

Memorandum • **Government of the District of Columbia**

TO: Thomas M. Downs Office: Corporation Counsel
 City Administrator/ Prepared by: LCD:L&O:LNG:pmck
 Deputy Mayor for Operations (86-230)

FROM: John H. Suda *[Signature]*
 Acting Corporation Counsel, D.C. Date: July 25, 1986

SUBJECT: Does the Mayor have the authority to arm the Metropolitan Police Department Reserve Corps?

The Metropolitan Police Department Reserve Corps was established by Commissioners' Order No. 302,611, approved November 23, 1948. It was amended in 1950. (See Attachment 1.) On April 24, 1961, then Principal Assistant Corporation Counsel Milton D. Korman sent a 6-page memorandum (see Attachment 2) to Commissioner Walter Tobriner concerning the "legal problems involved in possible utilization of the Metropolitan Police Department Reserve Corps to assist regular members of the Metropolitan Police Department in the performance of police duties." In concluding that the Commissioners had no authority to appoint Reserve Corps members to "active duty with full police powers," Mr. Korman relied on D.C. Code § 1-215 (1951) which prohibited the District from accepting volunteer service, and on the limited purpose provisions set forth in D.C. Code §§ 4-115 and 4-133 (1951) (now codified as §§ 4-114 and 4-130), which provide for the appointment of special police to protect private property (§ 4-114) and to exercise police powers in the event of "riot, pestilence, invasion, insurrection, or during any day of public election, ceremony, or celebration ..." (§ 4-130).

The Chief of Police, on December 1, 1971, issued General Order No. 3, Series 101 ("Order") (see Attachment 3), which provides in pertinent part that MPD District commanders may use Reserve Corps members in the following positions:

- a. Operating the patrol signal system.
- b. Patrolling a beat with a regular officer, or when practicable, in company of another reserve officer.
- c. Assignment to a mobile unit but not as an operator.

d. Assignment to prevent movement of traffic on a closed street (e.g., play streets and barricaded streets).

e. Assignment to a civic function for the purpose of preserving the peace and promoting better police-community relations.

f. Assignment to duty with the Special Events Section, Special Operations Division.

See Order, Part III B 3, at pp. 12-13.

Part III B 4 (p. 13) of the Order provides:

4. Members of the Reserve Corps possessing special qualifications, in addition to performing the normal duties of members of the regular force in the prevention and detection of crime and the protection of life and property, may be detailed to duty as:

- a. Computer equipment operators.
- b. Clerks.
- c. First aid instructors.
- d. Radio technicians.
- e. Teletype operators.
- f. Stenographers.
- g. Typists.
- h. General clerical work.
- i. Work in Dispatcher's Office.

Part II H 47 (p. 10) of the Order prohibits Reserve Corps members from carrying firearms. But Reserve Corps members are given firearms training and may bear arms when, during periods of emergency, they are sworn in as "standing members of the force" with full police powers. See Order, Part III B 6 (p. 13).

Mr. Korman's memorandum implicitly proceeded from the proposition that unless authority was specifically conferred on the Commissioners, they could not confer on the MPD Reserve Corps general police authority. That position was arguably correct before the Self-Government Act. But there can be little doubt that the authority to arm the MPD Reserve Corps is within the "executive power of the District" as vested in the Mayor under § 422 of the Self-Government Act, D.C. Code § 1-242 (1981). Moreover, unlike the situation in 1961, District of Columbia law authorizes the acceptance by the District of volunteer service. See D.C. Code § 1-304 et seq. (1981). Stated otherwise, the proper approach after the effective date of the Self-Government Act is that if the authority in question lies within the ambit of the "executive power," the Mayor may exercise that authority unless there exists a statute specifically prohibiting the Mayor from exercising it. And there is no statute specifically prohibiting the Mayor from authorizing the MPD Reserve Corps to carry firearms. Sections 5 and 14 of an Act to control the possession of pistols and other dangerous weapons, 47 Stat. 651, ch. 465 (1935), D.C. Code §§ 22-3205 and 22-3214 (1981), permit "policemen, or other duly-appointed law enforcement officers" to carry weapons. And the registration requirements of section 201 of D.C. Law 1-85, the Firearms Control Regulations Act, D.C. Code § 6-2311 (1981), do not apply to "any law enforcement officer or agent of the District." D.C. Code § 6-2311(b)(1) (1981). In our view, members of the MPD Reserve Corps fall within this category.*/ Although a decision authorizing members of the MPD Reserve Corps to carry firearms could be described as a "personnel" decision in the broadest sense, it does not appear to fall within the ambit of the personnel rules and regulations required to be issued by the Mayor via formal APA rulemaking under sections 404(a) and 405 of the Comprehensive Merit Personnel Act, D.C. Code §§ 1-604.4(a) and 1-604.5 (1981). The arming of law enforcement officers has not historically been a subject treated by the District Personnel Manual, and is

*/ Cf. memorandum of this Office dated September 14, 1983 (members of MPD Reserve Corps may be treated as employees for purposes of Title 23 of the District of Columbia Government Comprehensive Merit Personnel Act) (see Attachment 4).

not now treated by any successor personnel rules or regulations. Accordingly, only amendments to MPD General Order No. 3, Series 101, dated December 1, 1971, would be needed in order to authorize members of the MPD Reserve Corps to carry firearms in the performance of law enforcement duties.

JHS

Attachments