
Michigan Commission on Law Enforcement Standards
Commission Meeting Minutes
April 21, 2010
Ottawa County Sheriff's Office, West Olive, Michigan

COMMISSION MEMBERS PRESENT:

Sheriff James Bosscher, representing the Michigan Sheriffs' Association
Chief Doreen Olko, representing the Michigan Association of Chiefs of Police
Professor Ron Bretz, representing the Criminal Defense Attorneys of Michigan
Mr. John Buczek, representing the Fraternal Order of Police
Mr. Tom Cameron, representing Attorney General Mike Cox
Chief Richard Mattice, representing the Michigan Association of Chiefs of Police
Mr. David Morse, representing the Prosecuting Attorneys Association of Michigan
Mr. Richard Weiler, representing Police Officers Labor Council
Commander Dwayne Love, representing Chief Warren Evans, Detroit Police Department
Mr. Fred Timpner, representing the Michigan Association of Police
Lt. Col. Timothy Yungfer, representing Colonel Peter C. Munoz, Michigan State Police
Mr. John Szczubelek, Commission Counsel

COMMISSION MEMBERS EXCUSED:

Mr. Marty Bandemer, representing the Detroit Police Officers Association
Mr. Jim DeVries, representing the Police Officers Association of Michigan
Director Kurt Jones, representing the Michigan Association of Chiefs of Police
Trooper Michael Moorman, representing the Michigan State Police Troopers Association
Sheriff Robert Pickell, representing the Michigan Sheriffs' Association
Deputy Chief Gail Wilson-Turner, representing Chief Warren Evans, Detroit Police
Department
Sheriff Gene Wriggelsworth, representing the Michigan Sheriffs' Association

COMMISSION STAFF PRESENT:

Ms. Cheryl Hartwell	Mr. Wayne Carlson
Ms. Hermina Kramp	Ms. Maggie Edwards
Mr. Gary Ruffini	Mr. John Steele
Mr. Daniel Furniss	Mr. Lynn Ried
Mr. Patrick Hutting	Mr. Danny Rosa
Mr. David King	

GUESTS (signing in):

Lt. Sherry Chandler, Michigan Department of Natural Resources-Environmental
Sgt. John C. Meka, Michigan Department of Natural Resources-Environmental
Chief Bill Olney, Zeeland Police Department
Lt. Lee Hoeksema, Ottawa County Sheriff's Office
Undersheriff Greg Steigenga, Ottawa County Sheriff's Office
Training Director Daniel Dellar, West Shore Community College
President Matthew Van Liere, Deputy Sheriffs Association of Michigan
Chief Barbara Bergers, Grand Valley State University Police
Attorney Nick Bostic, representing Jeremy Lockwood
Director Dennis Edwards, Grand Haven Department of Public Safety

CALL TO ORDER:

The Commission meeting was called to order by Sheriff Jim Bosscher at 10:03 a.m., at the Ottawa County Sheriff's Office in West Olive, Michigan.

INTRODUCTIONS:

Sheriff Bosscher asked all present to introduce themselves. He welcomed all in attendance to the meeting. He thanked Sheriff Gary Rosema, Ottawa County Sheriff's Office, for hosting the Commission meeting.

Sheriff Rosema welcomed the Commission to Ottawa County. He emphasized the importance of the Commission's role to law enforcement and spoke briefly about the critical need for funding of the Commission's various activities.

Sheriff Bosscher also recognized President Matthew Van Liere of the Police Officers Association of Michigan who is attending the meeting on behalf of Commissioner Jim DeVries.

ACCEPTANCE OF THE FEBRUARY 23, 2010 COMMISSION WORKSHOP MINUTES:

A **MOTION** was made by Mr. Buczek and supported by Mr. Bretz to accept the February 23, 2010, Commission Workshop minutes as written.

A **VOTE** was taken. The **MOTION** carried unanimously.

ACCEPTANCE OF THE FEBRUARY 24, 2010 COMMISSION MEETING MINUTES:

A **MOTION** was made by Mr. Buczek and supported by Mr. Bretz to accept the February 24, 2010, Commission Meeting minutes as written.

A **VOTE** was taken. The **MOTION** carried unanimously.

ADDITIONS/CHANGES TO THE AGENDA:

There are no changes to the agenda.

CONSENT AGENDA:

There was no Consent Agenda.

PUBLIC COMMENT:

Mr. Szczubelek spoke on behalf of Ms. Kathy Cole, who serves as the Chairperson for the Michigan Police Officer's Memorial Commission. The Commission was established in 2004 to build a law enforcement officers' monument, honoring law enforcement officers who have lost their lives in the line of duty. The site for the monument has been identified in Lansing and is adjacent to the Hall of Justice. Money is currently being raised to build the monument at an estimated cost of 3 to 4 million dollars.

Attorney Nick Bostic, representing Mr. Jeremy Lockwood, addressed the Commission on behalf of his client. He provided a brief synopsis of the case which will be discussed in greater detail later in the meeting. Mr. Bostic stated that he and his client have concerns relative to the administrative requirements that govern cases such as his client's and who is to carry out the requirements. He asked that the Commission review the procedures that were followed in his client's case. Mr. Bostic thanked the Commission for the opportunity to address them on his client's behalf.

COMMISSION ATTORNEY REPORT:

Mr. Szczubelek stated that he has been working closely with the Legislative Committee and the Implementation Committee on the statutory revisions to Public Acts 203 and 302. He explained that a set of ethics revisions, which firmly expresses the position of the Commission, have been completed. He is continuing to work with the respective committees on further statutory revisions that should be completed in the near future.

COMMISSION ATTORNEY REPORT Continued:

Mr. Szczubelek explained that the lawsuit that Mr. Bostic referred to in his presentation during Public Comment is on hold until the Commission's administrative hearing and subsequent formal action is completed.

CHAIR'S REPORT:

Academy Graduation Schedule – Commissioners were asked to look at the graduation schedule and let staff know which graduations they could attend along with MCOLES staff. Academy staff and academy graduates appreciate Commissioner participation in their graduation ceremonies.

Law Enforcement Officer Position Report – Sheriff Bosscher stated that the number of law enforcement positions continues to decline. Currently Michigan is down 2,394 law enforcement positions since September 11, 2001.

Special Use Requests – Sheriff Bosscher stated that the Special Use Request activity that has been handled by staff since the last meeting is outlined in the Commission materials. There were no questions raised on any of these requests.

Grant Contract Adjustments – Sheriff Bosscher stated that the Grant Contract Adjustment activity that has been handled by staff since the last meeting is outlined in the Commission materials. There were no questions raised relative to these activities.

COMMITTEE REPORTS:

Executive Committee – Sheriff Bosscher stated that the committee met last night and discussed several matters that will be presented in detail later in the meeting. He stated that draft language for an Executive Order to move the Public Act 330 (private security police) responsibilities from the Department of State Police (MCOLES) to the Department of Labor and Economic Growth has been provided to the Governor's office for consideration.

Executive Director Selection Committee – Chief Olko stated that the committee met and has developed a position description and a hiring process for the selection of a MCOLES Executive Director. The position will be an unclassified position with the state of Michigan. A draft copy of the position notification and proposed timeline were provided to Commissioners. Chief Olko explained that these items may need minor adjusting as the committee moves the process forward. It is the intent of the committee to complete the screening process and present a candidate to the full Commission at the September meeting.

COMMITTEE REPORTS Continued:

An update on the progress of the selection process will be provided at the June meeting. Chief Olko asked for the Commission's endorsement of the proposed process.

A **MOTION** was made by Mr. Buczek and supported by Mr. Weiler to adopt the proposed position description, hiring notification, and selection process as presented.

A **VOTE** was taken. The **MOTION** carried unanimously.

Implementation Committee – Chief Mattice stated that the committee met on March 23, 2010, to respond to the Commission directive to review the grant process. Based upon concerns of staff and from the field, the Commission wants to provide additional direction. He stated that a detailed presentation will be made with the committee's recommendations later in the meeting.

Legislative Committee – Chief Olko stated that the committee met March 24, 2010, to discuss a number of pending legislative actions. Of specific concern is the transfer of the Survivor Tuition program from MCOLES to the Department of Education in the Governor's Recommended Budget. A number of pieces of legislation will continue to be monitored by staff and the committee. The committee also met on April 20, 2010, to discuss the recommended revisions to Public Act 203 of 1965 as amended relative to ethics. Chief Olko stated that the committee recommended adoption of Commission Resolution 2010-04, recommended ethics revisions.

NEW BUSINESS:

Revocations – Mr. Szczubelek presented the following cases, recommending that the Commission consider the proofs, finding of facts, and conclusions of law found in the "Proposal for Decision," issued by Administrative Law Judge Michael Zimmer.

Jeremy Lockwood – Mr. Lockwood applied for admission to the police academy in May of 2008. He completed a pre-admission physical that included an Ishihara Test for color blindness for which he failed. Through a transcription or other paperwork error, the form completed by the physician indicated that he had passed the Ishihara Test and on that basis, he was granted admission to the academy.

After completion of the academy, Mr. Lockwood was offered employment by the Corunna Police Department. Mr. Lockwood was again given the Ishihara Test, by a different physician, as part of his pre-certification employment physical. Mr. Lockwood failed the Ishihara Test, however, this failure wasn't reported to the Corunna Police Department by the physician or Mr. Lockwood. Mr. Lockwood failed the Ishihara Test a third time in February of 2009.

NEW BUSINESS Continued:

Mr. Lockwood executed, by his signature, a “Standards Compliance Verification Affidavit” that included, in relevant part, the affirmation of his meeting the MCOLES color vision standard, which he actually failed to meet in three separate examinations. The test indicates he did not meet the standard.

The Proposal for Decision by the hearing officer is to revoke Mr. Lockwood’s law enforcement license for making materially false statements during the application process.

A **MOTION** was made by Mr. Buczek and supported by Lt. Colonel Yungfer to accept the Proposal for Decision of the Administrative Law Judge and revoke the law enforcement license of Mr. Jeremy Lockwood.

A **VOTE** was taken. The **MOTION** carried unanimously.

Russel Pahssen – Mr. Pahssen made false statements in the arrest and criminal history portion of the Affidavit during the employment process. These false statements were found to be material within the meaning of Section 9b(1)(d) of PA 203 relative to the decision of Buena Vista Police Department in hiring Mr. Pahssen and to MCOLES in the granting of licensed status to Mr. Pahssen. Based upon the entirety of the record presented, it is concluded that Russel Pahssen made false statements in MCOLES’s application process, however those statements were not material to the licensing process. Therefore, the Proposal for Decision recommended against revocation of Russel Pahssen’s law enforcement licensure under MCL 29.609b.

A **MOTION** was made by Mr. Buczek and supported by Chief Mattice to accept the Proposal for Decision of the Administrative Law Judge and not revoke the law enforcement license of Mr. Pahssen.

Mr. Weiler recused himself from the vote due to his knowledge of the case.

A **VOTE** was taken. The **MOTION** carried unanimously.

Grant Process – Ms. Kramp and Mr. Carlson provided an overview of the competitive grant program issues and need for revision. Due to the continuing reduction in available funding, more stringent requirements need to be put in place to address the concerns of the MCOLES constituency. As a result of reduced funding during last year’s grant cycle, major cuts were necessary to grant applications. Mr. Carlson and Ms. Kramp provided information specific to each section of the resolution before the Commission for consideration.

NEW BUSINESS Continued:

A **MOTION** was made by Mr. Morse and supported by Lt. Colonel Yungfer to adopt Commission Resolution 2010-03 modifying the Michigan Justice Training Fund Competitive Grant Process as written.

A **VOTE** was taken. The **MOTION** carried unanimously.

Grand Valley State University Police Academy Program – Training Director Julie Yunker provide a presentation to the Commission relative to the police academy program at Grand Valley State University. The sixteen week program exceeds MCOLES minimum basic police training requirements. She explained various aspects of the program.

OLD BUSINESS:

Fiscal Year 2011 Budget Update – Ms. Kramp provided an overview of the MCOLES 2011 budget process. She explained that the Governor’s recommended budget moves the Survivor Tuition program from MCOLES to the Department of Education, where similar programs are administered.

Mr. Buczek stated that the Fraternal Order of Police is not comfortable with this action. In addition, the association was not fully aware of all the requirements that survivors are being required to meet in order to receive funds and they will be looking into these matters as well.

2010 MCOLES Annual Registration Final Report – Mr. Furniss provided the Commission with an update on the current status of the annual reporting. He provided additional information relative to the full time equated strength of law enforcement in the state of Michigan.

Active Duty Firearms Standard Compliance Final Report – Mr. Rosa stated that the Active Duty Firearms Standard was a very successful endeavor as the first mandated standard by the Commission for MCOLES licensed law enforcement officers. A handout was provided to the Commission which outlined information received from law enforcement agencies in relationship to the implementation of the standard.

Michigan Justice Training Fund Audit Update – Ms. Kramp stated that the Michigan Justice Training Fund audit (2008 & 2009), which is required every two years, is underway. The 2008 portion has been completed. The 2009 audit is nearing a close. Preliminary information provided by the auditor to date indicates no material findings in relationship to fiscal controls will be forthcoming.

MISCELLANEOUS:

Ethics Revision Commission Resolution 2010-04 - Chief Olko stated that the Legislative Committee made the decision last night to bring the resolution to the full Commission. She explained that the language was approved by the full Commission during the February 2010 meeting. However, the committee is asking that the Commission adopt the language in the new resolution format.

A **MOTION** was made by Chief Olko and supported by Chief Mattice to adopt Commission Resolution 2010-04 as written. (See attached)

A **VOTE** was taken. The **MOTION** carried unanimously.

NEXT MEETING:

Date: Wednesday, June 16, 2010


Location: Lake Superior State University, Sault Ste. Marie, Michigan

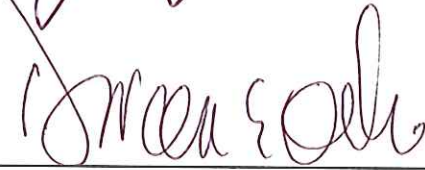
ADJOURNMENT:

A **MOTION** was made by Mr. Weiler and supported by Chief Mattice to adjourn the meeting.

A **VOTE** was taken. The **MOTION** carried unanimously.

The meeting was adjourned at 11:44 am.

APPROVED BY  ON 12-7-2011

WITNESSED BY  ON 12/7/2011

(8) In making the determination described in subsection (7), the commission may regard decisions made by a court regarding pre-trial release under MCR 6.106 or any successor provision, including conditions of bond, if any, as prima facie evidence of a threat to the public health, safety, and welfare.

(9) An order of suspension issued by the commission shall specify the conditions under which the license will be reinstated.

(10) If the commission issues a final decision or order to revoke or suspend the license of a law enforcement officer, that decision or order is subject to judicial review as provided in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, except as to venue, which shall be in the circuit court for Ingham county. A summary suspension issued under subsection (4) is not a final decision or order for purposes of this subsection.

(11) The commission may issue a subpoena in a contested case to revoke or suspend a law enforcement officer's license. The subpoena shall be issued as provided in section 73 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.273.

BE IT FURTHER RESOLVED, that 1965 PA 203 be amended by adding a new section, concerning notification of criminal charges and personal protection orders, that provides as follows:

(1) A licensed law enforcement officer shall promptly inform the commission in writing if he or she is charged with any offense for which a law enforcement officer license may be revoked or suspended under section 9b.

(2) A licensed law enforcement officer shall promptly inform the commission in writing if he or she is the subject of a personal protection order that has been issued after a judicial hearing under sections 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950, or 600.2950a, or under the laws of a foreign jurisdiction.

(3) A law enforcement agency that has knowledge that a licensed law enforcement officer it employs has been charged with an offense specified in subsection (1) or has become the subject of a personal protection order specified in subsection (2) shall promptly report this information to the commission in writing.

(4) A prosecutor that has knowledge that a licensed law enforcement officer has been charged with an offense specified in subsection (1) or has become the subject of a personal protection order specified in subsection (2) shall promptly report this information to the commission in writing.

BE IT FURTHER RESOLVED, that 1965 PA 203 be amended by adding a new section, concerning maintenance of documentation of compliance with licensing standards, that provides as follows:

(1) A law enforcement agency shall collect, verify, and maintain documentation establishing that an applicant for employment as a law enforcement officer met or exceeded the minimum selection and employment standards under R 28.14203 and R 28.14204 at the time the applicant commenced employment with the agency.

BE IT FURTHER RESOLVED, that 1965 PA 203 be amended by adding a new section, concerning standards for background investigations, that provides as follows:

(1) The commission shall promulgate rules establishing minimum standards for conducting employer background investigations. The rules shall specify a form that employing agencies may use to document the findings of background investigations. Before employing an applicant, the employing agency shall conduct a thorough background investigation in accordance with the rules promulgated by the commission. The background investigation shall include information setting forth facts and reasons for any of the applicant's previous separations from private employment, public employment, or appointment, as represented by the applicant. For purposes of this subsection, the term "separation from employment" includes any firing, termination, resignation, retirement, or voluntary or involuntary extended leave of absence from any salaried or non-salaried position. The employing agency shall maintain documentation of the background investigation for a period consistent with applicable record retention schedules and such documentation shall be signed by the administrator of the employing agency or his or her designee.

(2) Prior to the employment of an applicant, an authorized representative of the employing agency shall execute and maintain an affidavit of compliance on a form provided by the commission, attesting to compliance with the rules promulgated by the commission concerning comprehensive background investigations. The affidavit shall include conspicuous language that intentional false execution of the affidavit by the agency's authorized representative constitutes perjury.

BE IT FURTHER RESOLVED, that 1965 PA 203 be amended by adding a new section, concerning standards for disclosures of information used in the employment of law enforcement officers, that provides as follows:

(1) Prior to conducting a background investigation, an employing agency shall require an authorization and release from an applicant. The employing agency shall use a commission approved authorization and release form that:

(a) Authorizes the applicant's current or former employers to disclose, in good faith, any substantiated unprofessional conduct by the applicant and to provide to the requesting party copies of all documents in the employee's personnel record maintained by current or former employers relating to good faith disclosures of substantiated unprofessional conduct;

(b) Releases the current or former employers, and employees acting on the behalf of the current or former employers, from any liability for good faith disclosures of substantiated unprofessional conduct, and waives written notice required under the Bullard-Plawecki Employee Right to Know Act, PA 397 of 1978, MCL 423.501 *et seq.*

(2) An employer shall not employ an applicant who refuses to sign the authorization and release.

(3) Not later than 45 calendar days after receiving a request under subsection (1), an employer shall provide the information requested and make available copies of all documents in the employee's personnel record relating to substantiated unprofessional conduct as defined in this act. An employer, employee, or agent acting on behalf of the employer, who discloses information under this section in good faith is immune from civil liability for the disclosure. Good faith is presumed unless a preponderance of the evidence establishes that the employee knew the information was false or misleading, or it was disclosed with a reckless disregard for the truth, or the disclosure was prohibited by state or federal law.

(4) Information received under this section shall be used only for the purposes of determining suitability for law enforcement employment and licensure, and shall not be disclosed to any person not directly involved with the employer or the commission in the evaluation process, unless disclosure is required by law or an order of a court.

(5) "Substantiated unprofessional conduct" means on or off-duty conduct by an MCOLES licensed law enforcement officer that, if established, could warrant revocation or suspension under section 9b.

(6) "Substantiated unprofessional conduct" does not include either of the following:

(a) Conduct that is subsequently determined to be unsubstantiated by the employer, or an arbitrator or court exercising jurisdiction over the law enforcement officer;

(b) Conduct described in documents or other recorded media that have been expunged by an arbitrator or court exercising jurisdiction over the law enforcement officer.

(7) This section does not supersede or abrogate any provisions contained in the Bullard-Plawecki Employee Right to Know Act, PA 397 of 1978, MCL 423.501 *et seq.*

(8) Reasonable fees may be charged to cover actual costs of the employer in copying and furnishing documents to a law enforcement agency conducting a background investigation on an applicant for employment as a law enforcement officer.

Adopted by the Michigan Commission on Law Enforcement Standards on April 21, 2010



Sheriff James Bosscher, Chair