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April 10, 2008

#2661

Syndi L. Guido
Policy Director
Pennsylvania State Police
1800 Elmerton Avenue
Harrisburg, PA 17110

Re: Public comment concerning Title 37 PA Code Ch. 221

Dear Ms. Guido:

As President of the Fraternal Order of Police, Pennsylvania State Lodge representing over 41,000 retired and active law enforcement officers, I'm writing to comment on the proposed rulemaking which amends Title 37 of the PA Code to include Ch. 221. entitled "Retired Law Enforcement Officers Identification and Qualification Cards."

Our area of concern and opposition is with the inclusion of subsection 4 of proposed Section 221.21 of Subchapter B., which states:

§ 221.21 Eligibility.
An identification card shall only be issued to an individual who meets the following conditions:

....

(4) Has a nonforfeitable right to benefits under the retirement plan of the public agency.

The basis for our objection is two-fold. First, it must be noted that not all police officers in Pennsylvania are enrolled in a retirement plan. This is because retirement plans are not mandated for all Pennsylvania municipal police departments. A review of the applicable statutory structures evidences that only those municipalities with a police department consisting of three (3) or more full-time police officers are required to maintain a police pension system. Towns, Townships and Boroughs employing less than three (3) full-time police officers are not required by law to maintain a police pension

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April 10, 2008
Re: Title 37 PA Code Ch. 221
Page 2

system. Many such municipalities within this category have chosen not to offer such a system.

Our second objection is to the manner in which the proposed rule has been drafted. Pursuant to proposed Section 221.21(4), only those police officers who have a *nonforfeitable* right to benefits under a police pension plan would be eligible to be issued an identification card. If this provision is strictly construed, no retired police officer in the Commonwealth of Pennsylvania will be deemed eligible.

All public pensions in the Commonwealth of Pennsylvania are subject to the Pennsylvania Pension Forfeiture Act, 43 P.S. §§ 1311-1315. Accordingly, there is, as a matter of both fact and law, no such thing as a non-forfeitable right to benefits under the retirement plan of *any* police agency within the Commonwealth.

Based upon the forgoing, the Pennsylvania State Lodge of the Fraternal Order of Police objects to the proposed rulemaking as fatally flawed, arbitrary, discriminatory, and contrary to the intent and purpose of the Retired Law Enforcement Identification Act, 53 P. S. § 753.7 and strongly urges the Pennsylvania State Police to eliminate subsection (4) under Section 221.21 as a condition of eligibility.

If you have any questions concerning our comments, please contact Sean Welby, General Counsel for the Fraternal Order of Police, Pennsylvania State Lodge at (717) 234-0111.

Sincerely,

A handwritten signature in black ink that reads "Mark Koch" followed by a stylized flourish.

Mark Koch, President
Fraternal Order of Police
Pennsylvania State Lodge