
Michigan Commission on Law Enforcement Standards
Public Hearing on Regular Employment
January 31, 2007
Michigan Association of Chiefs of Police Conference
Amway Grand Hotel – Paintland Room
Grand Rapids, Michigan

MCOLES MEMBERS PRESENT:

Chief Kurt Jones, representing the Michigan Association of Chiefs of Police
Sheriff Gene Wriggelsworth, representing the Michigan Sheriffs' Association
Sheriff James Bosscher, representing the Michigan Sheriffs' Association
Deputy Chief Deborah Robinson, representing Chief Ella Bully-Cummings of the Detroit
Police Department
Mr. Jim DeVries, representing the Police Officers Association of Michigan
Mr. Raymond Beach, Executive Director
Mr. Tom Furtaw, Commission Counsel

HONORARY PANEL MEMBER:

Chief Kay Hoffman, President of the Michigan Association of Chiefs of Police

COMMISSION STAFF PRESENT:

Ms. Hermina Kramp Ms. Cheryl Hartwell
Mr. David King Mr. John Steele

INTRODUCTIONS:

The Public Hearing on Regular Employment began at 1:25 pm. Mr. Beach introduced the Regular Employment Committee that was appointed by Sheriff Wriggelsworth, Chairman of the Michigan Commission on Law Enforcement Standards. In addition, he introduced Chief Kay Hoffman, Lansing Township Police Department, current President of the Michigan Association of Chiefs of Police.

Mr. Beach thanked everyone in attendance for taking the time from their busy schedules to attend this public hearing on regular employment. He stated that all law enforcement agencies received a survey instrument and an executive briefing in December regarding regular employment of part time law enforcement officers. Even though December is a busy month for everyone, MCOLES experienced a better than 75% return rate on the survey. Mr. Beach explained that even though the time for this hearing was limited,

MCOLES will have staff in the booth throughout the conference to take any additional information that an agency wants the Commission to consider during their deliberations relative to defining regular employment.

Director Kurt Jones, Cheboygan Department of Public Safety explained that his department employs less than 10 officers and does utilize part time officers. He explained that the committee had received a lot of input regarding the use of part time officers during the public hearings conducted across the state to date. The Commission appreciates the willingness of law enforcement agencies to attend these hearings and share their concerns.

Director Jones explained that the Commission is going to great lengths to provide all law enforcement agencies with the opportunity to provide information specific to their department needs for consideration as the Commission moves forward to establish guidelines for regular employment of part time law enforcement officers. This area is a question that has been brewing with the Attorney General's office for a number of years and it is time that we solve the issue. Director Jones stated that the Commission has no preconceived plan on how to address this issue. The Commission is totally open to information and suggestions by all.

LEGAL CONSIDERATIONS:

Mr. Tom Furtaw, Assistant Attorney General, provided the participants with a brief overview of the legal considerations surrounding the regular employment of law enforcement officers. He explained that Public Act 203, which is the MCOLES Act, provides for the definition of a law enforcement officer as being a "regularly employed" member of a law enforcement agency (MCL 28.602).

MCOLES is a regulatory agency that not only issues licenses to qualifying law enforcement officers but the agency also sets standards. Traditionally, MCOLES has not conducted any inquiries, due diligence or otherwise, into regular employment. The Commission currently recognizes regular employment as basically a roster designation by the agency. So if an officer is listed on an agency roster, essentially that is the limit or extent of the inquiry with regard to the question of regular employment.

Mr. Furtaw provided the audience with a quick background legislatively and brought a number of Attorney General opinions to their attention. He explained that the current MCOLES Act provides credit for eligibility depending upon years of service. If an officer works less than a year with a law enforcement agency, then their license continues to be recognized for a period of one year while the officers seeks new employment. With one to five years of experience that period of eligibility increases to a year and a half. If an officer has over five years of experience and separates employment the license is

considered active or recognized for the purpose of reapplying for a period of two years. This recognition of service speaks to the importance of experience and regular police duty in terms of continuous licensing eligibility. Mr. Furtaw stated that he did not think that the legislature contemplated that an officer that works for one week in a year for five years straight has the same background and the same professional consideration as someone who has worked 40 hours per week or been a full time employee in excess of 2,000 hours for five years. So that is an anomaly that is right there that is in the Act itself. This highlights the inconsistency with the lack of a standard in regular employment.

Regular employment is also not a concept that is exclusive to law enforcement. Regular employment is a concept that gets litigated extensive under the Federal Fair Labor Standards Act.

The Attorney General's Office answers questions of law for state agencies and the agencies are bound by these opinions. There are a number of Attorney General Opinions that relate to the issue of regular employment. Mr. Furtaw spoke briefly about the following Attorney General Opinions:

Attorney General Opinion No. 4792 (1973) - The issue raised was, are constables exempt from the Carrying a Concealed Weapon (CCW) requirements?

Historically, constables have been defined as peace officers. The question arose as to whether or not they were exempt from the CCW requirements? Police officers do not have to apply for a CCW permit. Attorney General Frank Kelly opined that only peace officers who were regularly employed and paid by an agency qualify as exempt from a CCW requirement. This opinion also defined the work load. The work must be substantial rather than occasional and would constitute a large part of the officer's daily activity. This is in the context of a CCW permit and is interpreting MCL 28.602.

Attorney General Opinion No. 5265 (1978) This issue dealt with sheriff posses or members of a police auxiliary and whether or not they are subject to MCOLES training requirements.

The Attorney General referred to these individuals as emergency peace officers under a special exception in the statute, where, in emergency circumstances, a police chief or sheriff can engage individuals who otherwise are not regularly employed for purposes of dealing with an emergency situation. The opinion stated that while the language in the statute says temporarily engaged, these officers would be subject to the MCOLES requirements if they are regularly employed. This opinion also refers to a pattern of conduct where employment is concerned, meaning something not merely occasional or incidental. The opinion also said that temporarily engaged means irregular or ad hoc and would therefore not be subject to the MCOLES requirements.

Attorney General Opinion No. 5806 (1980) - The issue dealt with reserve police officers and whether or not they were CCW exempt.

Again, Attorney General Frank Kelly said that these individuals must be regularly employed which means substantial rather than merely occasionally working. Opinion 5806 left the decision of regular employment to the 83 county gun boards. The opinion is saying that there is legal issue that is driven by a factual inquiry. The factual question will be settled by a county gun board.

Attorney General Opinion No. 7098 (2002) Attorney General Jennifer Granholm undertook a question regarding reserve and regular police officer exemption to the CCW requirements.

The Attorney General couched this issue with the same basic analysis: Does the officer perform substantial work that constitutes a large part of the officer's daily activity. If so, then they could be found to be regularly employed and exempt. The county gun boards will once again decide this question.

Mr. Furtaw explained that there is an issue that is being raised with these opinions. MCOLES is getting questions that have legal ramifications about what constitutes regular employment. What the Attorney General Opinions are telling us is that regular employment means substantial work, something greater than sporadic or infrequent. The bottom line is that regular employment is recognized in law. MCOLES, as a state agency, is a licensing body and is bound by Attorney General Opinions that don't directly address the question, but clearly say that regular employment is recognized in law as meaning something more than casual or infrequent.

Ultimately, in Mr. Furtaw's opinion, the courts will define regular employment if law enforcement doesn't. Sooner or later there is going to be litigation either as a result of an incident where someone is injured during an arrest or there is a jurisdictional issue raised, or a union gets involved and has an issue. Sooner or later the question of what constitutes regular employment will get into the courts. The law currently provides a great deal of flexibility and it would be preferable that law enforcement define regular employment, as apposed to a judge that will suit law enforcement needs. MCOLES specifically needs a policy to address the requirements to define regular employment.

As it stands right now, absent a definition, MCOLES is being compelled to recognize individuals that, as a matter of common sense, clearly fall outside the rational definition of regularly employed. Mr. Furtaw explained that he would be hard pressed to defend a license in a case where a jurisdictional question or an injury during an arrest had occurred and to carry the freight in front of a circuit judge claiming that MCOLES pretty much recognizes anyone as long as they are carried on a law enforcement roster. The judge's

first question would be “don’t you take some due diligence to ensure that they are regularly employed?” So, as a licensing body, MCOLES is being forced to deal with this issue. But the key is that we currently have a lot of flexibility to craft a definition that is going to be workable for law enforcement policy across the state and will get us through the courts in the event of litigation.

COMMENTS ON SURVEY RESPONSES:

Mr. Beach explained that the public testimony was being taped, as it had in each of the public hearings, and will be transcribed for the Commission as they are very serious in their mission to gather all information relative to regular employment and the utilization of part time law enforcement officers. He further explained that Chairman Wriggelsworth appointed the following members to the Regular Employment Committee who are gathering information to be provided to the full Commission: Sheriff Robert Pickell, Genesee County Sheriff’s Office; Sheriff James Bosscher, Missaukee County Sheriff’s Office; Director Doreen Olko, Auburn Hills Department of Public Safety; Chief Kurt Jones, Cheboygan Department of Public Safety; and Mr. Jim DeVries, representing the Police Officers Association of Michigan.

Mr. Beach expressed his appreciation for everyone’s participation in the recent survey that MCOLES sent out in December. The response rate currently exceeds 75 percent which is excellent considering the time of year. He explained that of the agencies responding to the survey, 79 percent of the agencies who utilize part time law enforcement officers endorse the fact that the Commission should be looking at setting some kind of standard in this area. He further stated that 89 percent of agencies who do not employ part time law enforcement officers also replied in the positive toward the Commission setting a standard. This is an endorsement that this is an issue from a professional standpoint and the point of protecting agencies from liability.

PUBLIC TESTIMONY:

Chief Paul Bunten – Saline Police Department – Chief Bunten stated that he does not disagree with the fact that the Commission has to establish some standards, not only in the amount of time that a part time officer works but training standards as well. He did caution the Commission not to make the standard unreasonable. The Saline Police Department relies on part time officers. They are not regularly scheduled, they are used for backfill. They do work a considerable amount of hours and he controls how many part time officers the department utilizes just for that very reason. He believes that they have to be current in their trade too. They have to work a good amount of time to stay current. But if the standards become too high, too many hours, it’s going to directly impact many of our departments that really rely on part time people. Chief Bunten stated

that he doesn't envy the Commission on this task. This is going to be very difficult to find a blend that works. He believes that this issue is important, he just thinks that we have to be very cautious how we approach it.

Chief George Basar – Howell Police Department – Chief Basar stated that he agrees with Chief Bunten and feels that a standard in this area is necessary. He recently went to a department that utilizes part time law enforcement officers heavily. He found that the part time officers are paid a very low wage and receive minimum training and it was hit or miss that they found the time when they worked. Chief Basar stated that the one thing that we have to keep in mind, as we look at the part time question, is where are we taking our profession because we have more and more part time officers that are coming on board with current budget situations. What he has done with his part time officers, is that he looked at wage that was being paid and realized that it was impossible for them to work on a part time basis and be able to pay their bills. So these officers were working other places, often times another law enforcement agency which he views as a liability to his department. So he raised the wage to make it a little more livable which would allow them to be able to pay their bills and come to work for his department on a more regular basis. He further stated that part time officers need experience, and training will not give them experience. If they are only working one weekend a month, we can train them all day long, but they never have an opportunity to utilize that training and gain the experience that they need. So he took the position that he would rather have fewer part time officers, making a livable wage and working more hours to have a quality officer over quantity of officers.

Chief Joe Spagnuolo – Elise Police Department - Chief Spagnuolo stated that he agrees with both chiefs. He suggested that maybe the standard be based upon department size. He said that he can train his officers regularly, but in a small department such as his, they may not see half the things that officers in other departments see while performing their enforcement duties. Chief Spagnuolo further stated that he has to heavily rely on training as his budget does not allow for a lot of part time hours, but he relies on several part time officers. So, his part time officers may only get 8 or 16 hours a month, but he has to rely on them to attend their regular trainings so that he has the confidence of putting them out there. So even though they are not regularly employed in his municipality they may not see a lot of activity, so we have to base their experience on training. That is why the department requires all officers, including the part time officers, to attend all of the department's training.

Chief Gary Goss – Northville Police Department – The Northville Police Department utilizes part time officers for specific purposes. Part time officers are utilized at Northville Downs. The part time officers attend briefings with the full time officers and they must meet the same qualification standards for firearms. They are given legal update training. But primarily the department employs part time officers, who work by themselves, in positions where an auxiliary officer simply wouldn't work. They are

primarily utilized for the racetrack and parking in the downtown area. When you talk about regularly employed, our part time officers work anywhere from a minimum of 200 hours to a maximum of 1,900 hours per year. Chief Goss is just concerned that when we begin to establish standards that it's not going to preclude agencies that use part time officers from using them for special purposes and training them for that.

Chief Jim Stormont – Chikaming Township Police – One of the things that I wonder about is whether or not the Commission has looked into the change since I started as a part time officer many years ago. Probably about half of the people that were part time then were truck drivers, accountants, or all kinds of other things along with being part time police officers. But now days, what I notice in our area is that 75 – 80 percent of the officers that are part time work full time somewhere else as a police officer. So in my case, I have three part time officers, two of the three of them are full time officers at other agencies. Of the other agencies in the county that utilized part time officers, a large number of those part time people are full time police officers in other agencies. I just wonder if that is one way that maybe you want to look at your roster, and it might not show that like some of my officers that have 200 to 300 hours, will have 2,080 on another agency's roster.

Mr. Beach responded that this is an excellent point. He explained that of the 1,636 part time officers 509 of those officers have full time employment with another agency. Of the 1,100 remaining you have another 500 officers that actually derive their law enforcement powers from multiple agencies. So the true population of the officers that are only working part time at one agency is pretty small.

Chief Larry Jerue – DeWitt Police Department – The point that is brought up is a very good one because I too employ part time personnel and two of those individuals are gainfully employed full time with other law enforcement agencies. If you do look at that standard of a minimum number of hours, will you be able to track the full time hours and count those from the other agency? And I agree with every other chief that spoke to the importance of the training. The regular employment, I think that where my big concern falls is that I will put someone on part time, the more people who graduate and are now certifiable the greater numbers that we get in the smaller agencies that are looking for part time employment, they may work at three different agencies in a part time capacity and work for me maybe 100 hours a year, but overall their total numbers might reach whatever minimum standard that you have. What I would be interested in seeing, is the idea that if you are going to require a minimum number of regular hours that this would be the total number served at each and every agency, not just in mine because we could easily lose. With the shrinking dollars that are available, we have a very difficult time in maintaining a minimum number of officers on the road without the part time people.

Mr. Beach stated that of the graduates coming out of the current MCOLES approved academy, only about 45 percent of those graduates are becoming employed as law enforcement officers in Michigan. If you look at the statistics, some of these individuals are working in excess of 2,080 at multiple law enforcement agencies.

Mr. Gene King – Michigan Municipal League’s Insurance Program – In 2002, we had the opportunity with the Law Enforcement Action Forum to speak with Mr. Beach on this issue. He asked what the opinion on regularly employed would be as the Law Enforcement Action Forum employs a lot of part time people. We couldn’t come up with a consensus on a specific number of hours that we could say that this is the number that works. I think that probably the most important issue that we spoke to was the fact that mandatory training issues are involved. Part time officers have to be trained the same as the full time officers. But I think that the other issue that is real important here is the fact that MCOLES publishes a Job Task Analysis which details out the job functions for a law enforcement officer. In order for someone to be really proficient in doing the job they have to spend time on the job, experience the job, and be exposed to different things that are out there. Training will just not suffice for that. We find that in our injuries to officers, are quite frankly, people who are inexperienced to use some of the tactics and weapons that out there, often times are a danger to themselves as well as other people. Another aspect of it is that we are not targeting those people that are working a lot of hours or working for other agencies, we want those people that are gypsy cops that are jumping from place to place or that they are only holding their license because someone nice enough to swear them in so that they can have a badge and carry a gun and pretend that they are a policeman. Those are the guys that we need to get off the streets. Those are the guys that no longer need to be out there. It was nice back in the days when we could do that, back when we didn’t have the litigations and the issues that are before us today. But quite frankly, for law enforcement and for the state of Michigan, those people have to be eliminated from our profession. Part time people are a necessity and I think that you are going to find this is going to be a bigger problem as time goes on. The issue of regularly employed does have to be defined. You find that it comes up in a lot of different places. The issue of hours is one that I do not envy you. I don’t know if we can establish hours as that is going to be hard to do. But no matter what happens or what comes out of this thing, probably one of the most important issues you have is that you have to put experienced officers who are well-trained out there to protect the public. In doing that you are going to reduce your risks and ultimately your costs.

Mr. Beach stated that before he opened the floor to other questions or concerns he wanted to reinforce something that you heard from Chief Jones. You can trust that MCOLES is going to look at this issue very carefully. We are not in a rush to do anything. We don’t have any time constraints. This issue will be deliberated on over the next few months. But you can expect to hear from us as I promised in my Executive Briefing. We are going to share the survey results with you. We are going to share with you what we have learned during public testimony. Sheriff Pickell, who is chair of this select committee,

will be holding a committee meeting probably sometime in March so that we can begin to sort through all the information that we have. So, you have our word that we are going to be very cautious and very deliberate. We may be back gathering additional testimony or seek additional clarification of some of the information we have heard. Lastly, someone reminded me as we were out doing hearings around the state a couple of weeks ago, that if you really want to see a lot of people, set the number of hours and I will guarantee you that the city managers and county boards will be attending with the chiefs and sheriffs. Again, Mr. Beach stated that MCOLES is going to remain open with dialog on this matter. When we think that we have a solution to this issue, we will be back out to share this information with you and gather your input.

Mr. Beach explained that this issue has been on MCOLES' plate for some time and will not be solved in the immediate future. There are a number of important issues that MCOLES' faces, one of them being economics just as your agencies are experiencing fewer funds to support your operations.

QUESTIONS, COMMENTS, AND CONCERNS:

There were no additional questions or concerns raised.

Mr. Beach closed the hearing on behalf of the Commission, by thanking all participants for taking the time from their busy schedules to attend and provide valuable information with regard to regular employment.

The Public Hearing on Regular Employment concluded at 1:55 pm.