

Memorandum

To : Mr. Dave Lutweiler  
D.E.A.

Date : December 9, 1996

Telephone: CALNET (8) 454-5169  
(916) 324-5169  
FACSIMILE (916) 324-2960

From : John Gordnier  
California Department of Justice

Office of the Attorney General - Sacramento

Subject : Whether California State Law Would Preclude A State peace  
Officer From Enforcing Federal Law

Mr. Lutweiler, as I mentioned during the conference call on Friday, we believe the correct answer to this question is that state law does not preclude state peace officers from enforcing federal law. Both Mr. Greg Mitchell and Ms. Jamie Walker of your office and I have discussed the related question whether a state officer can arrest for a federal crime. (A copy of my memorandum on this issue to Ms. Cindy Ryan is attached).

Essentially, the rule is that unless federal law precludes arrest by a state peace officer a state officer may make an arrest for a federal offense. Proposition 215 had no impact on Penal Code section 836 dealing with arrest authority. Because our statute creates an affirmative, factual defense it will have impact after arrest and/or seizure in almost all cases. In a very few cases it will have an impact on probable cause to arrest on specific facts, but even these cases will not bear on the authority to arrest.

Please do not hesitate to contact me at (916) 324-5169 if I may be of further assistance.