

DEPARTMENT GENERAL ORDER 99-7

OFFICE of the CHIEF OF POLICE
REPLACES: SOP 201.01.00

DATE: January 29, 1999

STATUTORY AUTHORITY

I. PURPOSE.

The legally mandated authority vested in the sworn members of this Police Department issues from the Constitution of the State of Missouri, the Revised Statutes of Missouri, and the Municipal Code of the City of Clayton. Certain limitations apply to the scope of police power and officers of this command will exercise their authority in full accordance with legal and constitutional stipulations.

II. DEFINITIONS.

Authority - The legal right of power to command.

Legal - Actions authorized or based on law.

Peace Officer - Members of the state highway patrol, all state, county, and municipal law enforcement officers possessing the duty and power of arrest for violation of any criminal laws of the state or for violation of ordinances of counties or municipalities of the state who serve full-time, with pay.

III. MISSOURI STATE CONSTITUTION.

- A. Article VI, Section 19(a) of the constitution of the State of Missouri, Power of Charter Cities, How Limited, states: "Any city which adopts or has adopted a charter for its own government, shall have all powers which the general assembly of the State of Missouri has authority to confer upon any city, provided such powers are consistent with the constitution of this state and are not limited or denied either by the charter so adopted or by statute. Such a city shall, in addition to its home rule powers, have all powers conferred by law.

- B. Article VII, Section 11, of the constitution of the State of Missouri, Oath of Office, states: “Before taking office, all civil and military officers in this state shall take and subscribe an oath or affirmation to support the constitution of the United States and of this state, and to demean themselves faithfully in office.

IV. MISSOURI REVISED STATUTES.

- A. Missouri Revised Statute RSMo 70.820, Subsection 1, Authority of Peace Officers to respond to emergencies outside jurisdiction, states: “Any law enforcement officer as defined by Section 556.061 RSMo, full-time peace officer as defined by Section 590.100 RSMo, of a county or a full-time peace officer of any political subdivision who is certified pursuant to Chapter 590 RSMo, or a chief executive officer as defined by Section 590.100, of a county or any political subdivision, certified pursuant to Chapter 590 RSMo, shall have the authority to respond to an emergency situation outside the boundaries of the political subdivision from which such peace officer’s authority is derived. This section does not apply to any peace officer certified pursuant to Subsection 6 of Section 590.105.
- B. Missouri Revised Statute RSMo 70.820, Subsection 5, Authority of Certain Peace Officers, states: “ In addition to the emergency response powers prescribed in Subsection 1 of this section, any peace officer of a county of the first classification with a charter form of government, or any peace officer of any political subdivision within any county of the first classification with a charter form of government, or any peace officer of any city not within a county, who has completed the basic peace training program pursuant to Chapter 590 RSMo, may arrest persons who violate any provision of state law within the boundaries of any county of the first classification or of any city not within a county.
- C. Missouri Revised Statute RSMo 70.820, Subsection 6, Authority of Federal Law Enforcement Officers, states: “In addition to the powers prescribed in Subsections 1 and 5 of this Section, Section 544.216 RSMo, and any other arrest powers, a law enforcement officer or federal law enforcement officer as defined in Subsection 8 of this Section, may arrest on view, and without a warrant, at any place within this state, any person the officer sees asserting physical force or using forcible compulsion for the purpose of causing or creating a substantial risk of death or physical injury to any person or any person the officer sees committing a dangerous felony as defined in Section 556.061 RSMo. Any such action shall be deemed to be within the scope of the officer’s employment.

states: “It is the opinion of this office that a law enforcement officer, authorized by Section 70.820 RSMo, as amended by the Conference Committee Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bills 69 and 179 and House Committee Substitute for house Bill 669, 89th General Assembly, first Regular Session (1997) to arrest certain persons at any place within this state, is authorized to carry a concealed weapon at any place within this state.

- D. Missouri Revised Statute RSMo 71.200, entitled Police Force, Appointment of Men and Women, states: “All cities in this state shall have power to appoint both men and women as members of the police force and to prescribe their duties and provide for their compensation.”
- E. Missouri Revised Statute RSMo 544.157, Hot Pursuit, states: Any peace officer of a county of the first class having a charter form of government or a peace officer of a political subdivision located in such a county in hot pursuit of a person reasonably believed by him to have committed a felony in this state or who has committed, or attempted to commit, in the presence of such officer, any criminal offense or violation of a municipal or county ordinance, or for whom such officer holds a warrant of arrest for a criminal offense, shall have the authority to arrest and hold in custody such person anywhere in such county of the first class having a charter form of government. If the offense is a traffic violation, the uniform traffic ticket shall be used as if the violator had been apprehended in the municipality or county in which the offense occurred.”
- F. Missouri Revised Statute RSMo 544.216, entitled Powers of Arrest—Arrest without Warrant, states in part: “Any sheriff or deputy sheriff, any member of the Missouri State Highway Patrol, and any county or municipal law enforcement officer in this state, except those officers of a political subdivision or municipality having a population of less than two thousand persons or which does not have at least four full-time non-elected peace officers, unless such subdivision or municipality has elected to come under and is operating under the provisions of Sections 590.100 and 590.150 RSMo, may arrest on view, and without a warrant, any person he sees violating or who he has reasonable grounds to believe has violated any law of this state, including a misdemeanor, or has violated any ordinance over which such officer has jurisdiction.”
- G. Missouri Revised Statute RSMo 563.056, entitled Use of Force to Prevent Escape from Confinement, states in part: “A guard or other law enforcement

officer, may, subject to the provisions of Subsection 2, use physical force when he reasonable believes such to be immediately necessary to prevent escape from confinement or in transit thereto or therefrom.

Deadly force may only be used when:

- 1). such use of deadly force is authorized under other sections of this chapter.
- 2). a guard or law enforcement officer reasonably believes there is a substantial risk that the escapee will endanger human life or cause serious physical injury unless the escape is prevented.

H. Missouri Revised Statute RSMo 563.046, entitled Law Enforcement Officer's Use of Force in Making an Arrest, states in part: "A law enforcement officer need not retreat or desist from efforts to affect the arrest, or from efforts to prevent the escape from custody, of a person he reasonably believes to have committed an offense because of resistance or threatened resistance of the arrestee. In addition to the use of physical force authorized under other sections of this chapter, he is, subject to the provisions of subsections 2 and 3, justified in the use of such physical force as he reasonably believes is immediately necessary to effect the arrest or prevent the escape from custody."

I. Missouri Revised Statute RSMo 563.021, entitled Execution of Public Duty, states in part: "Unless inconsistent with the provisions of this chapter defining the justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable and not criminal when such conduct is required or authorized by a statutory provision or by a judicial decree."

J. Missouri Revised Statute RSMo 571.030, entitled Unlawful Use of Weapons - Exceptions, states in part: "A person commits the crime of unlawful use of weapons if he knowingly: 1) Carries concealed upon or about his person a knife, firearm, blackjack, or any other weapon readily capable of lethal use.

Subdivisions 1), 3), 4), 6), 7), and 8) of subsection 1 of this section shall not apply to or affect: All state, county, and municipal law enforcement officers possessing the duty and power of arrest for violation of the general criminal laws of the state or for violation of ordinances of counties or municipalities of the state."

V. CITY OF CLAYTON CHARTER.

A. The Charter of the City of Clayton, Section 3, Powers of the City, states: " The

city shall have all powers of local self-government and home rule and all powers possible for any city to have under the constitution and laws of the State of Missouri or which the general assembly would be competent to grant to any city or population group, and except as prohibited by the constitution, the city may exercise all municipal powers, functions, rights, privileges, and immunities of every name and nature.

- B. The Charter of the City of Clayton, Article IV, Section 5, Police Department, states: “The director of the Police Department shall be the Chief of Police. He shall be appointed on the basis of his administrative abilities and his qualifications for office. The Chief of Police and all police officers shall have the power conferred by law upon police officers of constitutional charter cities, cities of the first class, second class, third class, fourth class, or of any population group, and by ordinance not consistent with this charter.
- C. The Charter of the City of Clayton, Article XIII, Section 9, Oath of Office, prescribes: “Before entering upon his duties, every elected official and department head shall take, subscribe, and file with the city clerk, an oath or affirmation that he has all the qualifications, and is not subject to any of the disqualifications, named in this charter for the office or employment he is about to assume; and that he will support the constitution and the laws of the United States and of this state, and the charter and ordinances of the City.”

VI. CITY OF CLAYTON CODE OF ORDINANCES.

- A. Section 2-100, the City of Clayton Code of Ordinances states: “Each police officer shall, before entering upon his/her duties, take the oath prescribed in Article XIII, Section 9, of the charter, and when said oath has been filed with the city clerk, the city clerk shall deliver to such policeman a commission in the name of and signed by the city manager and under the seal of the city authorizing and empowering him to discharge the duties of a policeman during the will of the city manager. Such commission and oath shall be recorded by the city clerk.
- B. Wherein Sections 2-96 through 2-102 of the Code of Ordinances provides for law enforcement duty in general, Section 2-103 states: “The Chief of Police and policemen shall make arrests for any offense against this code, or against the laws of the state, and keep the offender in the city or county jail or other proper place to prevent escape of the offender until a trial can be had before the proper officer, unless such offender shall give a good and sufficient bond for his appearance at trial as provided in chapter 7 and, in case of violation of state law, as provided by the laws of the state.
- C. Section 6-7, the City of Clayton Code of Ordinances states: “Under the authority set forth in Section 70.873 RSMo, the Clayton Police, Fire and Public Works Departments are authorized to respond and provide assistance as requested in any mutual aid or emergency mutual aid request in the State of

Missouri or any bordering state having reciprocal legislation.

VII. CONSTITUTIONAL COMPLIANCE.

Sworn officers of this command shall obey all constitutional and statutory requirements governing the use and extent of their powers. Failure to comply may result in disciplinary action taken against the officer(s), up to and including dismissal. In addition, violation of the authority vested in each officer may result in both criminal and civil penalties.

BY ORDER OF:

RICHARD T. MORRIS
Chief of Police

RTM:dld

CALEA Reference: 1.2.1/1.2.2