



C O U N T Y M I C H I G A N

L. BROOKS PATTERSON, OAKLAND COUNTY EXECUTIVE

Robert J. Daddow  
Special Projects Deputy County Executive

April 13, 2010

Ms. Karen G. Norcross  
Sr. Numbering Resources Specialist  
Operations and Tariffs Section  
Telecommunications Division  
Department of Energy, Labor and Economic Growth -  
Michigan Public Service Commission  
6545 Mercantile Way  
P.O. Box 30221  
Lansing, Michigan 48909

RE: Michigan Public Service Commission – Draft Emergency 9-1-1 Services  
Training Standards

Dear Ms. Norcross:

As requested in March 2010, the Michigan Public Service Commission (MPSC) is seeking written testimony on the draft rules for the Emergency 9-1-1 Services Training Standards. Please consider this correspondence a response to the MPSC request. Hopefully, it can find its way into the formal process.

As indicated in recent email and other correspondence, I have expressed significant reservations that the State and its rule-making body for the 9-1-1 services training standards, the MPSC, is in compliance with the State's Constitution. These concerns were first expressed, in writing, in the fall as evidenced in the attached letter to you dated September 30, 2009.

Over the course of the recent emails, there have been a number of troubling assertions involving this matter, up to and including those that are dismissive simply because the inquiries are 'political' in nature. There is nothing political about asking that the State comply with the Constitution. And, should some think that it is financial, it is not. The Oakland County Sheriff's Office already trains at a level likely higher than most dispatch centers and would likely be unaffected to any great degree by the training standards under consideration. The issue is and remains the State's responsibility to demonstrate its compliance with the Constitution new activities are burdened on the local units of government.

On December 23, 1978, the electorate's approved amendment to the Constitution became effective. The two sections of the Constitution that apply to the concerns expressed in the prior

correspondence follows:

Art 9, Sec. 25: “The state is prohibited from requiring any new or expanded activities by local governments without full state financing...or from shifting the tax burden to local government.”

Art. 9, Sec. 29: “The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law. A new activity or service or any increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency or units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs.”

In lay terms, if the State requires local units of government to perform additional activities beyond those the State funded when the Headlee Amendment became effective (December 23, 1978) or if they pass a new requirement burdening the local units, the State must fund the new mandate. The draft rules (draft number 2, but undated) specifically cite the following (R.484.XXX Applicability – Rule 1):

- “(1). These rules apply to primary public service answering points as defined by the Emergency 9-1-1 Services Enabling Act, **PA 32 of 1986**, as revised.
- (2). Compliance with the provisions of this rule **shall be mandatory** no later than December 31, 2010.
- (3). Compliance with the provision of this rule **shall be also mandatory** for all new and existing employee (sic) of a Michigan primary public safety answering point after the effective date of this rule.” (Emphasis Added)

## UNRESOLVED CONCERNS

At the outset of emails, several individuals indicated that they could not see how the rules promulgated by the MPSC could be considered to fall under the Constitutional provisions of the Headlee Amendment. Frankly, with the use of terms such as ‘mandatory’ in Rule 1, it is hard to see how they cannot. The use of ‘mandatory’ cannot be any clearer as an imposed *new activity* falling within the second sentence of Art 9, Sec. 29.

In an email dated March 23, 2010, Mr. Bruce Rainey states:

“I am confused as to how the Headlee Amendment touches this Act. Seems to me, the Commission is acting within the law. **I don’t believe it is common practice for the Legislature to fund requirements to any legality (sic) law, one that has been in place for several years now.** Where do you see the Commissions role in providing an answer to that question?”

Unfortunately, Mr. Rainey is to a large degree correct in that the Legislature has continually failed to appropriate funding in accordance with the Constitution for the past 30 years. It is a travesty that they have failed to do so in the past, but doesn't provide a justification to do so in the future. The Constitution was passed by the electorate and is in place today.

As a practical matter, a second point involves the lack of common practice fund new requirements for a law 'that has been in place for several years now.' There are several issues evident with this matter. Undoubtedly, the act that has been in place for several years now referred to by Mr. Rainey is PA 32 of 1986 now being amended with the rules under consideration. One of two situations occurred with PA 32, as follows:

- PA 32 was a new act that was passed in 1986 with no similar act existing as of December 23, 1986, in which case the Headlee Amendment applied at that time for the funding requirements – namely, the State had the responsibility to fund the new activities it was then mandating. Given the State's history of compliance with this Constitutional requirement – Headlee Amendment – it is highly unlikely that any analysis and funding was provided. No independent research on this matter has been performed.
- Or, the activities existed at the time that the Headlee Amendment became effective on December 23, 1978. In this event, the State would be required to provide the same proportionate funding towards the activity (in which case, the first sentence of Art 9, Sec. 29 applies) after the effective date.

As a practical matter, the comparison of the current rules should not be evaluated against the prior legislation dated in 1986 (post-Headlee Amendment) but what was required of local units of government at December 23, 1978 and the funding provided towards the requirements by the State at that time.

In another email, Mr. Robin Ancona has asserted:

**“Commission staff does not consider the rules for the standards for the training of PSAP personnel as an unfunded mandate. .... The Legislature created the mandate and charged the Commission with creating the rules. We are working on draft rules on training standards to fulfill our responsibility.”**

The above continues to support the assertion that the rules under consideration are mandates on local units of government (actually, the above specifically asserts it) and that the Legislature tasked the MPSC, a state agency (see specific references concerning state agencies within the second sentence of Art 9, Sec. 29), to write those rules. While it is recognized that the MPSC has no ability to appropriate funds and the MPSC is in a tough position relating to the compliance with the Constitution, the adoption of the rules should nevertheless come with the funding from the Legislature.

As a state agency, the MPSC should finalize the rules, ascertain their burden on local units of government and assess whether the funding covers the new activity costs. Essentially, the request is that the MPSC perform its due diligence in the compliance with the Constitution. When the Legislature tasked the MPSC with the rule-making authority, a goal was set without specificity. Only after the rules have been finalized, but before they become effective, can anyone reasonably expect a cost analysis to be performed.

I filed a Freedom of Information Act request of the MPSC for any and all financial analyses for the funding provided to local units of government for training and the costs of the new mandated training standards. It is clear by the response dated April 1, 2010 from Ms. Mary Jo Kunkle that the MPSC has not performed its due diligence as no such financial analysis exists. Specifically,

“Your request for the stated information is denied as discussed. Pursuant to Section 5(4)(b) of the Michigan FOIA, this is to certify that, the documents you have requested **do not currently exist** within the Michigan Public Service Commission. The Michigan Public Service Commission **staff has not undertaken an analysis of the financial impact** related to the Emergency 9-1-1 Services Training Standards.” (Emphasis Added).

It is clear that the MPSC has yet to undertake an analysis in an effort to demonstrate to the local units of government that there is no unfunded components to the mandates it clearly believes (and has asserted) exist in these new training standards. Yet, without having conducted a financial analysis, how can the MPSC be assured, as a state agency, it has complied with the Constitution before it imposes the new rules on local units of government for training standards? Simply put, it cannot.

It is difficult to understand how the MPSC has come to the conclusion that there will be no further burdens on local units of government by requiring a higher training standard for employees. Clearly, there will be training costs, back-filling of those at training and a limitation now placed on public safety answering points on the personnel who can actually perform the services.

Presently and this occurs at the smaller public safety answering points, the dispatching function is covered by employees on temporary duty in lieu of workers' compensation status. Other lower level and less trained dispatchers are also used. Both of these latter activities will be prohibited as the employees will not meet the new training standards. The cost savings in these particularly in these very trying economic times are of interest to several public safety answering points.

While there can be little doubt that fully trained and professional dispatchers are 'good' public policy, the Constitution makes no distinction in this matter. The Constitution simply requires that any new activity should be funded by the State when imposed on a local unit of government. This is entirely a cost and funding issue and not whether new training standards are 'good public policy' – it is.

Having said the above, what actions are recommended in the completion of the MPSC's assigned task from the Legislature? The recommendations follow:

- Complete the task of addressing the programmatic changes for the development of the new training standards.
- Assess the funding levels provided at December 23, 1978 (the effective date of the Headlee Amendment) and related costs of providing the activity. Likely, the funding and the costs will be all post-Headlee Amendment actions by the Legislature.
- If there is a deficiency of funding, then the "rules" should be converted to "guidelines" or optional in their adoption until such time as the Legislature complies with the Headlee Amendment in appropriating an amount sufficient to cover the mandate.

I trust that the MPSC's desire to comply with the Constitution, specifically the Headlee Amendment, is at its forethought before it imposes yet another mandate, without funding, on local units of government. At a minimum, the MPSC has a responsibility to the local units of government to complete its due diligence in this matter to adequately demonstrate that the funding levels provided currently for training are sufficient to cover the prior levels of training required and the new activities currently being imposed.

Very truly yours,

A handwritten signature in black ink that reads "Robert J. Daddow". The signature is written in a cursive, flowing style.

Robert J. Daddow,  
Deputy County Executive

September 23, 2009

Ms. Karen G. Norcross  
Sr. Numbering Resources Specialist  
Operations and Tariffs Section  
Telecommunications Division  
Michigan Public Services Commission  
Lansing, Michigan

Re: 9-1-1 Training Standards – Conflicts with the Headlee Amendment

Dear Ms. Norcross:

Oakland County is in receipt of the most recent draft of the 9-1-1 Training Standards and have a significant concern with regards to the State funding of this new mandate. Oakland County is in support of improvements in minimum personnel standards and training for dispatch professionals. Specifically, stated in the draft rules is the assertion that “Compliance with the provisions of this **rule** shall be **mandatory** no later than December 31, 2010” (emphasis added).

The County’s support does not negate the State’s funding responsibilities under the Headlee Amendment, (Section 29 of the Michigan Constitution), which reads:

“The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs. The provision of this section shall not apply to costs incurred pursuant to Article VI, Section 18.”

In lay terms, any new rule or mandate created after the Headlee Amendment’s effective date of December 23, 1978 imposing costs on local units of government requires full funding by the State. As you are likely aware, a recently settled lawsuit between school districts and the State concerning levels of funding sets forth new standards of funding requirements relating to the compliance with the Headlee Amendment. The State’s position in that lawsuit was that because the State provided funding prior to the adoption of the new mandate, the costs associated with the *new* mandate is now considered to be incorporated within that original funding level. The State’s Supreme Court ruled otherwise. Funding for past rules and mandates remain unchanged while new State-mandated costs are to be covered by new State revenue sources.

The costs burdened on local dispatch operations to comply with the proposed new rule could include, but not be limited to, the training sessions, backfilling of dispatch time while at training, elimination of temporary duty personnel in dispatch functions (requiring additional personnel to be hired) and administrative costs. If the State intends on imposing new costs on local dispatch operations, new State funding would be required under the State's Constitution, specifically the Headlee Amendment.

Similarly, any prior actions by the State in promulgating rules and mandates involving local 9-1-1 operations would also require full State funding should those rules and mandates have become effective after the Headlee Amendment become effective on December 23, 1978. In a letter dated August 31, 2009, there is a reference to '...the rulemaking process mandated by the Emergency 9-1-1 Services Enabling Act, PA 32 of 1986.' No review of the components of this past legislation has been made but should there be new costs that were burdened on local units of government that remain fully unreimbursed, the State would be obligated to fund these costs under the Headlee Amendment as well.

While providing higher standards in dispatch services is helpful to public safety, the adoption of favorable new rules does not negate the State's requirement to comply with the Constitution.

Very Truly Yours,



Robert J. Daddow,  
Deputy County Executive

Copy to: Legislative Commission on Statutory Mandates

**From:** Daddow, Robert [mailto:daddowr@oakgov.com]  
**Sent:** Wednesday, September 23, 2009 4:10 PM  
**To:** Norcross, Karen (DELEG)  
**Cc:** 'Coates, Pat'; 'Sullivan, Joe'  
**Subject:** 9-1-1 Training Standards Rulemaking

Ms. Norcross – attached is my letter of comment involving the 9-1-1 Training Standards. While we support the improvements anticipated in the changes to improve standards, you should know that any new rules or mandates imposed by the State are unfunded mandates and require funding by the State. I have taken the liberty to advance this particular item to the Legislative Commission on Statutory Mandates and intend on using this as an example within the report that is anticipated to be issued in the later part of the calendar year as it is spot on target with the cultural beliefs that rules / mandates can be issued from the State without even any consideration of funding.. I am co-chair of this Commission.

And, even before you may go there, any prior funding that might have been provided to the PSAPs would apply to prior services. New services require new funding sources. I would suggest you reference Adair going through the legal process on this matter should you desire.  
RJD