

LAW ENFORCEMENT OFFICERS
STANDARDS AND TRAINING COMMISSION
MICKELSON CRIMINAL JUSTICE CENTER
Pierre, SD
April 19, 2017

The South Dakota Law Enforcement Officers Standards and Training Commission meeting was called to order by Chairman Gortmaker at the hour of 9:00 a.m. MDT on April 19, 2017, in the Roosevelt Room at the Lodge in Deadwood, SD.

Members present: Robert Perry, Special Agent, FBI; Matt Burns, Sioux Falls Chief of Police; Mike Leidholt, Hughes County Sheriff; Tom Wollman, Lincoln County State's Attorney; Jo Vitek, Lake Area Technical Institute; John Long, SSA, BIA, OJS; Steve Allender, Rapid City Mayor; David Lawrence, Chief of Police, Standing Rock Sioux Tribe; Bryan Gortmaker, Chairman; Scott Rechtenbaugh, Executive Secretary; Kim Knecht, Assistant Training Administrator; and Lesley Farmen, Basic Coordinator. Commission Members Randall Rosenau, Lawrence County Commissioner and Marty Jackley, Attorney General were absent.

Others present included Dan Satterlee, Assistant Director; SSA Chad Mosteller; SSA Brett Spencer; Jeremiah Lonewolf, SAC, BIA, OJS, Aberdeen; Belle Fourche Chief of Police Marlyn Pomrenke; and Mobridge Chief of Police Shawn Madison.

John Long, SSA, BIA OJS, was presented a plaque of appreciation. Long served on the commission from 2011 - 2016. Long completed his law enforcement service in February and is now the Pine Ridge BIA Superintendent overseeing the entire reservation.

Introductions were made of newly appointed commission member David Lawrence. Lawrence is Chief of Police with the Bureau of Indian Affairs on the Standing Rock Sioux Reservation. Chief of Police Lawrence represents the enrolled tribal member that is a certified law enforcement officer. Lawrence has over 27 years of law enforcement service including 10 years with the CRST Law Enforcement and 17 years with the BIA. Lawrence replaces John Long.

Members were advised Executive Secretary/Training Administrator Scott Rechtenbaugh will be transitioning to DCI as Assistant Director, Administration, replacing Dan Satterlee. SSA Chad Mosteller, DCI Central Zone Supervisor, will transition to Law Enforcement Training replacing Scott Rechtenbaugh.

Chairman Gortmaker declared a quorum present and started the order of business with review of the previous meeting's minutes.

- February 22, 2017 minutes of the South Dakota Law Enforcement Officers Standards and Training Commission were approved on a **motion** by Commission Member Wollman, **second** simultaneously by Commission Members Vitek and Perry.

The commission proceeded with the scheduled hearing of **Eric Bublitz**. Chairman Gortmaker turned the proceedings over to Hearing Officer Paul Bachand. It was stated for the record this is the time and place for the hearing to determine whether Bublitz possesses the requisite minimum standards for employment or certification as a law enforcement officer under SDCL 23-3-42. Bublitz consented to decertification as

a law enforcement officer in 2002. The allegations contained in the notice of hearing were read by hearing officer Bachand. Bublitz denied the allegations as set forth in the notice of hearing.

Eric Bublitz is present without counsel. Kelly Marnette, Assistant Attorney General, is acting legal counsel for the State. The record will reflect a stenographic transcription of the hearing will be made and copies of the transcription will be available upon request and tender of the cost thereof. See file for exhibits.

The record will reflect Commission member Price joined the meeting at 9:50 a.m.

Commission members heard the opening and closing statements, witness testimony, and considered the evidence and exhibits presented by both parties. Upon conclusion of testimony, arguments by both parties, review of records, questions and discussion, the evidentiary portion of the hearing concluded at 10:30 a.m.

Members took a short recess and entered into executive session on a **motion** by Commission Member Leidholt, **second** by Commission Member Long to further discuss their consideration, motion **approved**.

Members moved out of executive session and back into regular session on a **motion** by Commission Member Perry, **second** by Commission Member Burns. Proceedings resumed before the commission. **Motion** made by Commission Member Burns that Eric Bublitz does not possess the requisite minimum standards required to be a law enforcement officer and the chair to sign Findings of Fact and Conclusions of Law on behalf of the commission, **second** by Commission Member Perry. Motion **approved** by verbal response in the affirmative by all members. **Action: 7-0 Aye** (Allender, Perry, Leidholt, Wollman, Lawrence, Vitek, and Burns). Record will reflect Commission Member Long and Commission Member Price were recused from the decision making.

Assistant Attorney General Marnette will prepare the Findings of Fact and Conclusions of Law. The hearing proceedings were concluded at 10:50 a.m. Bublitz is ineligible to apply for law enforcement certification.

Hearing Officer Paul Bachand proceeded with the scheduled hearing in the matter of the certification of **Trey Andrews** as a South Dakota law enforcement officer. The hearing is held to determine whether Andrews possesses the requisite minimum standards required to be employed or certified as a law enforcement officer. Andrews pled guilty to Grand Theft, a class 4 felony and received a suspended imposition of sentence. Andrews completed the conditions of his sentence and court sealed the record in January 2015.

Andrews is present without legal counsel. Kelly Marnette, Assistant Attorney General, is present for the State. The record will reflect a stenographic transcription of the hearing will be made and copies of the transcription will be available upon request and tender of the cost thereof. See file for exhibits.

Record will reflect Commission member Vitek is recused from the hearing proceedings.

Commission members heard the opening and closing statements, testimony, and considered the evidence presented by both parties.

Upon conclusion of the testimony and arguments by both parties, review of the records, questions and discussion, the evidentiary portion of the hearing was concluded at 12 p.m. MDT. Members entered into executive session on a **motion** by Commission Member Perry, **second** by Commission Member Burns to further discuss their consideration, motion **approved**.

Members moved out of executive session on a **Motion** by Commission Member Price, **second** by Commission Member Allender. Proceedings resumed before the commission. **Motion** made by Commission Member Perry, based upon administrative rule 2:01:02:02 to deny Mr. Andrews the ability for certification, **second** by Commission Member Leidholt, motion **approved** by verbal response in the affirmative by all members. **Action: 6-0 Aye** (Wollman, Allender, Perry, Leidholt, Lawrence, and Burns). Motion by Commission Member Perry to have the Chair sign the Findings of Fact and Conclusions of Law on behalf of the commission, second by Commission Member Burns, motion approved. Assistant Attorney General Marnette will prepare the Findings of Fact and Conclusions of Law. The hearing proceedings were concluded at 12:28 p.m. MDT.

Members adjourned for lunch and reconvened at 1:47 p.m. MDT with a quorum present. Chairman Gortmaker advised members that questions of law came forward over the lunch hour regarding the last hearing. The Chair turned the meeting over to hearing officer Bachand. The record will reflect a recording of the hearing was made (court reporter was not present) and copies of the recording will be available upon request. See file for exhibits.

Mr. Andrews is back in front of the commission as it relates to the prior hearing that was just concluded. Questions of law have arisen. It is the interpretation of the administrative rule (2:01:02:0.2) compared to the statute (23-3-42) that also discusses the qualifications of officers. Hearing Officer Bachand read the appropriate part of 23-3-42 that applies to this issue: *Notwithstanding §§ 23A-27-14 and 23A-27-17, [these statutes deal with suspended imposition of sentence and the impact of orders] any person seeking certification as a law enforcement officer who has received an order pursuant to §§ 23A-27-13 MAY have his or her application refused.* 23A-27-13 is referenced on exhibit 5 in the prior hearing which is the order of sealing. The statute would indicate a permissive MAY. The statute governs over the rule. The applicant is not automatically rejected under the rule. The applicant is able to come before the commission to obtain certification.

Assistant Attorney General Marnette advised the applicant is under the rule, but governed by the statute. The applicant is not prohibited from having the suspended imposition from being considered for certification. The applicant is not automatically denied.

Hearing Officer Bachand indicated with the permissive may in 23-3-42, the commission could in fact determine the applicant is eligible for certification. Marnette agreed the commission would have that option as well as denying the applicant now and coming back at a future date. Bachand wanted to make certain this matter was adequately presented to the commission today.

The meeting was returned to the Chair. Chairman Gortmaker advised members they can make a motion to go into executive session to discuss the matter or if there is no motion to go into executive session, the ruling would be left as it stands.

Members entered into executive session on a **motion** by Commission Member Price, **second** by Commission Member Lawrence to discuss the matter, motion **approved**.

Members moved out of executive session at 2:01 p.m. MDT on a **motion** by Commission Member Burns, **second** by Commission Member Perry, motion **approved**. **Motion** by Commission Member Perry to reconsider the prior decision of the commission, **second** by Commission Member Allender, motion **carried**.

Motion by Commission Member Perry, based on further review of the statute rules and the evidence presented here today, that we approve Trey Andrews application to be certified as a law enforcement officer in South Dakota, and any Findings of Facts and Conclusions of Law the Chairman be permitted to sign on behalf of the commission, **second** by Commission Member Lawrence. Majority of the vote **passed** by the following roll call vote: **Action: 6 Aye 1 Nay** (Wollman, Lawrence, Allender, Perry, Burns, Leidholt, and Price). Findings of Fact and Conclusions of Law will be expedited by Assistant Attorney General Marnette. The hearing concluded at 2:06 p.m. MDT.

The next item of business was the consideration of an emergency draft rule. Paul Bachand presented the Emergency response appointment draft rule. The rule is in response to our State involving officers from other States under EMAC (Emergency Management Assistance Compact) to be appointed on a temporary basis in an emergency situation. Officers must be a certified officer and have successfully completed instruction on use of force or response to resistance policy and have completed a firearms qualification course within one year prior to the appointment. The rule is modeled after the 'Sturgis' rule 2:01:06:02, Temporary or probationary appointment. **Motion** by Commission Member Wollman to approve and move forward with the emergency rule and to move forward with the normal rule process, **second** by Commission Member Vitek, motion **carried**. **Motion** by Commission Member Vitek to pursue the adoption process as a permanent rule, **second** by Commission Member Price, motion **approved**.

The record will reflect Commission Member Perry stepped out to attend another meeting at 2:07 p.m. MDT.

Executive Secretary Rechtenbaugh presented the following reciprocity requests:

Lake Area Technical Institute students will complete the Law Enforcement Technology Program in May 2017. Per the Articulation Agreement between the SD Law Enforcement Officers Standards and Training Commission and Lake Area Technical Institute, the Standards and Training Commission agrees to administer to students in the final semester of the Law Enforcement program, a written reciprocity test and skills tests, or within two years of graduation. Eleven students have completed the reciprocity required skills testing. Two (Lauren Jones/Jaici Schlosser) did not pass the firearms qualification requirement. Out of the two, Lauren Jones has met the firearms skill retest requirement; Jaici Schlosser failed the firearms skill retest requirement. **Motion** by Commission Member Allender to approve the Lake Area student listing with the exception of Jaici Schlosser, **second** by Commission Member Price, motion **approved**.

Kyle Kienholz, Mobridge Police Department, completed Alexandria Tech Law Enforcement Program and the Minnesota POST board exam requirements. Kienholz has an active General License in North Dakota. Kienholz obtained a police officer training waiver due to passing the Minnesota POST exam, therefore Kienholz only attended the two-week criminal/traffic law portion of the North Dakota Academy. Kienholz resigned from his last employment during an internal investigation. North Dakota did not take action on Kienholz's certification. Review of the investigation did not indicate anything to warrant certification removal. Involved mostly policy and attitude issues. Kienholz's background check revealed

no adverse information. Kienholz completed the reciprocity exam on February 23, 2017, and successfully completed all reciprocity requirements in April 2017.

Shawn Madison, Mobridge Chief of Police, appeared before member regarding Officer Kienholz. Chief Madison advised he (Kienholz) is the most challenging officer and has had to rein him back, but is a good officer. Kienholz has difficulties getting along with officers and dispatchers. Chief Madison has seen an improvement in the last couple of months and continues to watch for violations. Commission members discussed concerns and will trust Chief Madison's judgement and decision. Chief Madison will continue to work with Officer Kienholz. **Motion** by Commission Member Leidholt to approve Kyle Kienholz's application for reciprocity, **second** by Commission Member Price, motion **approved**.

Shawn Nielsen, Sioux Falls Police Department, completed a 608-hour Basic Training Academy and is a certified officer in the State of Nebraska. Nielsen's certification is "Active". No action has been taken or is pending to revoke this certification. Nielsen's background check revealed no adverse information. Nielsen completed the reciprocity exam on March 1, 2017, and successfully completed all reciprocity requirements in April 2017. **Motion** by Commission Member Wollman to approve Nielsen's application for reciprocity, **second** by Commission Member Vitek, motion **approved**.

Justin Barrett completed the Law Enforcement Technology Program at Southeast Technical Institute in 2016. Barrett's background check revealed no adverse information. Barrett successfully passed the reciprocity exam on March 1, 2017. Because of the articulation agreement between the SD Law Enforcement Officers Standards and Training Commission and Southeast Technical Institute, Barrett is only required to demonstrate his proficiency in the EVOC, Firearms, and Response to Resistance Performance skills test. He must demonstrate the same level of skills in each as required in the Basic Certification Course. Barrett successfully completed the necessary reciprocity requirements in April 2017. **Motion** made by Commission Member Vitek to approve the reciprocity certification for Justin Barrett, **second** by Commission Member Price, motion **approved**.

Sean Nielsen completed the Law Enforcement Technology Program at Southeast Technical Institute in 2016. Nielsen's background check revealed no adverse information. Nielsen successfully passed the reciprocity exam on March 30, 2017. Because of the articulation agreement between the SD Law Enforcement Officers Standards and Training Commission and Southeast Technical Institute, Nielsen is only required to demonstrate his proficiency in the EVOC, Firearms, and Response to Resistance Performance skills test. He must demonstrate the same level of skills in each as required in the Basic Certification Course. Nielsen did successfully demonstrate proficiency in EVOC but did not successfully demonstrate proficiency in firearms. Nielsen must successfully qualify with his firearm by the completion of the next available reciprocity skills training. Nielsen is considered a probationary reciprocity candidate until his reciprocity training is completed. **Motion** was made by Commission Member Vitek to approve Nielsen's reciprocity certification contingent upon passing the firearms qualification, **second** by Commission Member Lawrence, motion **approved**.

Executive Secretary Rechtenbaugh advised members Deb Davis' appearance before the commission has been postponed. LET has not received a letter from her employer and her shoulder problem is worse than expected. A medical clearance will be needed. She will advise when she is ready, at which time we will schedule her appearance before the commission.

The following canine teams have met the requirements of certification or recertification:

- Canine Team **Seth Bonnema and K9 Gina**, Brookings Police Department, have met the requirements for Drug Dog Detection certification on February 17, 2017.
- Canine Team **Paul Sheldon and K9 Mack**, Jerauld County Sheriff's Office, have met the requirements for Drug Dog Detection certification on February 17, 2017.
- Canine Team **Matthew Hower and K9 Jary**, Rapid City Police Department, have met the requirements for Drug Dog Detection certification on March 7, 2017 and Patrol Dog certification on March 29, 2017.
- Canine Team **Jarrold Zaruba and K9 Dex**, Aberdeen Police Department, have met the requirements for Drug Dog Detection certification on February 17, 2017.
- Canine Team **Andrew Steen and K9 Astor**, SD Highway Patrol, have met the requirements for Drug Dog Detection certification on February 17, 2017. Note: K9 Astor is deceased.
- Canine Team **Aaron Spangenberg and K9 Sadie**, SD Highway Patrol, have met the requirements for Explosive Dog Detection certification on March 3, 2017.
- Canine Team **Garrett Harmon and K9 Igor**, Chamberlain Police Department, have met the requirements for Drug Dog Detection certification on February 17, 2017.
- Canine Team **Sean Doyle and K9 Stryker**, Rapid City Police Department, have met the requirements for Patrol Dog Detection certification on March 29, 2017.

Motion by Commission Member Wollman to approve the Canine Team certification listing as presented by the Executive Secretary, **second** by Commission Member Vitek, motion **approved**.

The following item of business was for information only and did not require commission action at this time.

A Consent of Decertification form was received from **Brian Biehl** former SD Highway Patrol Trooper.

There being no further business to come before the meeting body, the meeting was adjourned on a **motion** by Commission Member Liedholt, **second** by Commission Member Burns, motion **approved**. The next meeting is set for August 23, 2017, at the Criminal Justice Training Center in Pierre.

Frankly it is the Interpretation of administrative rule compared to the statute. The Admin rule 2:01:02:02 and statute 23-3-42 that also discuss the qualification of officers. The appropriate part of 23-3-42 that applies to this issue 3A-27-13 is referenced in exhibit 5 referencing the order of sealed indictment

The commission can deny the applicants certification based upon the record before them and not just on the fact of the imposition of sentence for a felony.

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