



MINNESOTA POLICE AND PEACE OFFICERS ASSOCIATION

525 Park Street, Suite 250 St. Paul, MN 55103-2145
Phone: 651-291-1119 Website: www.mppoa.com

September 22, 2023

Dear MPPOA Members,

On September 20, 2023, Attorney General Ellison issued a supplementary opinion (AGO) as it relates to the ongoing SRO issue. This opinion was generated after law enforcement stakeholders (including the Minnesota Police and Peace Officers Association, Minnesota Chiefs of Police Association, and Minnesota Sheriffs' Association) brought valid and legitimate concerns regarding the uncertainty in the application of the new law. This included clarity to the initial AGO opinion dated August 22, 2023. Our associations were concerned that the new law created two standards—one for peace officers and another for peace officers working in or contracted with a school or district.

In sum, the September 20, 2023 AGO concluded that the new law “does not limit the types of reasonable force that may be used by school staff and agents to prevent bodily harm or death. It also does not limit the types of reasonable force that may be used by police officers to carry out their lawful duties, as described in Minnesota Statutes section 609.06, subdivision 1(1). The test for reasonable force remains unchanged and is highly fact specific.”

Based on this AGO, now all peace officers, including those SROs or others contracted with a school district, may use reasonable force to effectuate their lawful duties. The new AGO extends “reasonable force” beyond threats of bodily harm or death and is now consistent with Minnesota Statutes 609.06, subdivision 1(1).

The updated AGO provides a legal opinion regarding part of the “Education Code” in Minnesota Statutes, section 121A. Minnesota Statute section 8.07 provides that “on all school matters” attorney general opinions like this one are “decisive.”¹ Because the AGO addresses law relating

¹ The Minnesota Supreme Court has confirmed the opinions are “binding” until overruled by courts. *Eelkema v. Bd. of Ed. of Duluth*, 11 N.W.2d 76, 78 (Minn. 1943). “School matters” have been construed broadly, including the interpretation of how general statutes apply in an education context. E.g., *Village of Blaine v. Indep. Sch. Dist. No. 12*, 138 N.W.2d 32, 39-40 (Minn. 1965) (noting attorney general opinion had properly construed statute regarding municipal utilities in applying it to school district); *Mattson v. Flynn*, 13 N.W.2d 11, 16 (Minn. 1944) (noting reliance on attorney general opinion interpreting statutory language regarding teachers retirement funds); *Eelkema*, 11 N.W.2d at 78 (adopting attorney general analysis and noting that attorney general opinion regarding “tenure act”’s application to superintendent had been binding until any contrary court opinion was issued); *Lindquist v. Abbott*, 265 N.W. 54, 55 (Minn. 1936) (noting attorney general opinion regarding whether school district could enter into year-long contract with attorney was “followed ever since” it was issued).



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to schools, section 8.07 authorizes the Minnesota Attorney General to issue an opinion that becomes “decisive.” On September 21, 2023 Governor Walz issued a statement concluding that this AGO opinion is “binding.”

Importantly, Minnesota Statutes 8.07 further states that the opinion is “decisive until the question involved shall be decided otherwise by a court.” This means that the standard to use force outlined by the AGO is decisive² unless and until a court disagrees. There remains a chance that if a judge is presented with a civil or criminal action in any jurisdiction in Minnesota, a court may disagree with the AGO and issue their own opinion as it relates to Minnesota Statutes 121A.58. Again, this is hypothetical and as of the date of this letter, no such action has been taken against any peace officer regarding their actions as a school resource officer in the State of Minnesota under the guidance of the new law.

On September 20, I, on behalf of MPPOA and its members, along with leaders of the Minnesota Police Chiefs Association and the Minnesota Sheriffs’ Association, met with Governor Walz and leaders of the Minnesota House and Senate. We expressed our concerns with the new language in section 121A (the SRO law), and the way the law came to fruition. Governor Walz agreed and promised to prioritize a legislative fix in the next legislative session. The Speaker of the House and the Majority Leader of the Senate announced a “commitment to hold public hearings” about the SRO issue within the “first two weeks” of the legislative session.

On September 21, 2023, the Minnesota Post Board provided the following guidance:

“The POST Board concurs with the supplemental opinion issued by the Attorney General on September 20, 2023, concerning the recent amendment to the student discipline laws, and understands it binds the Board by virtue of Minnesota Statutes section 8.07. As set forth in the Attorney General’s supplemental opinion, the amendment to the student discipline laws “does not limit the types of reasonable force that may be used by school staff and agents to prevent bodily harm or death” nor does it limit “the types of reasonable force that may be used by public officers to carry out their lawful duties, as described in Minnesota Statutes section 609.06, subdivision 1(1).”

As such, on matters involving the POST Board regarding complaints against SROs or officers contracted with a school/ districts, the POST Board will use the *decisive* language of the AGO.

Conclusions:

1. “Reasonable force” in Minnesota Statutes 609.06 is the standard for all peace officers, including SROs and officers that are contracted with a school district as per the AGO.
2. The most recent AGO is “decisive” unless and until a court disagrees with the AGO.

² <https://www.revisor.mn.gov/statutes/cite/8.07>



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3. If SROs and officers contracted with a school district return to their assignment based upon the new guidance from the AGO, they should understand that the AGO is binding unless and until overruled by a court. Should that occur, further guidance will be needed.
4. MPPOA thanks Governor Walz, the Attorney General, and legislative leaders for their work towards finding a temporary solution to return SROs back to Minnesota schools. A legislative solution is the only way to permanently fix this issue. Although commitments for hearings are helpful, they are not commitments to correcting the law. We will work with Governor Walz and legislative supporters to bring about a permanent resolution to this issue. The sooner that is accomplished, the better for all those involved. However, if this law is unable to be fixed statutorily next session, law enforcement agencies will need to re-evaluate their relationships with school districts and their SRO programs in the long-term.

I will continue to be a voice for you both in and out of the courtroom. Keep up the good work and be safe.

Imran S. Ali
General Counsel
Minnesota Police and Peace Officers Association