

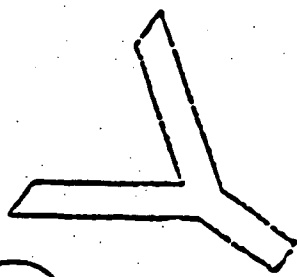


**TYRONE C. FAHNER**  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

December 3, 1981

FILE NO. 81-036

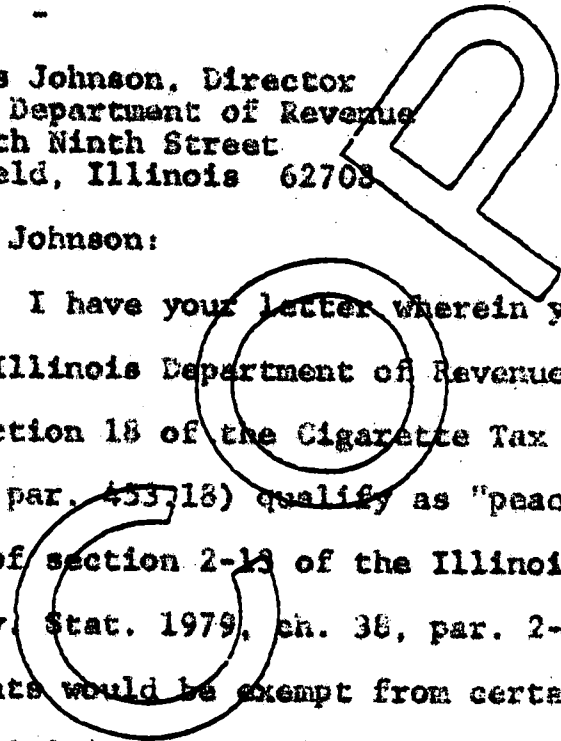
**CRIMINAL LAW AND PROCEDURE:**  
**Whether Certain Department of**  
**Revenue Fraud Agents May**  
**Qualify as "Peace Officers"**



J. Thomas Johnson, Director  
Illinois Department of Revenue  
1500 South Ninth Street  
Springfield, Illinois 62703

Dear Mr. Johnson:

I have your letter wherein you inquire whether certain Illinois Department of Revenue fraud agents appointed under section 18 of the Cigarette Tax Act (Ill. Rev. Stat. 1979, ch. 120, par. 433.18) qualify as "peace officers" within the meaning of section 2-13 of the Illinois Criminal Code of 1961 (Ill. Rev. Stat. 1979, ch. 38, par. 2-13). As peace officers, such agents would be exempt from certain provisions of the Illinois Criminal Code of 1961 relating to the unlawful use of weapons. For the reasons hereinafter stated, it is my opinion that Revenue fraud agents, acting pursuant to the authority vested in them under section 18 of the Cigarette Tax Act, are



J. Thomas Johnson - 2.

peace officers within the meaning of section 2-13 of the Illinois Criminal Code of 1961.

Section 2-13 of the Criminal Code of 1961 (Ill. Rev. Stat. 1979, ch. 38, par. 2-13) defines "peace officer" as

" \* \* \* any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses." (Emphasis added.)

Section 18 of the Cigarette Tax Act (Ill. Rev. Stat. 1979, ch. 120, par. 453.18) provides that:

"Any duly authorized employee of the Department may arrest without warrant any person committing in his presence a violation of any of the provisions of this Act, and may without a search warrant seize any original packages not tax stamped or tax imprinted underneath the sealed transparent wrapper of such original packages in accordance with the provisions of this Act and any vending device in which such packages may be found, and such original packages or vending devices so seized shall be subject to confiscation and forfeiture as hereinafter provided." (Emphasis added.)

Under section 2-13 of the Criminal Code of 1961, a person qualifies as a "peace officer" when he is vested by law with a duty to make arrests for offenses "whether that duty extends to all offenses or is limited to specific offenses". Although Illinois courts have on occasion dealt with the scope of the section 2-13 definition of "peace officer" (Arrington v. City of Chicago (1970), 45 Ill. 2d 316; People v. Perry (1975), 27 Ill. App. 3d 230), no court has passed on a situation where a person's statutory authority to make arrests is limited to

J. Thomas Johnson - 3.

specific offenses. In the Arrington case, the Illinois Supreme Court, in determining that jail guards are not peace officers within the section 2-13 definition, pointed out that such individuals had no general powers to arrest or maintain order. Likewise, in the Perry case, the Appellate Court for the First District, in determining that private security guards employed by a municipality are not peace officers within the meaning of section 2-13, discussed only that part of the section 2-13 definition relating to a general duty to maintain public order or make arrests. Neither case dealt directly with a situation similar to the one at hand.

Section 2-13 by its own terms provides that an individual is a peace officer when he is vested by law with the authority to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses. Revenue fraud agents appointed by the Department and authorized to act pursuant to section 18 of the Cigarette Tax Act are vested by law with a duty to arrest persons committing, in their presence, any violation of the Cigarette Tax Act. Although their authority to arrest is narrow, in accordance with the plain meaning of section 2-13 and absent any Illinois case construing the relevant language of the statute to the contrary, those individuals qualify as "peace officers" by virtue of their authority to arrest for specific offenses. As you point out in your letter, agents appointed pursuant to

J. Thomas Johnson - 4.

section 18 of the Cigarette Tax Act and having the legal status of "peace officer", are exempt from certain provisions of the Criminal Code of 1961 relating to unlawful use of a weapon. According to information received from your office, the established and consistent policy of the Department since 1969 has been to allow Revenue fraud agents to carry firearms based upon a belief that they were "peace officers".

Section 24-1 of the Criminal Code of 1961 (Ill. Rev. Stat. 1979, ch. 38, par. 24-1) provides in pertinent part that:

" \* \* \* (a) A person commits the offense of unlawful use of weapons when he knowingly:

\* \* \*

(3) Carries on or about his person or in any vehicle, a tear gas gun projector or bomb or any object containing noxious liquid gas or substance; or

(4) Carries concealed in any vehicle or concealed on or about his person except when on his land or in his own abode or fixed place of business any pistol, revolver, stun gun or taser or other firearm; or

\* \* \*

(10) Carries or possesses in a vehicle or on or about his person within the corporate limits of a city, village or incorporated town, except when on his land or in his own abode or fixed place of business, any loaded pistol, revolver, stun gun or taser or other firearm.

\* \* \*

Section 24-2 of the Criminal Code of 1961 (Ill. Rev. Stat. 1979, ch. 38, par. 24-2) provides in pertinent part that:

J. Thomas Johnson - 5.

"Exemptions. (a) Subsections 24-1(a)(3), 24-1(a)(4) and 24-1(a)(10) do not apply to or affect any of the following:

(1) Peace officers or any person summoned by any such officers to assist in making arrests or preserving the peace while he is actually engaged in assisting such officer.

\* \* \*

"

(Emphasis added.)

Because Revenue fraud agents, when acting pursuant to the authority vested in them under the Cigarette Tax Act, are peace officers, such agents are exempt from the provisions of subsections 24-1(a)(3), (a)(4) and (a)(10) of the Criminal Code of 1961 during the course of their official duties. Evans v. Rowers (1979), 595 F.2d 372, 374.

Very truly yours,

  
ATTORNEY GENERAL