

44TH DISTRICT
JAMES W. GERLACH

ORIGINAL: 2170

COMMITTEES

LOCAL GOVERNMENT, CHAIRMAN
LABOR & INDUSTRY, VICE CHAIRMAN
APPROPRIATIONS
JUDICIARY
PUBLIC HEALTH & WELFARE

SENATE REPUBLICAN POLICY COMMITTEE
PENNSYLVANIA COMMISSION ON
CRIME AND DELINQUENCY

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Senate of Pennsylvania

28 March 2001

Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
14th Floor Harristown 2
333 Market Street
Harrisburg, PA 17101

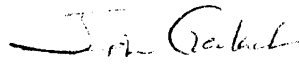
RE: Deputy Sheriffs' Education and Training Board
Proposed Rulemaking 35-38

Dear Mr. Nyce:

Enclosed for your review are comments on the above which I have received from the Pennsylvania State Association of Township Supervisors (PSATS) and the Montgomery County Sheriffs Department. I would appreciate your consideration of these comments and concerns as you proceed with the regulatory review process towards the final rulemaking on this matter.

I appreciate your time and consideration. If you have any questions or concerns, please contact me.

Very truly yours,


Jim Gerlach

JWG/lem

Cc: Members, Senate Local Government Committee
Elam M. Herr, Pennsylvania State Association of Township Supervisors
Thomas J. Speers, Solicitor to Sherriff John P. Durante,
Montgomery County Sheriffs Department

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THOMAS J. SPEERS
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651 WEST GERMANTOWN PIKE
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March 8, 2001

Gerard Mackarevich, Esq. VIA FAX 717-783-7139
Civil and Criminal Training Division
Pennsylvania Commission on Crime and Delinquency
PO Box 1167
Harrisburg, PA 17108-1167

Re: Proposed Regulations

Dear Mr. Macharevich:

I am the Solicitor for the Sheriff of Montgomery County. Your proposed regulations do not take into account the needs of, and the hardships imposed upon the larger counties. The policies encompassed in the proposed regulations are a duplication of procedures already approved by other state agencies, impose upon the Constitutional and Common Law authority of the Sheriff and impose an undue financial burden on the counties.

I. Duplication.

The proposed regulations are redundant. In the area of Montgomery County there is a considerable pool of applicants for the position of Deputy Sheriff who have Act 120 training. In addition many of our Deputies are pursuing Act 120 training. These applicants have already attended a training program certified by the Pennsylvania State Police. The attempt by the PCCD to second guess another agency of the Commonwealth with respect to that training is not reasonable. The premise of the Regulatory Review Act is set forth as follows:

§ 745.2. Legislative intent

(a) The General Assembly has enacted a large number of statutes and has conferred on boards, commissions, departments and agencies within the executive branch of government the authority to adopt rules and regulations to implement those statutes. The General Assembly has found that this delegation of its authority has resulted in regulations being promulgated without undergoing effective review concerning cost benefits, duplication, inflationary impact and conformity to legislative intent. The General Assembly finds that it must establish a procedure for oversight and review of regulations adopted pursuant to this delegation of legislative power in order to curtail

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March 8, 2001

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excessive regulation and to require the executive branch to justify its exercise of the authority to regulate before imposing hidden costs upon the economy of Pennsylvania. It is the intent of this act to establish a method for ongoing and effective legislative review and oversight in order to foster executive branch accountability; to provide for primary review by a commission with sufficient authority, expertise, independence and time to perform that function; to provide ultimate review of regulations by the General Assembly; and to assist the Governor, the Attorney General and the General Assembly in their supervisory and oversight functions. To the greatest extent possible, this act is intended to encourage the resolution of objections to a regulation and the reaching of a consensus among the commission, the standing committees, interested parties and the agency.

Your proposed regulations clearly are a duplication of those of another Commonwealth agency and place hidden costs on the County of Montgomery. A major focus of the proposed regulations is to offer the "same type of training" as that already incorporated into Act 120 training. The purpose of this is to permit Deputies to make arrests and to enforce the vehicle code. This fact is recognized by the PCCD in that the current practice is where a partial waiver of training is granted, due to the applicant having Act 120 training, the required training is to be reduced from 560 hours to 100 hours. The problem is that where a Deputy can clearly show that he or she has completed the Pennsylvania State Police (PSP) approved training the PCCD has sought to determine for itself when whether or not such training is satisfactory. The PCCD has no right to second guess the determination of the PSP. The PCCD may not require any additional testing or approval in order to determine if the portion of the training offered by the PSP approved courses is appropriate and a waiver is warranted. Once the Deputy has attained proof of having successfully completed the Act 120 training it is grossly improper for the PCCD to require redundant training or even to require a new test to verify the training. Once the Deputy has passed the Act 120 course he or she has proven that they have the appropriate training.

II. Imposition upon the Constitutional and Common Law Authority of the Sheriff.

The office of the Sheriff predates the formation of the United States. The office has its roots in Common Law and is authorized by the Constitution of Pennsylvania. By increasing the training requirement from four weeks to fourteen weeks the PCCD has imposed upon the Constitutional and Common Law prerogatives of the Sheriff. The PCCD has assumed that every Sheriff actually desires to set up a County Police Force in his or her jurisdiction. It is the role of the PCCD to assist the Sheriff not to dictate to the Sheriff. By mandating training in areas that do not directly relate to the duties that a particular Sheriff desires to assign to his Deputies the PCCD has dictated to the Sheriff. It is not the desire of the Sheriff of Montgomery County to attempt to supersede the authority of local municipal police departments. When it is needed for a Deputy to exercise arrest powers the Sheriff of Montgomery County already has a suitable pool of Deputies that have completed Act 120 training. It is therefore, beyond the scope of the

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authority of PCCD to require additional training the areas already covered by Act 120.

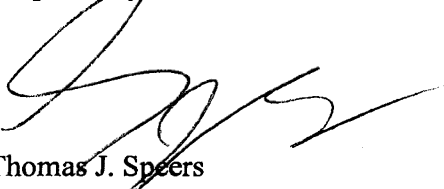
III. Undue Financial Burden.

The structure of the PCCD training imposes a real financial hardship upon the counties. PCCD will only reimburse the county for one half of a Deputy's salary while attending classes. Obviously, the increased training now requires the County to pay five weeks salary to a Deputy who is not fulfilling duties within the county. This additional financial burden has not been addressed.

In addition Montgomery County has a unique problem. Our Deputies do not work a 40 hour week. The regular work week is now 33.5 hours. The PCCD is requiring a payment of 40 hours. This too is a financial burden which the proposed regulations do not address.

The PCCD has elected to offer Basic Training for Deputies at only one location. This is unfair to counties such as Montgomery. In our area there is an ample number of programs and instructors already certified by the PSP to offer Act 120 training. If training were to be offered locally the actual cost of training could be greatly reduced. There would be no need for our Deputies to be lodged overnight and there would be no need for a 14 week separation from their families. The training could be structured to meet the needs and demands of the County. Training could be offered a night or weekends so that a Deputy may still fulfil his or her regular obligations. The failure of the PCCD to allow this alternative training is not reasonable.

Respectfully submitted,



Thomas J. Speers
Solicitor to Sheriff John P. Durante

cc: Sheriff Durante
IRRC
Governor

ORIGINAL: 2170



PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

March 7, 2001

Mr. Gerard Mackarevich, Chief Counsel
Commission on Crime and Delinquency
P.O. Box 1167
Harrisburg, PA 17108-1167

Dear Mr. Mackarevich:

On behalf of 1,457 townships of the second class, we submit the following comments on the proposed rulemaking amending Title 37, Part VI, Chapter 421: Deputy Sheriffs' Education and Training Board.

These new proposed regulations would dramatically expand the scope of the basic training curriculum required for newly hired deputy sheriffs, increasing the number of hours from 560 to 760. The proposed coursework, which supposedly closely follows that of municipal police officers, adds 200 hours of instruction on law enforcement related topics. The curriculum that is listed does not address the issue of hours as is spelled out in the municipal police education and training regulations. Without this listing the Board could regulate the course structure that is irrelevant to the expansion of duties.

The primary functions of deputy sheriffs consist of serving on the court's behalf and providing courthouse security. We believe that this training requirement will expand the authority of deputy sheriffs by regulation instead of legislation. Although the *Leet* decision has stated that certain powers are provided to deputy sheriffs through "common law" doctrine, we contend these regulations go beyond the scope of their office and convey upon them unlimited police powers that were never enacted by the legislature. Ultimately, this training could result in deputy sheriffs acting as municipal police officers, without specific statutory authority having been granted.

Thank you for this opportunity to comment on the proposed regulations. If you have any questions or wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Elam".

Elam M. Herr
Assistant Executive Director,
Legislative Affairs and Policy Development

EMH:ls

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