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October 17, 2013

Hon. J. Brendan Sharkey
Speaker of the House of Representatives
Connecticut General Assembly
Legislative Office Building, Suite 4100
Hartford, CT 06106-1591

Dear Speaker Sharkey:

You have asked for a formal opinion reexamining an opinion issued by Attorney General Richard Blumenthal on September 21, 1993, regarding the training requirements for various law enforcement officers (1993 Opinion). In particular, you request a reexamination of that part of the 1993 Opinion that addressed whether Constables for Fish and Game Protection (Fish & Game Constables) are subject to the training and certification requirements of the Police Officers Standards and Training Council (POSTC), and ask specifically whether Fish & Game Constables may carry firearms without POSTC training and certification, and if so, what training must they complete. We conclude that, in light of strong evidence of legislative acquiescence to and reliance on the 1993 Opinion, we should not reconsider, and it remains our opinion that Fish & Game Constables under Conn. Gen. Stat. § 26-6a must receive POSTC training and certification.

1993 Opinion

The 1993 Opinion was issued to the Executive Director of the Municipal Police Training Council (MPTC), the predecessor to POSTC.¹ It addressed whether a wide range of law enforcement officers established under various statutes were subject to POSTC training and certification. Among the officers considered were Fish & Game Constables.

Section 7-294d of the General Statutes authorizes POSTC to develop comprehensive police training plans and to issue certifications to police officers who have completed its training programs. Conn. Gen. Stat. § 7-294d(a). It further provides that no person may be employed as a "police officer by any law enforcement unit" for more than a year unless he has been certified by POSTC or been granted an extension by POSTC. *Id.*, § 7-294d(b). POSTC may under

¹ The MPTC was renamed POSTC pursuant to Public Act 95-108. For ease of discussion, this opinion will hereafter simply refer to both entities as POSTC.

certain criteria refuse to renew a certification or revoke or cancel a certification. *Id.*, §§ 7-294d(b), (c).

In evaluating whether the various officers were subject to POSTC training and certification requirements, the 1993 Opinion employed a two-stage analysis. As the 1993 Opinion explained, although § 7-294d refers to “police officers,” the statute provides that it also “shall apply to any person who performs police functions.” *Id.*, § 7-294d(e). The first step of the 1993 Opinion’s analysis was to consider if the officers in question were “police officers”² or persons who perform “police functions”³ within the meaning of the statute. 1993 Opinion, at 2-3. If the officers under consideration came within the meaning of “police officers” or persons who perform “police functions,” then the 1993 Opinion considered whether such officers were subject to POSTC training and certification requirements under § 7-294d. *Id.*

The second step in the analysis was resolved principally by examining the specific statutes governing the officers in question. If the specific governing statute did not address training, the 1993 Opinion concluded that the officers in question were subject to POSTC training and certification requirements. By contrast, if the specific governing statute did impose a training requirement different from that provided by § 7-294d, the 1993 Opinion concluded, following the rule of statutory interpretation that specific statutory language controls over general, that the officers in question were not subject to POSTC training and certification. Thus, for example, it concluded that POSTC training and certification requirements did not extend to sheriffs and deputy sheriffs under Conn. Gen. Stat. § 6-32b, animal control officers (to the extent waived by relevant municipality) under Conn. Gen. Stat. § 22-331, conservation officers under Conn. Gen. Stat. § 26-6, and fire police under Conn. Gen. Stat. § 7-313a. 1993 Opinion, at 3, 5, 6-7, 12.

² “Police officer” was defined, then and now, as “a sworn member of an organized local police department, an appointed constable who performs criminal law enforcement duties, a special policeman appointed under section 29-18, 29-18a or 29-19 or any member of a law enforcement unit who performs police duties.” Conn. Gen. Stat. § 7-294a(9).

³ At the time of the 1993 Opinion, the phrase “performs police functions” was not defined. The statute was amended in 1995 to define “performs police functions” for a person who is not a police officer to mean “that in the course of such person’s official duties, such person carries a firearm and exercises arrest powers pursuant to section 54-1f or engages in the prevention, detection or investigation of crime, as defined in section 53a-24.” Pub. Act. 95-108; Conn. Gen. Stat. § 7-294d(e). For present purposes, this definition is substantively consistent with the analysis of the 1993 Opinion.

Reexamination of Training Requirements for Fish & Game Constables

The 1993 Opinion concluded that Fish and Game Constables performed police functions and were subject to POSTC training and certification. 1993 Opinion, at 7. Section 26-6a(a) of the General Statutes, which authorizes the appointment of Fish & Game Constables, provides:

The chief executive authority of any town, city or borough, with the consent and approval of the police commission of such town, city or borough, if any, otherwise the chief of police, if any, may appoint and administer the oath of office to special officers to be known as constables for fish and game protection, *whose duties shall be limited to the enforcement, in the municipality of their appointment, of state and local fish and game laws and regulations issued by the Commissioner of Energy and Environmental Protection, any local ordinance relating to hunting, fishing and trapping and any provision of section 53-205 or 53a-109.* Before entering upon the duties of their office, such officers shall post any bond which may be required for constables by such town, city or borough. Any person so appointed shall serve without compensation and shall be subject to such rules and regulations governing conduct as such chief executive authority deems necessary. Each such officer shall, within twenty-four hours, *report all arrests made by him* to the chief executive authority or a person designated by such authority. Such authority or the person so designated shall, within twenty-four hours thereafter, report such arrests to a district supervisor or conservation officer of the Department of Energy and Environmental Protection. All such constables for fish and game protection shall perform their duties under the supervision of, and be responsible to, such chief executive authority. Any such officer may be removed from office at any time by such authority or the chief of police upon approval of a majority of the police commission, if any. *The commissioner [of energy and environmental protection] shall cooperate with local officials in the instruction of such special officers and shall formulate and conduct a training seminar once annually for constables appointed pursuant to this section, which seminar shall be completed by any such constable prior to entering upon the duties of his office.*

Conn. Gen. Stat. § 26-6a(a) (emphasis added). The 1993 Opinion concluded that “[d]espite their limited authority, such [Fish & Game Constables] perform police functions, and are, therefore, subject to the authority of [POSTC] as concerns training and certification of police officers.” 1993 Opinion, at 7.

There is little question that Fish & Game Constables are persons performing police functions within the meaning of § 7-294d. They are charged with enforcement, including the power to arrest, of state and local fish and game laws as well as laws relating to carrying loaded weapons in vehicles (§ 53-205) and criminal trespass (§ 53a-109) in their municipalities. There is no reason to reconsider that aspect of the 1993 Opinion. *See* Conn. Gen. Stat. § 7-294d(e).

However, the 1993 Opinion did not address the provision of § 26-6a that directs the commissioner of energy and environmental protection to conduct annual training seminars for Fish & Game Constables and requires such officers to complete the training seminar.⁴ Arguably, this provision implicates the second step of the analysis undertaken in the 1993 Opinion – to wit, whether the statute governing the officers in question provides for specific training requirements different from that required generally by § 7-294d. This step in the 1993 Opinion’s analysis, it should be emphasized, is based on the rule of statutory construction that specific language usually should prevail over general language. *See Housatonic Railroad Co. v. Comm’r of Revenue Serv.*, 301 Conn. 268, 301-02 (2011). As with any rule of construction, it is only a guide to determining legislative intent and must yield to other more persuasive evidence of intent. *Burke v. Fleet Nat’l Bank*, 252 Conn. 1, 23 (2000).

Several factors weigh strongly against reevaluating the 1993 Opinion’s conclusions as to Fish & Game Constables. First, in the twenty years since its issuance, there is evidence that the legislature has not only acquiesced in, but relied on the conclusions of the 1993 Opinion. The statutes relating to POSTC training have been addressed and amended numerous times since 1993. Of particular significance is Public Act 95-108, which in addition to changing the name to POSTC and defining the phrase “police functions,” *see* notes 1 & 3, amended § 7-294d(f) to exempt explicitly from POSTC training and certification sheriffs and deputy sheriffs trained pursuant to § 6-32b, animal control officers under § 22-331, and fire police appointed under § 7-313a. Pub. Act 95-108, § 4. The 1993 Opinion had concluded that each of these three categories of officers were not subject to POSTC training and certification. 1993 Opinion, at 3, 5, 12. The legislative history of Public Act 95-108 reveals that this amendment was in

⁴ The training provision was added to § 26-6a by amendment in 1991. Public Act 91-378, § 6.

fact enacted in light of the 1993 Opinion.⁵ 1995 Jt. Standing Comm. Hearings, Public Safety, at 316-17 (Feb. 2, 1995) (testimony of William Knapp, Exec. Dir., MPTC); OLR Bill Analysis sHB 5585 (1995) (<http://www.cga.ct.gov/ps95/ba/1995HB-05585-R01-BA.htm>). Aware of the 1993 Opinion's conclusions, the legislature nonetheless chose not to exempt Fish & Game Constables from POSTC training. Where a statute has been amended after the issuance of an Attorney General's opinion without addressing the matter that was the subject of the opinion, there is a presumption of legislative acquiescence, and the Attorney General's opinion serves as "highly persuasive" evidence of the meaning of the statute. *Wiseman v. Armstrong*, 269 Conn. 802, 826-27 (2004); see *Thomas v. Dept. of Developmental Services*, 297 Conn. 391, 404 (2010) (doctrine of legislative acquiescence applies when legislature has amended a statute previously subject to court interpretation).

Moreover, we are also mindful that the legislature in last year's session sought to address the question of training of Fish & Game Constables for at least some municipalities. House Bill 5304, which was vetoed by the Governor, would have required that Fish & Game Constables in municipalities with populations of over 44,000 but less than 50,000 to complete a "basic police training course that is tailored to the duties to be performed by such officers and provided by a police officer of the police department of such town" who was POSTC certified. H.B. 5304 (2012). This training provision, by implication, presumably would have exempted Fish & Game Constables from only such municipalities from POSTC training and certification. Although failed legislation is not always a good guide to legislative intent, see *Wilcox v. Schwartz*, 303 Conn. 630, 653-54 (2012), in the unique circumstances presented here it counsels against reconsidering the 1993 Opinion.⁶

Finally, as to your specific question about the use of firearms by Fish & Game Constables – a question that was not explicitly addressed by the 1993 Opinion – there would remain some uncertainty even if we concluded that the 1993 Opinion ought to be revisited, which we do not. Section 26-6a does not

⁵ One of the purposes of the 1995 amendments was to make clear that, unless exempted, officers with authority to make arrests and carry firearms were subject to POSTC training, and thus to allow local officials to make an informed decision whether to appoint officers with such authority and thereby incur the costs of POSTC training. See H. Proc., at 2010-22 (May 10, 1995) (remarks of Rep. Dargan).

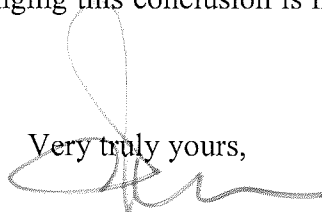
⁶ Indeed, the Governor's veto message specifically referenced the 1993 Opinion's conclusion as to Fish & Game Constables. Veto Message for House Bill 5304, *An Act Concerning the Training and Authority of Certain Constables Appointed for Fish and Game Protection*, dated June 15, 2012.

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expressly authorize the use of firearms by Fish & Game Constables. By contrast, the statute governing lake patrolmen – officers with similarly restricted authority to enforce boating laws – provides that such patrolmen “may carry a firearm or baton, or both, only upon completion of [POSTC training] or a firearms safety course offered by the Department of Energy and Environmental Protection.” Conn. Gen. Stat. § 7-151b(a). Unlike the lake patrolmen statute, § 26-6a does not expressly indicate whether Fish & Game Constables may use firearms and if so, what training is required. Against the backdrop of the legislative acquiescence to the 1993 Opinion, there is no clear basis in the statutory language to conclude that Fish & Game Constables may use firearms in the performance of their official duties without having completed POSTC training.

In light of the longstanding interpretation of the relevant statutes reflected in the 1993 Opinion and the legislative acquiescence and reliance thereon, we conclude that a reexamination of the 1993 Opinion’s conclusion that Fish & Game Constables must complete POSTC training and certification is not appropriate. Under the circumstances, changing this conclusion is more properly left to the legislature.

Very truly yours,



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