

Minutes

September 25, 2007

The 364th meeting of the NH Police Standards and Training Council was called to order at 9:05 a.m. by Chairman Michael L. Prozzo, Jr., Sullivan County Sheriff's Department, in the John D. Morton conference room at the Arthur D. Kehas Law Enforcement Training Facility and Campus in Concord, New Hampshire.

Members Present: Chief Gregory C. Dodge, Epping Police Department; Chief Timothy Russell, Henniker Police Department; Sheriff Scott A. Carr, Carroll County Sheriff's Department; Associate Justice Stephen H. Roberts, Dover District Court; Associate Justice Norman E. Champagne, Manchester District Court; Major Susan R. Forey, designee of Colonel Frederick H. Booth, NH State Police; Commissioner William L. Wrenn, Jr., Department of Corrections; Vice Chancellor Charles Annal, designee of Chancellor Richard A. Gustafson of the Community College System of New Hampshire. Chief Michael J. Magnant, Portsmouth Police Department and Associate Attorney General Ann Rice, designee of Attorney General Kelly A. Ayotte, arrived at 1:23 p.m.

Chief Morency was excused from today's meeting due to a schedule conflict; Attorney General Ayotte, having given birth last week, was also excused with the Council's best wishes and hearty congratulations to her and her family.

Staff Present: Director Donald L. Vittum, Assistant Director Robert B. Stafford, Jr., Paralegal Cassandra A. Erickson, Keith H. Lohmann, Council Secretary Kathryn Day, and Account-Technician Helen L. Robinson.

Guests Present: Mr. George E. Tetreault, Portsmouth, NH; Officer Gerald V. Moors, Madbury Police Department; Capt. Joseph DiGregorio, Strafford County Sheriff's Office; Chief David G. Dubois, Rochester Police Department; the Honorable Richard E. Galway, Associate Justice, New Hampshire Supreme Court; Chief Frank A. Hinkle, Alexandria Police Department; and, representing the Alexandria Board of Selectmen: Mrs. Ann Gangemi, Ms. Cindy Williams, Mr. Robert Bacon, and Mr. Gaetano "Don" Gangemi, Sr.

Approval of Minutes

Justice Roberts noted that Captain Kerry Steckowych was in fact not present at the August 28 meeting and requested that the minutes be amended to reflect that. The Council unanimously approved the Minutes of August 28, 2007, as amended, following a motion by Chief Dodge, seconded by Sheriff Carr.

Director's Report

The Director's written report, mailed under separate cover, was accepted as submitted. There was no further discussion and the members had no questions for the Director concerning the report.

Previous and/or Unfinished Business

Eligibility/Decertification – Gerald Moors (formerly of Rochester PD) currently of the Madbury PD for violation under Pol 301.05(g)(15), Pol 301.05(m), and Pol 402.02(a)(5)

On a motion by Chief Dodge, seconded by Sheriff Carr, the Council voted on a roll-call vote to enter into a non-public session at 9:34 a.m. on the case continued from August 28, 2007.

Following witness testimony on the eligibility/decertification matter, on a motion by Commissioner Wrenn, seconded by Chief Dodge, the Council voted unanimously to seal the minutes of the non-public session.

Commissioner Wrenn, seconded by Chief Dodge, moved to exit the nonpublic session. A roll call vote of the Council was unanimous and the nonpublic session was concluded at 1:20 p.m. Commissioner Wrenn moved that the Council take the matter under further advisement and deliberate and reach a conclusion at a later date; the motion was seconded by Justice Roberts. Vice Chancellor Annal informed the Council that he may possibly be absent from the October meeting and was prepared to render a decision but would defer to the preference of members representing law enforcement if they felt that more time was needed. Commissioner Wrenn was reluctant to rush toward a conclusion without first making sure that all unanswered questions were addressed and without having the opportunity to review all the exhibits and his personal notes. Justice Roberts asked for clarification on the procedural status regarding rules cited in the case. Cassie Erickson confirmed that Mr. Moors was noticed on May 4, 2007, under under Pol 301.05(g)(15), Pol 301.05(m), and Pol 402.02(a)(5) and that the case is going forward under all three of these. She provided the members with a copy of the notice served on Mr. Moors. Keith Lohmann further stated that the case was in process when Mr. Moors went to work for the Madbury Police Department and that prompted the question of his eligibility to continue to work in Madbury and that the Council has grounds to bring the case on all three charges.

One concern for the Chairman was the potential of a lack of a quorum at a later date, as Major Forey was also unsure if she would be present. Chief Russell commented that such a delay would prolong the current administrative suspension of Mr. Moors for another month. Chairman Prozzo expressed that, given the volume of documentation involved, he was amenable to allowing more time if it was needed in order to reach a fair and informed decision.

The motion on the table to delay deliberations failed in a roll call vote of 4-5, with Chairman Prozzo, Judge Champagne, Justice Roberts, and Commissioner Wrenn in support and Major Forey, Sheriff Carr, Chief Russell, Vice Chancellor Annal, and Chief Dodge opposed.

At 2:40 p.m. the nonpublic session on this matter was resumed, after a motion by Chief Dodge and seconded by Sheriff Carr received the unanimous approval of the Council in a roll call vote.

Chief Russell moved to seal the minutes of the nonpublic session, with Chief Dodge moving to second. The motion carried with the unanimous consent of the Council.

A motion to exit the nonpublic session by Chief Russell, seconded by Sheriff Carr, passed unanimously by a roll call vote at 3:28 p.m.

Judge Roberts moved to agree that the prosecution failed to meet the burden of proof as required to establish the charges set forth in the May 4, 2007, Notice of Hearing to Mr. Moors. The motion was seconded by Sheriff Carr and passed on a roll call vote of 6-3, with Sheriff Carr, Judge Roberts, Chief Dodge, Chief Russell, Commissioner Wrenn and Chairman Prozzo voting in the affirmative; Judge Champagne, Vice Chancellor Annal, and Major Forey were opposed.

New Business

Consent Calendar

The request for extension submitted on behalf of Chief Frank A. Hinkle, Alexandria, Police Department, was set aside until such time that the Chief arrived with representatives of the Alexandria Board of Selectmen. Upon a motion by Commissioner Wrenn, seconded by Judge Champagne, the Council voted unanimously to approve the following requests:

Prior Training and Experience Request (Full-Time)

1. Chief Jonathon L. Dennis, South Hampton Police Department.

Requests for Extensions (Full-time Police Officers)

145th Academy 01/07/08-03/28/08, fitness test 12/17/07

1. Deputy Michael Malloy, Hillsborough County Sheriff's Office
2. Officer Christopher Fowler, Franconia Police Department
3. Officer James J. Gardiner, Littleton Police Department (stipulating that the officer work only under direct supervision)

Consent Calendar (cont'd)

4. Office Jason P. Tremblay, Alton Police Department (stipulating that the officer work only under direct supervision)

Requests for Extensions (Part-time Police Officers)

1. Officer Patrick I. Riley, New Hampshire Marine Patrol to the **252nd Part-Time Academy (dates to be announced)**

Specialized Training Grant Requests (as submitted)

1. for Lieutenant Robert Gagliardi of the Bedford Police Department, in the amount of \$1,000, to attend the October-November 2007 Leadership Program at the Massachusetts Police Leadership Institute
2. for Acting Lieutenant Jonathan Breen and Sergeant Peter Morelli of the Derry Police Department, in amount of \$2,000, to attend the October-November 2007 Leadership Program at the Massachusetts Police Leadership Institute
3. for four officers of the Portsmouth Police Department, in the amount of \$2,987, to complete the "Total Station" photogrammetry training program at the Portsmouth Police Department in late October or early November
4. for Lieutenant Robert Michaud of the Londonderry Police Department, in the amount of \$705.40 to attend the October 1-5, 2007, session of "Internal Affairs Investigation" at Roger Williams University.

Commissioner Wrenn inquired of the Director whether PSTC offers any "Total Station" photogrammetry training program within the state. Director Vittum responded that, at the current time, this is not available and that he agrees, as Commissioner Wrenn recommends, that it would be worthwhile to investigate whether this current technology for accident and crime scene investigation could be offered in New Hampshire in the future.

Request for Extension – Chief Frank A. Hinkle, Alexandria Police Department.

Hired October 15, 2006, Chief Hinkle is currently attending part-time officer academy. The staff recommends granting extension to the 145th Session of the Full-Time Officer Academy, with the requirement that Chief Hinkle attend and complete the law package classes at the 251st Part-Time Officer Academy.

Assistant Director Stafford introduced Chief Hinkle and representatives of the Alexandria Board of Selectman. Chief Hinkle has struggled with passing the fitness test, specifically the running portion, due to shin splints. At an earlier meeting, the Council made a decision that, since he was unable to pass the fitness test and go to the law package he must work with a fully certified officer at all times, until he received certification. At this time, the Council is asked to determine whether Chief Hinkle should complete only 63 hours that is required for the part-time academy or the 100 hours that is required for the full-time academy.

Chief Hinkle indicated to the Council that he has no difficulty meeting the upper body strength portion of the fitness test and that he is training intensely to meet the requirements for the running portion. He anticipates that he will ultimately pass the test and is looking forward to becoming healthier and stronger, without the Council waiving any of the physical requirements, but he desires to continue his studies in the meantime so that he may serve the Town of Alexandria more effectively.

A motion to adopt the recommendation of the staff to approve Chief Hinkle's request for extension to the 145th Full-Time Officer Academy to complete the PT&E requirements and for approval to take part in the 63-hour law package through the 251st Part-Time Officer Academy was made by Commissioner Wrenn and seconded by Sheriff Carr. Director Vittum clarified for Vice Chancellor Annal that the stipulation for Chief Hinkle to work under the supervision of another officer would be in effect only until such time that he completes the law package through the Part-Time Officer Academy. The motion was passed by the Council unanimously.

Other Business

Job Task Analysis Proposal(s) for Court Security Officers (CSOs)

Chairman Prozzo welcomed Associate New Hampshire Supreme Court Justice Galway. Keith Lohmann provided a brief overview of recommendations made by a court security commission that was convened in 2005 by the Chief Justice, Associate Justice Galway, and Assistant Commissioner Earl Sweeney. As the former Director of PSTC, Mr. Lohmann participated as a member of that commission that examined court security issues in general, including physical facilities and security.

One of the recommendations of that commission was that PSTC should train and certify court security officers and those court security officers should work for county sheriffs. In the most recent Session of the Legislature there were three or four bills filed having to do with this issue; the one with the most detail was SB 79, which ultimately went to interim study, and HB 2 (the budget trailer bill) created another court security committee to look at the issue and report by November 1, 2007, with their findings and recommended legislation.

At the request of Sheriff Carr, who was President of the Sheriff's Association when the matter was raised in a May 2006 memo by Mr. Lohmann to Sheriff Carr and copied to Council members, Mr. Lohmann documented in detail what a court security officer curriculum might look like if PSTC were to administer this training.

Mr. Lohmann considered what AOC is currently doing and what the Commonwealth of Virginia has in place. A job task analysis was also completed, as is done with all PSTC curriculum. The study group and the Sheriff's Association both recommended that physical fitness standards should be included as part of the certification program, just as it is for police officers and correctional officers. An analysis of the physical standards and the proposed curriculum was distributed to the Council during the week ending September 22, 2007; Mr. Lohmann briefly reviewed those recommendations.

On Thursday, September 27, the HB 2 study committee will convene to write their report that is due by November 1, 2007, and desires feedback and recommendations from the Council and the sheriffs on how this curriculum should go forward. Mr. Lohmann stated his preference for including all the same standards as for police officers and corrections officers (i.e., background investigation, Form A, physical exam, etc.). Further, based on the fact they will be certified by the Council, Director Vittum believes they should also be subject to a three-year PT test, just like police officers and corrections officers are. Essentially, the program should mirror what is done with the existing training and certification of police officers and corrections officers.

Director Vittum elaborated on the funding concept, stating that he had conveyed to the committee that he believed a part-time (20 hours per week) coordinator should be hired for that particular program. The part-time coordinator would recruit facilitators, review the Form As to make sure the paperwork is available, and then coordinate the classes to make sure that all the required instructors were in place for the proposed four-week curriculum. Funding for the position of the part-time coordinator was estimated to be \$50,000 and it was recommended that it would be drawn from the penalty assessment funds. This would require the authorization of the Finance Committee.

Director Vittum explained that he proposed that PSTC run the program for one year for the practical purpose of providing hard numbers for consideration by the study committee. Without knowing the exact number of officers that would participate, how many would pass the physical agility requirement, and the cost to train each court security officer, \$50,000 was considered to be a reasonable estimate. Additionally, the Director felt, with the monies being drawn from the penalty assessment fund, with court security officers certified by the PSTC the standards for the CSOs should compare with standards for others in the police field.

After the PSTC has implemented the curriculum for a one-year period, a more precise cost can be determined, but for the purpose of the study committee's report three components need to be detailed: the curriculum, physical fitness standards, and funding for one year with a part-time coordinator, utilizing adjunct instructors. Director Vittum feels certain that the PSTC will need to rely on adjunct instructors who are already trained to facilitate the curriculum and explained that the sheriffs, as well as Mr. Howard Zibel, have offered assistance with this need. The Director believes that the curriculum proposed by Mr. Lohmann is sound and that the physical fitness standards proposed are appropriate but could certainly be modified later if needed.

Judge Galway believes that court security should absolutely be a professionalized operation and that the courts should not be running the security. The individuals performing security functions in the Superior Court at the present time are the appropriate ones to do the custody and control, and there should be standards and training in place. Currently there are 17 different types of firearms in the courts, for example. Further, in comparison with earlier times when 80 percent of the bailiffs in the courts were trained former police officers, now only 20 percent are former police officers and do not have the appropriate training. The goal should be to achieve an operation that is standardized and as professional as possible. Judge Galway complimented the Director and Keith on their analysis and fully supported their proposal.

Chairman Prozzo endorsed the plan on behalf of the Sheriff's Association, which feels confident that the PSTC facility is the right place for the training and that the Council is the proper authority to set the standards, making it a politically unbiased and cohesive system for training court security officers who operate throughout the New Hampshire court system.

Sheriff Carr supported the plan as a way to address the issue of court security officers who move from employment with one county to another; the court wants minimum standards and to be assured that, no matter what court you go into, the person that is there has the capability and the knowledge to provide better-than-adequate court security. In response to a question about whether this will be a unified system, with all court security being managed by the sheriffs, Sheriff Carr conceded that legislation would be needed to provide for the responsibility to fall under the authority of the sheriffs to recruit and perform background checks, as is done now; however, the certification process and the hiring process would be very well defined and held to higher standards by this Council. The minimum standards would be raised so that the people who are in the courts are capable of performing all of the requirements that they may be called upon to perform. The Administrative Office of the Courts would no longer be involved and the management of court security personnel would be left to the sheriff in each county. These individuals would be known as court security officers, not bailiffs.

Concerning arrest powers, Sheriff Carr stated that these people would be sworn in as court security officers through the authority of the sheriff and, like now, will have the authority to arrest within the court premises only. Chairman Prozzo stated that they have arrest powers at the current time in the courtroom or when accompanying a view; however, they have no authority out in the parking lot to make an arrest related to a matter that is not connected with the court.

Sheriff Carr reiterated that it is not intended for court security staff to become sworn police officers. It is recognized that more needs to be done, now that incidents of violence in courtrooms have become more prevalent. This program is a proactive way of doing everything possible to provide the very safest environment within our court system.

The PSTC facility is the best place to come for a certification process that has minimum compulsory standards. Current court security officers undergo only a two-week training program that is regarded as “woefully inadequate.” Further, no current court security officers will be exempted from the proposed certification process, although they will be given a period of six months to a year to meet the requirements for certification; this would include meeting minimum physical fitness standards. Once they meet these standards, it would be expected they would receive a wage increase; if they fail to meet the standards, they would be dismissed. No one will be “grandfathered.”

Judge Roberts pointed out that, although RSA 104:5 already provides for sheriff’s bailiffs to “*provide adequate security in all state courts*”, this is not the situation in the Dover District Court – unless that means only security for prisoners in custody. If it means day-to-day routine security at the front door and in the courtroom, that does not occur. Also, the current statute stipulates that those bailiffs are going to comply with “*such background investigation checks, physical and mental standards, and training appropriate to their duties as (PSTC) may require.*” Apparently, this already provides a legal basis for PSTC to provide the standards that court security officers would adhere to. Judge Roberts made a further observation that increased compensation must be tied to the increased standards. The Legislature must understand that these conditions must be implemented together. Judge Galway stated that the study committee has put forward recommendations for full-time security personnel to receive benefits and a wage increase in the past, however the cost was prohibitive. The goal of the plan would be to set compensation at \$100 per day in the first year and \$120 per day the second year; the third year, they would receive \$150 per day. The cost required to fund the new program is estimated to be approximately \$2.25 million; this includes training for 348 current court personnel, background checks, compensation, etc. The current proposal provides a mechanism only for putting the training program in place, which will be funded by \$50,000 to be drawn from the penalty assessment fund, not general funds.

Commissioner Wrenn expressed concern for the capacity of the current facility to handle the numbers and for setting a precedent that may lead to PSTC being asked to certify campus security guards, for example. He recommended implementing the training over a period of two years or longer so that the staff and resources at PSTC will not be stretched too far. He noted that rulemaking changes will be necessary, as well. Director Vittum anticipates that a matrix will be developed that will consider whether a prospective CSO is a retired police officer, for instance; these individuals would not need to participate in the full program. The Director emphasized that the program needs to be centralized at the PSTC facility in order to make the training and standards uniform and cohesive. Much of the curriculum will be hands-on and needs to be coordinated with the academic component; flexibility is required to accommodate changes in scheduling. Regional programs would not be manageable.

Mr. Lohmann noted an important distinction to make regarding arrest powers. When the curriculum was proposed to an expert group for the job task analysis, the presumption was that the CSOs would not be police officers. They would have the same authority they have now (derived through the judges) and they would have no independent law enforcement authority. Investing the CSO with the authority of a police officer would require a significant change in the proposed curriculum.

A motion made by Judge Champagne, seconded by Judge Roberts, to adopt the physical fitness standards and the curriculum as proposed by the job task analysis, with \$50,000 to be drawn from penalty assessment monies, was adopted unanimously by the Council. Chief Russell commended the Director and Mr. Lohmann on the proposal presented to the Council.

Tuition Student Statute/Rules

This issue was brought to the attention of Chief Morency by a chief of police. As outlined in previous email to the Council, at this time tuition students are not accepted for various reasons. Commissioner Wrenn acknowledged the time and effort expended by staff to provide a history of what the Council has done in the past regarding tuition. Commissioner Wrenn endorses the current policy and is opposed to moving toward a change, either for the full-time police academy or the corrections academy or any other training. At the urging of Commissioner Wrenn, it was agreed that this item should be tabled until Chief Morency could participate in further discussion.

Pending Council Decertification/Eligibility Action

Upon a motion by Chief Dodge, seconded by Chief Russell, the Council voted unanimously in a roll call vote to enter into nonpublic session at 9:18 a.m. to discuss a pending decertification/eligibility matter.

At the conclusion of a presentation by Keith Lohmann, Chief Dodge moved to seal the minutes of the nonpublic session. The motion was seconded by Sheriff Carr and carried with the unanimous vote of the Council.

Following a motion by Chief Dodge, seconded by Chief Russell, the Council voted unanimously, on a roll call vote, in favor of exiting the nonpublic session at 9:27 a.m., with Chairman Prozzo recusing himself.

Next Meeting Date/Adjournment

The next meeting of the Council is scheduled for ***October 23, 2007, at 9:00 a.m.***

Upon a motion by Chief Dodge, seconded by Justice Roberts, the Council voted unanimously to adjourn the meeting at 3:30 p.m.

Chairman Michael L. Prozzo, Jr.