25 M.R.S.A. § 2908

By statute, the Commissioner can expand the duties of these security officers beyond their primary purpose:

The commissioner may by rule, policy, or procedure expand the duties and powers of security officers in the capitol area and other state-controlled locations designated by the commissioner beyond the duties and powers enumerated in this section to investigate, prosecute, serve process on and arrest violators of any law of this State.

25 M.R.S.A. § 2908 (Supp. 2001).

However, the Commissioner can not legally expand the authority of the security officers to include law enforcement powers pursuant to 25 M.R.S.A. § 2908 unless those personnel have satisfied the mandatory training requirements of 2804-C and 2804-E. Although section 2908 gives the Commissioner the authority to expand their powers, including the power to make arrests, there is no provision in the law for an exemption from training requirements should that expansion be granted. The plain language of the statutes and the relevant history reviewed above do not provide a basis for such an exemption to be implied. The only available exemption is that provided by 25 M.R.S.A. § 2804-C (5). To the extent that a current capitol security officer is certified as meeting all law enforcement training requirements, or was a full-time law enforcement officer employed by a state agency as of July 1, 1990, that officer is exempt from the training requirements of section 2804-C (but not exempt from the in-service training requirements of 25 M.R.S.A. § 2804-E).

Options with respect to Capitol Security Personnel

Finally, you have asked “what are the choices that [you have] to legally rectify this situation,” given the fact that the security officers earn more than \$10,000 annually, and have not been trained in accordance with 25 M.R.S.A. § 2804-C.

If you wish the Capitol Security personnel to act as law enforcement officers, with the power to make arrests, take persons into protective custody, enforce all or selected provisions of Titles 29-A and 17-A, and perform other law enforcement functions, they must be trained pursuant to the mandatory training requirements of 25 M.R.S.A. §§ 2804-C and 2804-E.

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appurtenances owned or leased by the State at the capitol area of [sic] other state controlled locations in Augusta.” These security officers were referred to in the statute as “special police officers.” 25 M.R.S.A. §2908 (1988). The current statute identifies them as “security officers.”

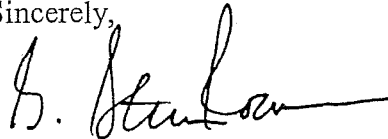
If you do not wish or are unable to train the Capitol Security personnel, they can not act as full-time law enforcement officers, except to the extent that an officer qualifies for an exemption pursuant to 25 M.R.S.A. § 2804-C (5), discussed above. Unless and until they are trained, any rule, policy or procedure in effect that implies that these individuals have the power to make arrests, enforce Titles 17-A or 29-A, take persons into protective custody, use force in accordance with the standards outlined in 17-A M.R.S.A. 107, or perform other law enforcement functions must immediately be suspended.<sup>6</sup> Their duties must be limited to those outlined by the Legislature as their “specific powers and duties”:

...to patrol the public ways and parking areas, as defined by section 2905, to provide security for all parks, grounds, buildings and appurtenances maintained by the State in the capitol are and other state-controlled locations designated by the commissioner, and to enforce the rules promulgated pursuant to sections 2904 to 2907.

25 M.R.S.A. § 2908 (Supp. 2001).

To the extent that you or any previous Commissioner has granted Capitol Security personnel the authority or duty to act as law enforcement officers, you must have those persons trained within twelve months of their hire as full-time law enforcement officers. In the alternative, you must immediately suspend any such person’s law enforcement authority and duties, as well as any enabling rule, policy or procedure.

Sincerely,



G. STEVEN ROWE  
Attorney General

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<sup>6</sup> Pursuant to 29-A M.R.S.A. § 2054(1)(B)(8) (Supp. 2001); vehicles driven by “capital security officers” are “authorized emergency vehicles.” Laws 2001 c. 360 § 5. The driver is authorized to use a siren when exercising certain privileges granted to authorized emergency vehicles. 29-A M.R.S.A. § 2054 (3), (6) (1996). Authorized emergency vehicles are also required to use lights when exercising privileges granted under this statute. 29-A M.R.S.A. § 2054 (6) (1996). However, no emergency lights are authorized for Capitol Security vehicles. 29-A M.R.S.A. § 2054 (2) (1996). Significantly, Capitol Security personnel are not authorized to exceed the maximum speed limit, as are operators of other authorized emergency vehicles, including law enforcement, emergency medical service and fire department vehicles. 29-A M.R.S.A. § 2054 (5)(C) (Supp. 2001); Laws 2001 c. 360 § 7.