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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

March 2, 2001

Mr. James Thomas, Executive Director
Pennsylvania Commission on Crime and Delinquency
3101 North Front Street
Harrisburg, PA 17108

Re: Regulation #35-26 (IRRC #2163)
Constables' Education and Training Board
Constables' Education and Training

Dear Mr. Thomas:

Enclosed are our Comments. They will soon be available on our website at www.irrc.state.pa.us.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director

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Enclosure

cc: Honorable Thomas P. Gannon, Majority Chairman, House Judiciary Committee
Honorable Kevin Blaum, Democratic Chairman, House Judiciary Committee
Honorable Stewart J. Greenleaf, Chairman, Senate Judiciary Committee
Honorable Jay Costa, Jr., Minority Chairman, Senate Judiciary Committee
Gerard Mackarevich, Esq., Pennsylvania Commission on Crime and Delinquency
Stephen Spangenberg, Pennsylvania Commission on Crime and Delinquency

Comments of the Independent Regulatory Review Commission

on

Constables' Education and Training Board Regulation No. 35-26

Constables' Education and Training

March 2, 2001

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Pennsylvania Constables' Education and Training Board (Board) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by December 18, 2002, the regulation will be deemed withdrawn.

1. Section 431.2. Definitions. - Need; Reasonableness.

The first paragraph of this section includes the sentence "The following words and phrases, when used in this chapter, have the meanings as indicated." This sentence is not needed, and should be deleted.

Waiver

This definition is lengthy and includes substantive provisions. For clarity, the Board should shorten this definition and rely upon the specific criteria for each course in the regulation. For example, it may be sufficient to simply define waiver as "the Board's grant of permission to a constable to reduce the hours of classroom attendance in a Board training course."

2. Section 431.11. Registration. - Clarity.

This section states: "To be considered by the Board for certification, a person shall register with the Board by submitting the information requested by the Board." We have two concerns with this section.

First, what information will the Board request? An applicant will not know what information to submit if no examples of information are included in the regulation. Examples of pertinent information should be included in the final-form regulation.

Second, this section should specifically state how and in what format an applicant should submit such information to the Board. For example, does a form exist? This should be clarified.

3. Section 431.15. Certification numbers. - Clarity.

Subsections (d) and (e)

Both Subsections (d) and (e) use the term “immediately.” Subsection (e)(1) uses the phrase “as soon as practicable.” These phrases are vague. The Board should replace these phrases with specific timeframes.

Subsection (e)

Paragraph (2) finishes with the phrase, “upon the constable’s successful completion of the next available continuing education.” This phrase is incomplete. To alleviate any confusion, a term such as “period” or “program” should be inserted at the end of this sentence.

The timeframes described in Paragraphs (1), (2) and (3) are not clear. For example, Paragraph (3) uses the time period of “5 years after the constable’s initial certification or most recent recertification.” Do these time periods begin with the date of initial certification, or the lapse of certification? This should be explained.

Additionally, in Paragraph (3), the phrase “not less than 5 years” should be replaced with “5 years or more.”

4. Section 431.21. Curriculum. - Statutory authority; Consistency with statute.

Subsection (a)

This subsection outlines the categories of instruction included in basic training. Section 2945 of Act 44 of 1994, (42 Pa.C.S.A. § 2945) (Act) states that basic training must include “instruction in the interpretation and application of the fees provided for in section 2950 (relating to fees).” This topic is not specifically listed in this section. For consistency with the statute, “instruction in the interpretation and application of the fees provided for in section 2950 (relating to fees)” of the Act should be included in the final-form regulation.

Subsection (b)

This subsection would allow the Board to “add, delete or modify one or more topics upon publishing prior notice of the changes in the *Pennsylvania Bulletin* and in an edition of the *Constables’ Training Bulletin*....”

A provision of the regulation may only be amended by promulgation of a new regulation. The Board should delete Subsection (b) or explain its statutory authority to amend the regulation without going through the rulemaking process.

5. Section 431.22. Successful completion. - Clarity.

Training period

This section does not state the total number of training hours needed for an applicant to become a constable. Section 2945 of the Act (42 Pa.C.S.A. § 2945) requires “training for a total of 80 hours.” The 80-hour requirement should be stated in the final-form regulation.

Subsection (a)(3)

A constable or other person, according to Subsection (a)(3), will complete basic training successfully by “demonstrating to the Board’s satisfaction proficiency in practical skills.” We have three issues with the clarity of this subsection.

First, what is the process by which a constable or other person will demonstrate their skills to the Board? Will they demonstrate through examination scores or a practical examination? This should be clarified in the final-form regulation.

Second, the criteria that will be used to determine the Board’s satisfaction should be included in this subsection, such as a certain score on a written exam.

Finally, the Board should provide examples of “practical skills” in the final-form regulation.

6. Section 431.24. Waiver examination. - Clarity.

Subsection (a)

We have two comments on Subsection (a). First, this section states, “...who attains a passing grade score on the Board’s basic training waiver examination as established by the Board.” It is not clear as to what is being established by the Board – the basic training waiver examination, or the passing grade score. According to Section 431.32(a), the Board is establishing a passing score. To alleviate confusion, the phrase “as established by the Board” should be placed directly after what the phrase modifies. Further, the phrase should be used consistently throughout the regulation.

Second, Subsection (a) uses the term “passing grade score.” Subsection (b) uses “passing score.” For consistency, one phrase should be used consistently throughout the regulation.

7. Section 431.31. Curriculum. - Economic impact; Clarity.

This section states the Board may periodically change the content of continuing education. We have two questions. First, how will a constable receive notice of this change? How will the Board implement changes so that a course already completed at the time of the change is not later disallowed?

Second, the term “periodically” is vague. Does the Board intend to change the content annually? If so, “annually” should replace “periodically.”

8. Section 431.32. Successful completion. - Need; Reasonableness; Clarity.

Subsection (a)(1) requires attendance for all of the hours required by the Act. For clarity, this provision should include the specific requirement of “40 hours per year” in 42 P.S. § 2946.

9. Section 431.43. Firearm and ammunition. - Clarity.

Course Prerequisites

We have two overall concerns with this section. First, it is our understanding that Subsections (a), (b) and (c) are prerequisites to being admitted to the firearms qualification course. Failure to meet them would not result in a failure of the course under Section 431.44(b), (c) and (d), since the constable would not have been admitted to the course. The regulation should clearly explain that Subsections (a), (b) and (c) are prerequisites to being admitted to the firearms qualification course.

Second, as explained in more detail below, the requirements of Subsections (a), (b) and (c) lack specificity, partly due to the broad range and changing nature of firearms and ammunition available. The Board should consider adding a mechanism which allows a constable the opportunity to predetermine whether a specific firearm and ammunition are acceptable.

Subsection (a)

This subsection states “a constable shall be responsible for providing a firearm, ammunition, magazines, speed loaders, safety accessories, cleaning equipment and other associated equipment as needed during the firearms qualification course.” How will a constable know what specific “safety accessories, cleaning equipment, and other associated equipment” are needed?

Subsections (b) and (c)

These subsections require firearms and ammunition to be “generally acceptable for law enforcement usage within this Commonwealth.” The regulation should either specifically state or cross reference the standards used to determine firearms and ammunition that is acceptable for law enforcement usage in this Commonwealth. In the alternative, the Board should establish a mechanism for a constable to request advance approval of a particular firearm.

10. Section 431.51. Board approval of school. - Clarity.

Section 6.8 of the *Code and Bulletin Style Manual* states that “shall” should be used to express a duty or obligation, and “will” should be used when the agency pledges to act. Since the Board must establish, implement and administer training programs under the Act (42 P.S. § 2944(a)), we question why the word “may” is used in Subsection (a) rather than “will.”

INDEPENDENT REGULATORY REVIEW COMMISSION

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From: Kristine M. Shomper
Administrative Officer
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Commission
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Date: March 2, 2001
of Pages: 6

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Constables' Education and Training Board's regulation #35-28 (#2163). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Cynthia Minnich Date: 3/2/01