



PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

Original: 2170

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 cursive script that reads "Elam".

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

EMH:ls

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Camp Hill, PA 17011-7296
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Original: 2170

Mackarevich, Gerard

From: Andrea Parenti [aparenti@dmkcg-law.com]
Sent: Tuesday, March 13, 2001 5:06 PM
To: Mackarevich, Gerard
Subject: Re: Proposed Rulemaking of the Deputy Sheriffs' Education and Training Board

Thank you for your inquiry regarding our comments on the proposed rulemaking of the DSETB. Your reading of our comments is correct. The Pennsylvania Sheriffs' Association is fully supportive of the pending rulemaking. The Association supports the expanded curriculum including the addition of 200 hours to the already existent 560 hours of training.

In light of the recent Supreme Court decisions cited in our comments, the Pennsylvania Sheriffs' Association supports the additional hours being added to the curriculum including vehicle enforcement training.

I appreciate your time in requesting this clarification. Should you desire additional information prior to your report to the Independent Regulatory Review Commission please feel free to contact me.

----- Original Message -----

From: Mackarevich, Gerard
To: 'Andrea Parenti'
Cc: Minnich, Cynthia ; Spangenberg, Stephen
Sent: Tuesday, March 13, 2001 4:11 PM
Subject: RE: Proposed Rulemaking of the Deputy Sheriffs' Education and Training Board

Thank you for your comment on the proposed rulemaking of the DSETB.

I would request you to confirm one clarification of your opinion. In the second--to-last paragraph of the letter, you referenced "an expanded core curriculum of approximately 560 hours" by which Deputy Sheriffs "will be adequately prepared for all of their potential duties and roles." This wording in my view may be read by some as indicating support for the 560-hour course, but not for a larger one that is actually being proposed in the current rulemaking. I wanted to confirm that you and your client understand that the expansion being currently proposed in the pending rulemaking involves adding 200 hours, including vehicle code enforcement training, to a curriculum that already had been expanded to 560 hours in the Summer of 2000 pursuant to a Statement of Policy set forth at 37 Pa. Code § 421.101-421.104.

My reading of your letter is that the Pennsylvania Sheriffs' Association fully supports the DSETB's pending rulemaking. May I assume that such a view continues notwithstanding the above clarification? Please advise as soon as possible, as the law requires the DSETB to forward your comment to the Independent Regulatory Review Commission and to the chairs of the standing committees in a very short time. You may confirm or provide other clarification by return e-mail, in which case I will be in a position to make a fully-informed representation of your position to IRRC and the chairs in my cover letters to them.

-----Original Message-----

From: Andrea Parenti [mailto:aparenti@dmkcg-law.com]
Sent: Friday, March 09, 2001 1:52 PM
To: gmackarevi@state.pa.us
Subject: Proposed Rulemaking of the Deputy Sheriffs' Education and Training Board

Dear Mr. Mackarevich:

Please find attached hereto the comments of the Pennsylvania Sheriffs' Association on the proposed rulemaking from the Deputy Sheriffs' Education and Training Board. The original comments shall follow via Express Mail.

The Association appreciates your time and consideration in reviewing these comments. Should you

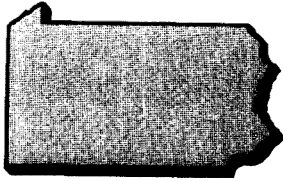
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have any questions or wish to discuss this matter further, please do not hesitate to contact the undersigned.

Very truly yours,

Thomas W. King, III, Esquire, Solicitor
Andrea C. Parenti, Esquire, Solicitor
Pennsylvania Sheriffs' Association

3/14/01



COUNTY COMMISSIONERS ASSOCIATION OF PENNSYLVANIA

17 N. FRONT ST. • HARRISBURG, PA 17101-1624 • 717-232-7554 • 717-232-2162 FAX • www.pacounties.org

Original: 2170

March 7, 2001

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

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INDEPENDENT
REGULATORY
REVIEW COMMISSION

Dear Mr. Nyce:

Please accept this letter as the Association's official comments on the proposed regulation from the Deputy Sheriffs' Education and Training Board under the Pennsylvania Commission on Crime and Delinquency relating to deputy sheriffs' training.

The proposed regulation would significantly expand the scope of the basic training curriculum required for newly hired deputy sheriffs by providing them with the same type of training as that given to municipal police officers. The expanded curriculum calls for an additional 200 hours of instruction in law enforcement related topics such as motor vehicle code enforcement, patrol procedures, and investigative techniques. The proposed rulemaking would also add language to the current regulation that would allow the Board to periodically adjust the hourly requirements for basic training and continuing education without the need for additional rulemaking.

Our opposition to the regulation covers several issues. Presently, the primary function of most deputies is to serve process on the court's behalf, and in many counties to provide courthouse security. The number of deputies who are authorized by their county or sheriff to do patrols or vehicle arrests is nominal, and no county, to our knowledge, has deputies engaged in active criminal investigation. We believe that the curriculum should be divided into required and optional course work, with the determination whether a deputy receives the optional training to be based on duties performed at the local level.

Our second concern relates to the proposed elimination of future rulemaking with regard to the hourly requirements. Not long ago, the hourly requirements for basic training and continuing education were statutory. This was then changed to allow the hourly requirements to be set through rulemaking. To forego the rulemaking process when making adjustments in the hourly requirements removes the accountability mechanism and is inappropriate.

Further, the proposed expanded curriculum and the hourly requirements will be a fiscal burden to counties. While the costs of tuition and room and board are paid from the Deputy Sheriffs' Education and Training Fund, the county most shoulder 50% of the salaries of deputies while



they are away for training, as well as the overtime costs for those deputies who must cover for deputies attending the training.

Finally, with the training regimen nearly mirroring that for municipal police officers, the potential increases that counties would become the training ground for deputies ultimately seeking municipal police positions.

As caretakers of our communities, counties take public safety very seriously. However, the provisions contained in the proposed regulation go beyond what is necessary to ensure public safety.

Thank you for your consideration of these comments. Please feel free to call if you have questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Terri Houck". The signature is written in a cursive, flowing style.

Terri Houck
Director of Government Relations

THOMAS J. SPEERS
ATTORNEY AT LAW
651 WEST GERMANTOWN PIKE
PLYMOUTH MEETING, PA. 19462-9998

PHONE (610) 941-2636

FAX (610) 941-2638

March 8, 2001

Original: 2170

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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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

Gerard Mackarevich, Esq.
March 8, 2001
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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



Sheriffs' Association of the Commonwealth of Pennsylvania

Original: 2170

March 9, 2001

**VIA ELECTRONIC MAIL TO GMACKAREVI@STATE.PA.US
(VIA EXPRESS MAIL)**

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

Re: Proposed Rule-Making to the Deputy Sheriffs' Education and Training Act,
71 P.S. §§ 2105-2107

Dear Mr. Mackarevich:

On behalf of the Pennsylvania Sheriffs' Association, I am writing to express the Associations' support of the Proposed Rulemaking published in the Pennsylvania Bulletin that would amend Chapter 421.

By way of a brief background to the Associations' support of this amendment, please note that Deputy Sheriffs perform a variety of duties across the Commonwealth. The extent of these duties vary among the 67 counties of Pennsylvania. The Supreme Court of Pennsylvania has recently affirmed the authority of Sheriffs and their Deputies to perform a variety of duties among. In Commonwealth vs. Leet, 641 A.2d 299 (Pa. 1994), the Court studied the history of the Office of the Sheriff. The Court found that "it is common place that in times going back to the Magna Carta, the Sheriff was the chief law enforcement officer of the shire or county." The History of English Law by Pollock and Maitland as quoted by the Court in Leet, provides that "the only persons who are specially bound to arrest malefactors are the Sheriff, his bailiffs and servants." The Court goes further to cite Blackstone as confirming the common law power of the Sheriff to make arrests without warrants for felonies and for breaches of the peace committed in his presence. Blackstone, Commentaries on the Law, Volume IV at 289. Leet at 303.

Gerard M. Mackarevich, Chief Counsel

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The only qualification of the ability of Deputy Sheriffs to make arrests and enforce the laws is that Deputies must complete the same type of training that is required of police officers throughout this Commonwealth.

Additionally, for your information, the report of local government commission of the General Assembly of the Commonwealth of Pennsylvania (report of the House Resolution 167 Task Force dated September, 1999), entitled, "Recommendations on Improving Local Policing" provides for the broad authority of Sheriffs throughout the Commonwealth. As stated in the report,

"Throughout history, the Sheriff was recognized as the chief law enforcement officer in his shire or county. This status remains today, unless it has been changed by statutory law. The Sheriff retains all of its common law powers unless abrogated by statute, thus, the Sheriff has the power and authority to investigate or aid in the investigation of a crime. More importantly, since the Sheriff retains all arrest powers he had at common law, he has the authority to enforce the criminal laws as well as the vehicle laws of Pennsylvania."

Recently, the Supreme Court affirmed its decision in Leet in the case of Commonwealth vs. Kline, 706 A.2d 909 (Pa.Cmwlth.1998). The Court confirmed that the Deputy Sheriff at issue in Kline was a "police officer" within the meaning of Section 1547(a) of the Vehicle Code. The only requirement placed upon the Deputy was that he must complete the same type of training that is required of police officers throughout this Commonwealth.

Therefore, in light of the Pennsylvania case law and further authorities in support of the powers of Deputy Sheriffs, the training program in place for Deputy Sheriffs is of critical importance to the Pennsylvania Sheriffs' Association. By upgrading the basic training program currently in place to include an expanded core curriculum of approximately 560 hours, Deputy Sheriffs will be adequately prepared for all of their potential duties and roles. There are approximately 2,000 Sheriffs and Deputies across the Commonwealth of Pennsylvania. By providing Deputies with an enhanced training program, it not only benefits the Sheriffs and Deputies, but benefits all the citizens of this Commonwealth as well. Following the successful completion of the basic training course, Deputy Sheriffs will be able to enforce the laws and protect the citizens of the Commonwealth. The proposed amendments to the Deputy Sheriffs' Education and Training Act are consistent with the Supreme Court cases cited herein and other authorities granting Deputy Sheriffs a wide range of authority to enforce the laws of the Commonwealth provided they receive adequate training.

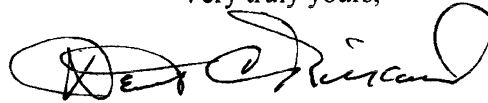
Gerard M. Mackarevich, Chief Counsel

Page 3

March 9, 2001

Thank you for your time and consideration in reviewing these comments. Please feel free to contact the undersigned if you have any questions or would like additional information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dennis Rickard". The signature is fluid and cursive, with a large loop at the end.

Dennis Rickard, Secretary Treasurer
Pennsylvania Sheriffs' Association

cc:

- The Honorable Thomas P. Gannon, Majority Chairman, House Judiciary Committee
- The Honorable Stewart J. Greenleaf, Majority Chairman, Senate Judiciary Committee
- Thomas W. Corbett, Jr., Esquire, Chairperson, Pennsylvania Commission on Crime and Delinquency
- Commander Carmen Deluca, Chairman, Deputy Sheriffs' Education and Training Board
- Mr. Stephen Spangenberg, Manager, PCCD Civil and Criminal Training Division
- Pennsylvania Sheriffs' Association Executive Committee