

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

Version 3
August 20, 2018

437

Attorney General

Richard G. Evans
Special Assistant
Attorney General

June 28, 1978

Lee E. Sheehy
Special Assistant
Attorney General

296-1288

In the Matter of Proposed Temporary Rules of the Police Officer Standards and Training Board Relating to Selecting, Training, and Licensing of Peace Officers and Constables

As we discussed, the following rules, or portions thereof, in the above-captioned matter have been disapproved for the following reasons:

1. 13.003: Subdivision A is improper as it delegates to the Board the establishment of standards which are "agency statement(s) of general applicability and "future effect" without compliance with the Administrative Procedures Act. See, for example, Atty Gen 202(e).

   Since such standards must be established as a rule, changes must also be accomplished through the A.P.A.. Subdivision B is therefore improper.

   Subdivision C is approved conditioned upon its severability.

   Subdivision D may improperly delegate to the Board without establishing standards by which the Board must make its decision. Adding the word "reasonable" would provide such a standard.

   Subdivision E is approved since it does not discriminate on its face. However, the agency should be warned that Minnesota Statutes Section 363.03 prohibits individuals and institutions from certain unfair discriminatory practices. Application of subdivision E could possibly run afoul of that statutory provision if care is not taken in its application. See specifically Minn. Stat. § 363.03, Subd. 5.

   Subdivision F is approved as it is not discriminatory on its face. However, the agency should be aware of Minnesota Statutes 363.03 and related cases which prohibit employment discrimination against disabled persons which is not based on a "bona fide occupational qualification".

   Subdivision G is approved conditioned on its severability.

2. 13.004: Subdivision A fails to establish sufficiently clear standards as to required academic preparation or experience to permit any reasonable person to determine whether they are qualified as an "instructor". See, for example, Atty Gen 204.

Subdivision B is approved conditioned on its severability.

3. 13.005: This rule is disapproved because its application is dependent upon sections 13.003 and 13.004, and it is not severable from the provisions of those rules.

4. 13.006: Subdivision A is approved since you have agreed that it does not modify statutory deadlines which may differ from July 1, 1978, but only permits earlier action by the board if such action is sought.

Subdivision B is approved conditioned on its severability. However, the reference to suspension and revocation in this subdivision should be clarified by reference to Minn. Stat. Chapter 214. Standards and procedures for revocation or suspension should also be set forth in rulemaking if not contained in Chapter 214.

Subdivision C is approved conditioned upon its severability.

Subdivision D is approved conditioned upon its severability.

Subdivision E is approved conditioned upon its severability.

Subdivision F and G are approved conditioned upon their severability. Both rules would be clarified by adding that "minimum selection standards" are established pursuant to 13.020(B).

Subdivision H is disapproved because the rule fails to properly clarify the process of determination of successful completion of the probationary period, namely, certification by the local supervisory official.

Subdivision I is disapproved because it is not severable from subdivisions which were disapproved above.

Subdivision J is approved conditioned upon its severability.

Subdivision K is disapproved. The Board does not establish the standards upon which reactivation of a license will be granted or denied.

Subdivision L is approved conditioned on its severability, except for item No. 3 listed therein. That item is disapproved because it is not severable for K which was disapproved above.

Subdivision M is approved conditioned on its severability.

5. 13.0010: Subdivision A is approved conditioned upon its severability.

Subdivision B is approved if severable from the unapproved subdivisions.

Subdivision C is approved conditioned upon its severability.

Subdivision D is approved conditioned upon its severability.

Subdivision E is approved conditioned upon its severability.

Subdivision F is not approved at this time. "Approval" criteria must be established by rule. Further, the entitlement to "equal share" established by the rule is vague and should be clarified as to the means of computation of equal share. However, the agency may wish to add additional language which would permit approval of this rule.

Subdivision G is disapproved for the same reason.

Subdivision H is approved.

Subdivision I is approved.

6. 13.020: Subdivision A is approved conditioned upon its severability.

Subdivision B is approved conditioned upon its severability.

Subdivision C is approved conditioned upon its severability.

The issue of whether the remaining rules, or portions thereof, are severable from rules disapproved above is a difficult question. The tentative decision of this office is that the portions which may be approved are not severable. This decision is subject to reconsideration upon further argument by the agency.

If you have questions, do not hesitate to call me.

LES:mb

#437

RULES REVIEW CHECKLIST

DATE RULES RECEIVED _____ Temporary Rule ✓

Resubmitted and Received 8/9/78

DUE DATE 8/16/78

a. Returned to Agency w/o filing w/Secy of State _____
b. Approved 8/16 Date Sent Back to Agency _____

- -

1. Rules as Adopted _____
2. Rules as Proposed _____
3. Certificate of Board's Authorizing Resolution, where applicable _____
4. Order for Hearing _____
5. Notice of Hearing _____
   (i) Sufficiency _____
6. Secretary of State's List _____
7. Certificate of Acquisition of Secretary of State's List _____
8. Affidavit of Mailing _____
   (i) At least 30 days prior to hearing _____
9. Statement of Need and Evidence _____
10. Hearing Examiner's Report _____
11. Agency's Findings of Fact _____
12. Certificate of Board's Resolution Adopting Rules, where applicable _____
13. Order Adopting _____
14. Report of Chief Hearing Examiner _____
    (i) Finding of No Substantial Change _____
    (ii) Permission to Incorporate by Reference, where applicable _____
15. Certificate of Compliance with Rulemaking Procedures _____
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable _____
17. Petition by Public, where applicable _____.

#437 COMMERCE - PEACE OFFICERS RULES

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 6/21/78 Temporary Rule ✓

Resubmitted and Received _____

DUE DATE 6/28

a. Returned to Agency w/o filing w/Secy of State _____
b. Approved _____ Date Sent Back to Agency _____

DISAPPROVED 6/28/78 W/TELEPHONE CALL TO AGENCY ATTORNEY WHO REQUESTED MTG. PRIOR TO REJECTION MEMO.

1. Rules as Adopted _____
2. Rules as Proposed _____
3. Certificate of Board's Authorizing Resolution, where applicable _____
4. Order for Hearing _____
5. Notice of Hearing _____
   (i) Sufficiency _____
6. Secretary of State's List _____
7. Certificate of Acquisition of Secretary of State's List _____
8. Affidavit of Mailing _____
   (i) At least 30 days prior to hearing _____
9. Statement of Need and Evidence _____
10. Hearing Examiner's Report _____
11. Agency's Findings of Fact _____
12. Certificate of Board's Resolution Adopting Rules, where applicable _____
13. Order Adopting _____
14. Report of Chief Hearing Examiner _____
    (i) Finding of No Substantial Change _____
    (ii) Permission to Incorporate by Reference, where applicable _____
15. Certificate of Compliance with Rulemaking Procedures _____
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable _____
17. Petition by Public, where applicable _____.

ADMIN. 1000A

STATE OF MINNESOTA

DEPARTMENT /COMMERCE (POST)

Office Memorandum

TO : Rick Evans

DATE: June 13, 1978



FROM : Mark K. Shields MKS

SUBJECT: Approval of Temporary Rules

Pursuant to § 15.0412, Subd. S., I am forwarding to you with this memo a copy of the POST Board's temporary rules.

These rules were published in the State register on May 16, 1978. The 20 day response period has expired, and as I understand it, your office has five working days from the receipt of this certification to act on these rules.

I have also attached the two responses I received since the publication of the rules.

ms

OUR FILE NO. 437

Attorney General

Richard G. Evans
Special Assistant
Attorney General

August 17, 1978

Lee E. Sheehy
Special Assistant
Attorney General

296-1288

P.O.S.T. Temporary Rules

As we discussed, the above-captioned Temporary Rules have been approved with the following change: The word "may" in the fifth sentence of 4 MCAR § 13.006 K will be changed to "shall".

LES:mb

(2) any other individual shall have his/her portion of the GA or AFDC grant deleted. Assistance to the other family members will be provided through protective or vendor payments;

(3) food stamp benefits shall be terminated in accordance with procedures outlined in the Food Stamp Act.

9. Post-determination actions: Readmittance to WEP. If, during the 60-day counseling period, the WEP support service staff determines that a participant is progressing satisfactorily, she/he shall be reassigned to an active WEP component. If the 60-day counseling period is unsuccessful, as determined by the WEP support service staff, and an individual is deregistered from WEP for failure to participate without good cause, she/he must remain deregistered from WEP for 90 consecutive calendar days from the date the welfare grant was reduced or terminated. The individual must give evidence of willingness to participate before he/she may again register for WEP. The person's verbal agreement to cooperate is sufficient evidence of "willingness to participate". If an individual has failed to participate in WEP without good cause two or more times, she/he must remain deregistered for six months from the date the welfare grant was adjusted. WEP need not register any recipient whose prior failure to participate was the result of criminal or other activities which presented a hazard to WEP staff or to other WEP participants.

Q. Deregistration.

1. All deregistrations shall be performed by WEP.

2. Deregistration is necessary when:

a. an individual is found to have failed or refused to participate in WEP without good cause;

b. an incorrect determination of nonexemption has been made;

c. an individual becomes exempt, and the local welfare agency informs WEP Center that she/he does not wish to volunteer;

d. an individual becomes ineligible for welfare benefits, except where she/he is participating in a WEP component or is employed and receiving WEP-funded support services.

3. The local welfare agency shall notify the WEP Center of any change which will affect a welfare recipient's welfare or exemption status in such a way as to warrant deregistration.

4. Volunteers who withdraw from WEP shall be deregistered without penalty.

5. Volunteers who are found to have refused to participate after receiving a Notice of Intended Deregistration, or who have requested a hearing on the matter and have received an adverse decision, shall be deregistered as exempt.

6. Persons who volunteer but for whom no suitable employment or training is available shall be deregistered as exempt.

R. Severability. The provisions of this rule shall be severable and if any phrase, clause, sentence or provision is declared illegal or of no effect, the validity of the remainder of this rule and the applicability thereof to any person or circumstances shall not be affected thereby.

Peace Officer Standards and Training Board

Proposed Temporary Rules Governing the Selection, Training and Licensing of Peace Officers and Constables

Notice of Opportunity for Public Comment

The Minnesota Board of Peace Officer Standards and Training (POST Board) has proposed the following temporary rules pursuant to Minn. Stat. § 15.0412, subd. 5 (1977 Supp.). These temporary rules are proposed for the purpose of effectively implementing the provisions of Minn. Stat. §§ 626.843, subd. 1, and 626.846 (Supp. 1977), as amended by Laws of 1978, ch. 681, § 9, 10, 17, 18 and 23.

All interested parties are hereby afforded the opportunity to submit data and comments on these proposed temporary rules for 20 days after publication of this material in the *State Register* by writing to: Mark K. Shields, Executive Director, POST Board, 5th Floor, Metro Square Building, St. Paul, Minnesota 55101.

Any written material received by the POST Board shall become part of the hearing record in the final adoption of the temporary rules.

Temporary Rules as Proposed:

4 MCAR § 13.001 Introduction.

A. Scope. The Minnesota Board of Peace Officer Standards and Training, which is created pursuant to Minn.

Stat. § 626.84 (Supp. 1977) *et seq.*, as amended, is authorized to promulgate rules and standards relating to the selection, training and licensing of peace officers and constables in the State of Minnesota. The following temporary rules are adopted pursuant to that enabling legislation.

B. Effective date. These temporary rules shall become effective July 1, 1978.

4 MCAR § 13.002 Construction of terms.

A. Definitions: For the purpose of these rules the words, terms and phrases shall have the meanings hereafter given them, unless another intention clearly appears.

1. Agency: Local or state law enforcement agency employing peace officers.

2. Appointing authority: Executive head of the agency. In cases where there is no executive head or where the executive head is the sole member of the agency, "appointing authority" shall mean the public official, board, commission, or other person or groups of persons responsible for the initial appointment and continued tenure of persons employed by the agency as peace officers.

3. Basic course: A course of training which must be completed by any individual seeking to be licensed as a peace officer and whose content, length, instruction and instructors have been approved by the board.

4. Board: The Minnesota Board of Peace Officer Standards and Training.

5. Bureau: Minnesota Department of Public Safety, Bureau of Criminal Apprehension.

6. Director: Director or head of a school.

7. Executive director: Executive Director of the Minnesota Board of Peace Officer Standards and Training.

8. Field training: A program of on-the-job instruction and evaluation for new peace officers which meets or exceeds the established guidelines of the board.

9. Field training officer (FTO): A licensed peace officer who is responsible for the field training and evaluation of new peace officers and who has met or exceeds the established requirements of the board regarding FTO qualifications.

10. Guest lecturer: A person who may be utilized from time to time for the purpose of providing specific expertise within a certified course of instruction.

11. Instructor: A person who is qualified to teach in a certified school.

12. Peace officer: As defined in Minn. Stat. § 626.84.

13. Permanent appointment: Any peace officer as defined in Minn. Stat. § 626.84(c) and (d) and who meets the requirements of Minn. Stat. § 626.845, subd. 2; or Minn. Stat. § 626.846, subd. 1; or Minn. Stat. § 626.846, subd. 1(a); or Minn. Stat. § 626.846, subd. 3, shall be considered to have received a permanent appointment for the purposes of these rules.

14. Political subdivision: County, city, town, municipality or other political subdivisions of the State of Minnesota.

15. Post-secondary program: A course of instruction in law enforcement at a college, university or vocational-technical institute that has been certified by the board. Successful completion of one of these certified courses is necessary to enroll in a skills course.

16. Provisional certification: Temporary approval given by the board which permits a school to operate for a period not to exceed one year, provided that the school substantially complies with the board's requirements for certification as set forth in § 13.005.

17. Reimbursement funds: Funds made available to the board for use by political subdivisions to defray the cost of salaries, expenses and substitute protection incurred during the training of peace officers.

18. School: Any training school or program certified by the board.

19. Skills course: A course of training which must be completed by an individual who has successfully completed a certified post-secondary program in order to complete their training and be licensed. The completion of the post-secondary program and the skills course is equivalent to the completion of the basic course.

B. Gender: Words used in the masculine gender shall include the feminine gender as well.

C. Singular and plural: Words used in the singular shall include the plural and words used in the plural shall include the singular.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

4 MCAR § 13.003

4 MCAR § 13.003 Basic Course.

A. The board shall establish and publish minimum requirements for a peace officer basic course. All certified basic courses shall adhere to these minimum requirements and shall furnish such reasonable and necessary proof to the board to verify that the minimum requirements are being met. Nothing in these rules shall preclude any certified basic course from enacting regulations which establish standards of training above the minimum requirements mandated by the board.

B. The board shall have the power to make such changes in the basic course content and length as it may deem necessary.

C. Attendance shall be required of each trainee at all sessions of each basic course. Any trainee who is absent for more than one day of any basic course shall make up such course content to the satisfaction of the director.

D. The board shall determine the maximum number of students to be enrolled per course.

E. Currently employed unlicensed peace officers applying for enrollment in any certified basic course shall receive priority acceptance.

F. All trainees shall be physically and psychologically capable of complete participation in all basic course activities. Any trainee unable to physically or psychologically participate in all aspects of the basic course shall not be certified as having satisfactorily completed the basic course.

G. The director shall be responsible for maintaining and making available to the board and executive director pertinent information on all classes conducted in the basic course. All basic courses shall be subject to periodic review and evaluation by the board.

4 MCAR § 13.004 Instructors.

A. All instructors who teach law enforcement courses in a certified school, certified post-secondary law enforcement program, or in a course which has been approved by the board, shall be qualified by academic preparation, or have the experience to teach the assigned subject matter and have successfully completed a board-approved instructor's course.

B. These rules shall not preclude a certified school, program or course from utilizing professionally qualified guest lecturers.

4 MCAR § 13.005 Certification of post-secondary programs and schools.

A. All schools and programs shall be reviewed periodically by the board and no certification shall issue unless the school or program files with the board satisfactory proof that the school or program will offer courses meeting prescribed objectives, has the necessary equipment and facilities, and has qualified instructors. Further, the school or program shall also file with the board such other information as it may require (*e.g.*, lesson plans, course outlines, etc.).

B. The director of the school or program shall file all information required at least 30 days prior to the commencement of each proposed course or program.

C. Upon receipt of a properly filed application, the board may grant provisional certification to a school.

4 MCAR § 13.006 Licensing of peace officers.

A. Pursuant to Minn. Stat. § 626.846, subds. 1, 1(a), 2, 3 and 3(a), eligible peace officers shall be licensed by the board commencing July 1, 1978. Similarly, pursuant to Minn. Stat. § 367.41, subds. 2, 3, 4 and 5, and Minn. Stat. § 626.845 subd. 2, eligible constables shall be licensed by the board commencing July 1, 1978.

B. Licenses shall remain valid for a period of not more than three years unless suspended or revoked.

C. All peace officers whose last names begin with "A" through "G" shall be eligible to have their licenses renewed on July 1, 1980. Peace officers whose last names begin with "H" through "M" shall be eligible to have their licenses renewed on July 1, 1981. Peace officers whose last names begin with "N" through "Z" shall be eligible to have their licenses renewed on July 1, 1982.

D. All unlicensed peace officers and constables shall attend a certified basic course no later than within one year from the time of appointment.

1. All peace officers and constables enrolled in a certified basic course shall complete it within six months from the date of enrollment, unless otherwise authorized by the board.

E. Students who successfully complete a post-secondary program shall be eligible to take the academic portion of the licensing examination.

F. Students who successfully pass the academic portion of the licensing examination shall be eligible to enroll in a skills course, subject to the minimum selection standards of the board. Upon successful completion of such skills course, a student shall be eligible to take the skills portion of the board's licensing examination.

1. All persons enrolled in the skills course shall suc-

cessfully complete that course within six months of the date of enrollment, unless otherwise authorized by the board.

G. Any student who successfully completes a post-secondary program which provides both academic and skills courses shall, subject to the selection standards adopted by the board, be allowed to take the complete licensing examination.

H. Upon successful completion of both portions of the licensing examination, a student shall be certified eligible for employment as a peace officer for a period of not more than one year. Any student who obtains employment as a peace officer shall be issued a license upon successful completion of a one-year probationary period with a single agency.

I. Evidence of successful completion of the probationary period shall be furnished to the board by the agency.

I. Any unlicensed peace officer who successfully completes a basic course pursuant to these rules and who successfully completes a one-year probationary period with a single agency calculated from the date of successful completion of the basic course shall be licensed as a peace officer by the board provided that the peace officer successfully completes the licensing examination within that period of time.

J. Licensing examinations shall be offered at least twice a year. The board shall establish the examination schedules. Any student or peace officer seeking to take either portion of the licensing examination shall submit a written application on a form provided by the board at least 30 days prior to the date of the examination. The application shall be accompanied by the appropriate fee. Students or peace officers who fail the examination may be allowed to retake the examination two times upon furnishing a renewed written application to the board. Nonrefundable examination fees as established by the board shall accompany each application.

K. Licensed peace officers who have received a permanent appointment as defined in these rules, and who leave law enforcement in good standing shall be allowed to maintain the license in an inactive status provided they meet the requirements of § 13.008. Any person whose license is inactive desiring to reenter law enforcement shall petition the board and the board shall determine if a petitioner's license shall be returned to active status. The board may direct the appropriate appointing authority to invoke the terms and conditions of § 13.020.

L. Any peace officer who is certified and employed in good standing in another state shall be eligible for licensing in Minnesota provided that:

4 MCAR § 13.010

1. Said peace officer successfully passes the licensing examination pursuant to § 13.006J; and

2. Is employed within the State of Minnesota and complies with § 13.020; and

3. Successfully completes a probationary period with a single agency of not less than one year.

M. All licenses shall remain the property of the board. A copy of the valid license shall be forwarded to the licensee, and such copy shall be surrendered to the board in the event that the license is suspended, revoked or becomes inactive.

4 MCAR § 13.007 Examination and license fees. Reserved for future use.

4 MCAR § 13.008 Peace officer continuing education-training. Reserved for future use.

4 MCAR § 13.009 Field training. Reserved for future use.

4 MCAR § 13.010 Reimbursement program of the board.

A. Statement of purpose. An increase in the minimum number of weeks required for basic training of peace officers and constables has created additional cost to political subdivisions. The reimbursement program of the board is intended to assist political subdivisions paying the salary and expenses of peace officers who have successfully completed basic courses and to help absorb the cost of providing substitute protection while peace officers are being trained. Accordingly, the following rules are promulgated pursuant to the authority vested in the board by Minn. Stat. § 626.843, subd. 3(d).

B. Any agency which meets the following criteria shall be eligible to receive reimbursement funds:

1. The agency shall have complied with § 13.020 of these rules prior to seeking reimbursement funds.

2. The agency or political subdivision shall not require its peace officers to work while attending the basic course, unless it is part of the training program.

3. Each peace officer for whom reimbursement funds are sought shall have successfully completed the basic course within which he was enrolled.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

4 MCAR § 13.010

4. The agency or political subdivision completed and filed all reports requested by the board.

C. Application for reimbursement funds shall be made on forms provided by the board.

D. Separate forms shall be submitted for each peace officer who has successfully completed a basic training course and for whom the political subdivision seeks reimbursement funds.

E. The application for reimbursement funds shall be submitted on behalf of the political subdivision by an official designated by resolution of the governing body. Verification of compliance with these rules shall accompany the application and shall be made in writing by the executive head of the agency.

F. Approval of the application shall be by the board or its designee.

1. After the board or its designee has approved the reimbursement application it shall recommend payment and promptly forward the request form through the appropriate state agencies for disbursement of funds.

2. Upon approval, each political subdivision shall be entitled to an equal share for each peace officer trained from the funds designated for such reimbursement, provided that the eligibility criteria enumerated in subsection B of this section have been fulfilled for all trainees who begin courses subsequent to the effective date of these rules. Any such award shall be conditioned upon the availability of funds.

G. When funds become available for reimbursement for mandated courses other than basic training, political subdivisions shall be entitled, upon approval, to an equal share for each peace officer who completes such a course, provided that the eligibility criteria enumerated in subsection B of this section have been fulfilled for all trainees who begin courses subsequent to the effective date of these rules. Any such award shall be conditioned upon the availability of funds.

H. A political subdivision is not deemed eligible for reimbursement herein when it receives a subsidy from a state or federal agency or program to assist paying a trainee's salary; provided, that if no expenses are allowed under such program, the board may authorize reimbursement for expenses only in an amount not to exceed $30.00 per week of training per trainee.

I. Applications for reimbursement funds shall be submitted by the appropriate political subdivision within 60 days of their receipt.

4 MCAR § 13.011-13.019. Reserved for future use.

4 MCAR § 13.020 New peace officers.

A. All agencies shall furnish the name, address, date of appointment and other pertinent information concerning a newly appointed peace officer to the executive director within 10 calendar days of his appointment.

B. No agency shall appoint any new peace officer who does not comply with the minimum selection standards hereinafter enumerated; provided, that these standards shall not be construed to restrict an agency from adopting more rigid standards in the areas enumerated.

1. The applicant shall be a citizen of the United States.

2. The applicant shall possess or be eligible to possess a valid Minnesota driver's license.

3. The applicant shall successfully pass a written examination demonstrating the possession of all mental skills necessary for the accomplishment of the duties and functions of a peace officer.

4. The applicant shall be required to complete and submit to the agency a preliminary application form before testing, and a comprehensive application form after testing and prior to hiring. The applicant shall be fingerprinted and a thorough background search shall be made through, but not limited to, the resources of local, state and federal agencies in order to disclose the existence of any criminal record or unacceptable conduct which would adversely affect the performance by the applicant of his duties as a peace officer.

5. The applicant shall not have been convicted of a felony in this state or in any other state or federal jurisdiction or of any offense in any other state or federal jurisdiction which would have been a felony if committed in Minnesota.

6. A licensed physician or surgeon shall make a thorough medical examination of the applicant to determine that he is free from any physical condition which might adversely affect the performance of his duties as a peace officer.

7. An evaluation shall be made by a licensed psychologist to determine that the applicant is free from any emotional or mental condition which might adversely affect his performance of duties as a peace officer.

8. The applicant shall successfully pass a job-related examination of his physical strength and agility demonstrating the possession of physical skills necessary to the accomplishment of the duties and functions of a peace officer.

9. The applicant must successfully complete an oral examination conducted by or for the agency to demonstrate the possession of skills necessary to the accomplishment of the duties and functions of a peace officer.

4 MCAR § 13.020

C. Periodically the board may make specific recommendations applicable to the implementation of the minimum selection standards set forth in § 13.020B.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new or amended rule. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.



The Native American in Minnesota is believed to be the descendent of a race which migrated from Asia some 12,000 years ago. The Indians encountered by the first white explorers in the region were probably members of the Dakota nation. Minnesota's name, which means "sky-tinted waters," and the names of many of our cities, towns, rivers and lakes are an example of the influence of the Indian in the state's development. Today the majority of Minnesota's 24,000 Indians, mostly Chippewa, live on tribal reservations and in the Twin Cities area.

Peace Officer Standards and Training Board

Proposed Temporary Rules and Proposed Permanent Rules Governing the Selection, Training and Licensing of Peace Officers and Constables

Notice of Opportunity for Public Comment

The Minnesota Board of Peace Officer Standards and Training (POST Board) has proposed the following temporary rules for the purpose of effectively implementing the provisions of Minn. Stat. § 626.84, *et seq.* (Supp. 1977), as amended by Laws of 1978, ch. 681.

All interested parties are hereby afforded the opportunity to submit data and comments on these proposed temporary rules for 20 days after publication of this material in the *State Register* by writing to Mark K. Shields, Executive Director, POST Board, 5th Floor Metro Square Building, St. Paul, Minnesota 55101.

Any written material received by the POST Board shall become part of the hearing record in the final adoption of the temporary rules.

These rules supersede the rules published at *State Register*, Volume 2, Number 49, p. 2233, June 12, 1978 (2 S.R. 2233) as proposed temporary rules.

Order for Hearing

It is hereby ordered that a public hearing on the proposed permanent rules of the Peace Officer Standards and Training Board be held in Room 83 of the State Office Building, Wabasha Street (between Aurora and Fuller Streets), Saint Paul, Minnesota 55155, on the 24th day of August, 1978, commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

It is further ordered that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

It is further ordered that the Notice of Hearing be published in the *State Register*.

Mark K. Shields
Executive Director

July 10, 1978

Notice of Hearing

Notice is hereby given that a public hearing on the proposed permanent rules of the Peace Officer Standards and Training Board will be held in the State Office Building Auditorium, Room 83, Wabasha Street (between Aurora and Fuller Streets), Saint Paul, Minnesota 55155, on Thursday, August 24, 1978, commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted by mail to Natalie Gaull, Hearing Examiner, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8114, either before the hearing or within twenty (20) days after the close of the hearing.

The proposed rules, if adopted, would govern the selection, training and licensing of peace officers and constables in the State of Minnesota. In addition, the proposed rules establish the reimbursement program of the Minnesota Board of Peace Officer Standards and Training (POST Board). Copies of the proposed rules are now available and one (1) free copy may be obtained by writing to: POST Board, 5th Floor Metro Square Building, Saint Paul, Minnesota 55101, telephone (612) 296-2620. Additional copies will be available at the door on the date of the hearing. The POST Board's authority to promulgate the proposed rules is contained in Minn. Stat. § 626.843 subd. 1 (Supp. 1977), as amended by Laws of 1978, ch. 681, § 9. A Statement of Need explaining why the board feels the proposed rules are necessary and a Statement of Evidence outlining the testimony it will be introducing will be filed with the Hearing Examiner's Office at least twenty-five (25) days prior to the hearing and will be available at that location for public inspection.

Please be advised that pursuant to Minn. Stat. § 10A.01, subd. 11 (1976), any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five (5) days of the commencement of such activity by the individual.

July 10, 1978

Mark K. Shields
Executive Director

Proposed temporary rules 4 MCAR §§ 13.001-13.020 and proposed permanent rules 4 MCAR §§ 13.001-13.020 are identical.

Rules as Proposed

4 MCAR § 13.001 Introduction and scope. The Minnesota Board of Peace Officer Standards and Training, which is created pursuant to Minn. Stat. § 626.84 (Supp. 1977) *et seq.*, as amended, is authorized to promulgate rules and standards relating to the selection, training and licensing of peace officers and constables in the State of Minnesota. The following rules are adopted pursuant to that enabling legislation. See Minn. Stat. § 626.843.

4 MCAR § 13.002 Construction of terms.

A. Definitions. For the purpose of these rules the words, terms and phrases shall have the meanings hereafter given them, unless another intention clearly appears.

1. Agency: local or state law enforcement agency employing peace officers.

2. Appointing authority: executive head of the agency. In cases where there is no executive head or where the executive head is the sole member of the agency, "appointing authority" shall mean the public official, board, commission, or other person or groups of persons responsible for the initial appointment and continued tenure of persons employed by the agency as peace officers.

3. Basic course: a course including both academic and skills training which must be completed by any individual seeking to be licensed as a peace officer and whose content, length, instruction and instructors have been certified by the board.

4. Board: the Minnesota Board of Peace Officer Standards and Training.

5. Bureau: Minnesota Department of Public Safety, Bureau of Criminal Apprehension.

6. Constable: as defined in Minn. Stat. § 367.40 subd. 3.

7. Deputy constable: as defined in Minn. Stat. § 367.40 subd. 4.

8. Director: director or head of a school.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

4 MCAR § 13.002

9. Executive director: executive director of the board.

10. Field training: a program of on-the-job instruction and evaluation for new peace officers conducted by board-approved field training officers which meets or exceeds established guidelines of the board.

11. Field Training Officer (FTO): a licensed peace officer who is responsible for the field training and evaluation of new peace officers and who has met or exceeds the established requirements of the board regarding FTO qualifications.

12. Guest lecturer: a person who may be utilized from time to time for the purpose of providing specific expertise within a certified course of instruction.

13. Instructor: a person who is qualified to teach in a school.

14. Peace officer: as defined in Minn. Stat. § 626.84(c).

15. Permanent appointment: any peace officer who meets the requirements of Minn. Stat. § 626.846, subds. 1, 1(a), 3 or 3(a), and any constable who meets the requirements of Minn. Stat. § 626.845 subd. 2, shall be considered to have received a permanent appointment for the purposes of these rules.

16. Political subdivision: county, city, town, municipality or other similar political subdivision of the State of Minnesota.

17. Post-secondary program: an academic course of instruction in law enforcement at a college or university that has been certified by the board and which minimally includes the subject areas listed in § 13.003A.1.

18. Provisional certification: temporary approval given by the board which permits a school to operate for a period not to exceed one year, provided that the school substantially complies with the board's requirements for certification as set forth in § 13.005.

19. Reimbursement funds: legislatively appropriated funds made available to the board for use by political subdivisions to defray the cost of salaries, expenses and substitute protection incurred during the training of peace officers which shall be disbursed on an equal share basis to agencies which had peace officers successfully complete a basic course during the preceding fiscal year.

20. School: any training school or program certified by the board.

21. Skills Course: a course of training which minimally includes the subject areas listed in § 13.003A.2. and which must be successfully completed by an individual to be eligible to be licensed.

a. The completion of a post-secondary program and a skills course is equivalent to the completion of the basic course.

B. Gender. Words used in the masculine gender shall include the feminine gender as well.

C. Singular and plural. Where appropriate, words used in the singular shall include the plural and words used in the plural shall include the singular.

4 MCAR § 13.003 Basic course.

A. The basic course minimally shall include the following subject areas.

1. Academic instruction in:

a. administration of justice;

b. Minnesota Statutes;

c. criminal law;

d. human behavior;

e. juvenile justice;

f. law enforcement operations and procedures.

2. Skills training in:

a. techniques of criminal investigation and testifying;

b. patrol functions;

c. traffic law enforcement;

d. firearms;

e. defensive tactics;

f. emergency vehicle driving;

g. criminal justice information systems;

h. first aid (see § 13.006 E.).

B. Participation or continued instruction in a particular subject area enumerated in § 13.003 A. may be waived by the director upon satisfactory evidence of approved equivalent training.

C. All basic courses shall comply with the minimum requirements set forth in § 13.003 A. and shall furnish such reasonable and necessary proof to the board to verify that the provisions of § 13.003 A. are being met.

I. Nothing in these rules shall preclude any basic course from enacting regulations which establish standards of training above the minimum requirements set forth in § 13.003 A.

D. Periodically the board may issue specific learning objectives applicable to the content of the minimum basic course as outlined in § 13.003 A.

E. Attendance shall be required of each student at all sessions of each basic course. Any student who is absent for more than one day of any basic course shall make up such course content to the satisfaction of the director.

F. The board shall determine the reasonable number of students to be enrolled in each basic course.

G. Currently employed unlicensed peace officers applying for enrollment in any bureau sponsored basic course shall receive priority acceptance.

H. All students shall be physically and psychologically capable of complete participation in all basic course activities. Any student unable to physically or psychologically participate in all aspects of the basic course shall not be deemed as satisfactorily completing the basic course.

I. The director shall be responsible for maintaining and making available to the board and executive director pertinent information on all classes conducted in the basic course. Additionally, the director shall notify the board of all students who have successfully completed his school.

J. All basic courses shall be subject to periodic review and evaluation by the board.

4 MCAR § 13.004 Instructors.

A. All instructors who teach law enforcement courses in a school, post-secondary law enforcement program, or other course which has been approved by the board, shall possess an associate degree or greater from an accredited institution of higher learning, or have professionally recognized experience to teach the assigned subject matter.

B. These rules shall not preclude a certified school, program or course from utilizing guest lecturers.

4 MCAR § 13.005 Certification of post-secondary programs and schools.

A. All schools and post-secondary programs shall be reviewed periodically by the board and no certification shall issue unless the school or program files with the board satisfactory proof that the school or program will offer courses meeting the prescribed learning objectives, has reasonable training equipment and facilities, and has qualified instructors. Further, the school or program shall also file with the board such other relevant information as it may require (e.g., lesson plans, course outlines, etc.).

B. The director of the school or program shall file all relevant information required by the board at least 30 days prior to commencement of each proposed course or program.

C. Upon receipt of a properly filed application, the board initially may grant provisional certification to a school until such time as an onsite evaluation and inspection has been completed.

4 MCAR § 13.006 Licensing of peace officers.

A. Pursuant to Minn. Stat. § 626.846, subds. 1-3(a), eligible peace officers shall be licensed by the board commencing July 1, 1978. Similarly, pursuant to Minn. Stat. § 367.41, subds. 2-5, and Minn. Stat. § 626.845, subd. 2, eligible constables shall be licensed by the board commencing July 1, 1978.

B. Licenses shall remain valid for a period of not more than three years unless suspended or revoked in accordance with the provisions of Minn. Stat. ch. 214.

C. All peace officers whose last names begin with "A" through "G" shall be eligible to have their licenses renewed on July 1, 1980. Peace officers whose last names begin with "H" through "M" shall be eligible to have their licenses renewed on July 1, 1981. Peace officers whose last names begin with "N" through "Z" shall be eligible to have their licenses renewed on July 1, 1982.

D. All unlicensed peace officers, except as provided otherwise by § 13.006 E.-O. who are appointed subsequent to July 1, 1978 by any state, county, municipality or joint or contractual combination thereof of the State of Minnesota with a population of more than 1,000 according to the last federal census and constables appointed or elected subsequent to July 1, 1979, shall attend a basic course no later

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. **Strike outs** indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. Strike outs indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

4 MCAR § 13.006

than within one year from the time of appointment or election.

1. All unlicensed peace officers, except as provided otherwise by § 13.006 F.-O. who are appointed subsequent to July 1, 1979 by any state, county, municipality or joint or contractual combination thereof of the State of Minnesota with a population of less than or equal to 1,000 according to the last federal census, shall attend a basic course no later than within one year from the time of appointment.

2. Each peace officer and constable enrolled in a basic course shall complete it within six months from the date of enrollment, unless the board grants an extension for compelling reasons.

E. Students shall furnish the board proof of successful completion of one of the following approved first aid courses:

1. Red Cross advanced first aid;

2. Crash Injury Management (CIM); or

3. Emergency Medical Technician (EMT).

The first aid course shall be successfully completed prior to termination of the prelicense probationary period.

F. Students who successfully complete a post-secondary program shall be eligible to take the academic portion of the peace officer licensing examination.

G. Students who successfully pass the academic portion of the peace officer licensing examination shall be eligible to enroll in a skills course. Upon successful completion of such skills course, a student shall be eligible to take the skills portion of the licensing examination.

1. All persons enrolled in a skills course shall successfully complete that course within six months of the date of enrollment, unless the board grants an extension for compelling reasons.

H. Any student who successfully completes a post-secondary program which provides both academic and skills courses shall be allowed to take the entire peace officer licensing examination.

I. Upon successful completion of both portions of the peace officer licensing examination, a student shall be certified eligible for employment as a peace officer for a period of not more than one year. Any student who obtains employment as a peace officer shall be issued a license upon successful completion of a one-year probationary period with a single agency.

1. Notification of successful completion of the probationary period shall be furnished to the board by the appropriate appointing authority.

J. Any unlicensed peace officer who successfully completes a basic course pursuant to these rules and who successfully completes a one-year probationary period with a single agency calculated from the date of successful completion of the basic course, shall be licensed as a peace officer by the board provided that the peace officer successfully completes the licensing examination within that period of time.

K. Peace officer licensing examinations shall be offered at least twice a year. The board shall establish the examination schedules. Any student or peace officer seeking to take either portion of the licensing examination shall submit a written application on a form provided by the board at least 30 days prior to the date of the examination. Each application shall be accompanied by the appropriate nonrefundable fee as set forth in § 13.007. Students or peace officers who fail the examination may be allowed to retake the examination two times upon furnishing to the board a renewed written application and appropriate fee.

L. Inactive licenses. Licensed peace officers who have received a permanent appointment as defined in these rules, and who leave law enforcement in good standing shall be allowed to maintain the license in an inactive status provided they meet the requirements of § 13.007-13.008. Any person whose license is inactive and who desires to re-enter law enforcement shall petition the board in writing and his appointing authority shall invoke the provisions of § 13.020 A, B.1-7, and furnish the board with proof of their compliance.

M. Any peace officer who is certified and employed in good standing in another state shall be eligible for licensing in Minnesota provided that he:

1. successfully completes a peace officer licensing examination pursuant to § 13.006 K;

2. is employed within the State of Minnesota and complies with the provisions of § 13.020 B.; and

3. successfully completes a probationary period with a single agency of not less than one year.

N. All peace officers licenses shall remain the property of the board. A copy of the valid license shall be forwarded to the licensee, and such copy shall be surrendered to the board in the event that the license is suspended, revoked or becomes inactive.

O. A peace officer who prior to July 1, 1978, is employed by and receiving direct compensation from any

state, county, municipality, or joint or contractual combination thereof with a population of more than 1,000 according to the last federal census, but who has not met the requirements of Minn. Stat. §§ 626.841-626.855 in effect on June 30, 1977, shall be licensed by the board when proof is provided that he has:

1. successfully completed a peace officer licensing examination no later than January 1, 1981;

2. complied with the provisions of § 13.020 B.;

3. qualified in the use of firearms; and

4. obtained first aid training in accordance with § 13.006 E.

4 MCAR § 13.007 Examination and license fees.

A. A nonrefundable fee of $25.00 shall be paid to the board prior to taking the peace officer license examination.

B. License fees shall be as follows:

1. Active: $10.00 for three years.

2. Inactive: $10.00 for three years.

4 MCAR § 13.008 Peace officer continuing education — training.

A. Statement of purpose. Pursuant to the authority vested in it by Minn. Stat. § 214.12, the board has determined that a program of continuing education for licensed peace officers is necessary to promote and ensure the professional competence of licensees.

B. No peace officer's license shall be renewed unless the licensee or his appointing authority furnishes the board proof that the licensee has successfully completed at least 48 hours of board-approved training or education within the previous three-year license period.

1. Prior to being eligible to receive board approval, the course outline or lesson plans for a peace officer continuing education course shall be filed with the board. Additionally, the names and qualifications of each instructor and guest lecturer shall be provided to the board.

C. The board may from time to time mandate specific courses and required minimum hours to insure continued protection of the public interest. Nothing contained herein shall be construed as limiting an agency from requiring or furnishing more than the number of hours of continuing education and/or training required by the board.

D. This rule shall take effect July 1, 1979.

4 MCAR § 13.009 Field training. Statement of purpose. The board encourages and shall furnish assistance to all agencies which establish minimum requirements for field training of new peace officers.

4 MCAR § 13.010 Reimbursement program of the board.

A. Statement of purpose. An increase in the minimum number of weeks required for basic training of peace officers and constables has created additional costs to political subdivisions. The reimbursement program of the board is intended to assist political subdivisions paying the salary and expenses of peace officers who successfully complete a basic course and to help absorb the cost of providing substitute protection while peace officers are being trained. Accordingly, the following rules are promulgated pursuant to the authority vested in the board by Minn. Stat. § 626.843, subd. 3(d).

B. Any agency which meets the following criteria shall be eligible to receive reimbursement funds for the training of each officer successfully completing the basic course.

1. The agency shall have complied with the provisions of § 13.020 B prior to seeking reimbursement funds.

2. The agency or political subdivision shall not have required its peace officers to work while attending the basic course, unless such work was part of the training program.

3. The agency or political subdivision shall have completed and filed all pertinent reports required by the board.

C. Application for reimbursement funds shall be made on forms provided by the board.

1. Forms shall be submitted listing each peace officer who has successfully completed a basic course and for whom the political subdivision seeks reimbursement funds.

2. The application for reimbursement funds shall be submitted on behalf of the political subdivision by an official designated by resolution of the appropriate governing body. Verification of compliance with these rules shall ac-

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. **Strike outs** indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. **Strike outs** indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

4 MCAR § 13.010

company each application and shall be made in writing by the executive head of the agency.

3. Applications for reimbursement funds shall be submitted by the appropriate political subdivision within 60 days after receiving the requisite forms from the board.

D. Upon compliance with these rules and applicable statute, approval of the application shall be by the board or its designee. After the board or its designee has approved the reimbursement application, it shall recommend payment and promptly forward the request form through the appropriate state agencies for the disbursement of funds.

E. Upon approval, each political subdivision shall be entitled to reimbursement funds for each peace officer attending a basic school provided that the eligibility criteria enumerated in § 13.010 B have been met.

2. A political subdivision is not deemed eligible for reimbursement funds when it receives a subsidy from a state or federal agency or program to assist paying a student's salary; provided, that if no expenses are allowed under such program, the board may authorize reimbursement for actual expenses in an amount not to exceed $30.00 per week of training for each student.

3. Any award of reimbursement funds shall be conditioned upon the continued availability of such funds.

E. Disbursement of reimbursement funds by the board shall be after the close of board's fiscal year.

F. When funds become available for reimbursement of mandated training other than basic courses, political subdivisions shall be entitled, upon approval of a proper application, to share equally in such funds for each peace officer who completes such training, provided the eligibility criteria enumerated in § 13.010 B. have been met.

4 MCAR §§ 13.011-13.019 Reserved for future use.

4 MCAR § 13.020 New peace officers.

A. All agencies shall furnish the name, address, date of appointment and other pertinent information concerning a newly appointed peace officer to the executive director within 10 calendar days of such officer's appointment.

B. No agency shall appoint any new peace officer who does not comply with the following minimum selection standards; provided, that these standards shall not be construed to restrict an agency from adopting more rigid standards in the areas enumerated.

1. The applicant shall be a citizen of the United States.

2. The applicant shall possess a valid Minnesota driver's license; or in the case of residency therein, a valid driver's license from a contiguous state; or eligibility to obtain either of the above.

3. The applicant shall complete a comprehensive written application prior to hiring. The applicant shall be fingerprinted and a thorough background search shall be made through, but not limited to, the resources of local, state and federal agencies in order to disclose the existence of any criminal record or unacceptable conduct which would adversely affect the performance by the applicant of his duties as a peace officer.

4. The applicant shall not have been convicted of a felony in this state or in any other state or federal jurisdiction or of any offense in any other state or federal jurisdiction which would have been a felony if committed in Minnesota.

5. A licensed physician or surgeon shall make a thorough medical examination of the applicant to determine that he is free from any physical condition which might adversely affect the performance of his duties as a peace officer.

6. An evaluation shall be made by a licensed psychologist to determine that the applicant is free from any emotional or mental condition which might adversely affect his performance of duties as a peace officer.

7. The applicant shall successfully pass a job-related examination of his physical strength and agility demonstrating the possession of physical skills necessary to the accomplishment of the duties and functions of a peace officer.

8. The applicant shall successfully pass a written examination demonstrating the possession of all mental skills necessary for the accomplishment of the duties and functions of a peace officer.

9. The applicant shall successfully complete an oral examination conducted by or for the agency to demonstrate the possession of skills necessary to the accomplishment of the duties and functions of a peace officer.

C. Periodically the board may make specific recommendations applicable to the implementation of the minimum selection standards set forth in § 13.020 B.

D. Potential penalities for noncompliance with the minimum selection standards set forth in this rule include:

1. denial of entrance into the bureau basic course;

2. denial of reimbursement funds as specified in § 13.010;

3. denial of licensure; and

4. other appropriate remedies as provided under Minn. Stat. §§ 214.10 and 214.11.

ADMIN 1000 (Rev. 1/73)

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO : Richard G. Evans
Special Assistant
Attorney General

DATE: June 28, 1978

FROM : Lee E. Sheehy
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: In the Matter of Proposed Temporary Rules of the Police Officer Standards and Training Board Relating to Selecting, Training, and Licensing of Peace Officers and Constables

As we discussed, the following rules, or portions thereof, in the above-captioned matter have been disapproved for the following reasons:

1. 13.003: Subdivision A is improper as it delegates to the Board the establishment of standards which are "agency statement(s) of general applicability and "future effect" without compliance with the Administrative Procedures Act. See, for example, Atty Gen 202(e).

   Since such standards must be established as a rule, changes must also be accomplished through the A.P.A., Subdivision B is therefore improper.

   Subdivision C is approved conditioned upon its severability.

   Subdivision D may improperly delegate to the Board without establishing standards by which the Board must make its decision. Adding the word "reasonable" would provide such a standard.

   Subdivision E is approved since it does not discriminate on its face. However, the agency should be warned that Minnesota Statutes Section 363.03 prohibits individuals and institutions from certain unfair discriminatory practices. Application of subdivision E could possibly run afoul of that statutory provision if care is not taken in its application. See specifically Minn. Stat. § 363.03, Subd. 5.

   Subdivision F is approved as it is not discriminatory on its face. However, the agency should be aware of Minnesota Statutes 363.03 and related cases which prohibit employment discrimination against disabled persons which is not based on a "bona fide occupational qualification".

   Subdivision G is approved conditioned on its severability.

2. 13.004: Subdivision A fails to establish sufficiently clear standards as to required academic preparation or experience to permit any reasonable person to determine whether they are qualified as an "instructor". See, for example, Atty Gen 204.

Subdivision B is approved conditioned on its severability.

3. 13.005: This rule is disapproved because its application is dependent upon sections 13.003 and 13.004, and it is not severable from the provisions of those rules.

4. 13.006: Subdivision A is approved since you have agreed that it does not modify statutory deadlines which may differ from July 1, 1978, but only permits earlier action by the board if such action is sought.

Subdivision B is approved conditioned on its severability. However, the reference to suspension and revocation in this subdivision should be clarified by reference to Minn. Stat. Chapter 214. Standards and procedures for revocation or suspension should also be set forth in rulemaking if not contained in Chapter 214.

Subdivision C is approved conditioned upon its severability.

Subdivision D is approved conditioned upon its severability.

Subdivision E is approved conditioned upon its severability.

Subdivision F and G are approved conditioned upon their severability. Both rules would be clarified by adding that "minimum selection standards" are established pursuant to 13.020(B).

Subdivision H is disapproved because the rule fails to properly clarify the process of determination of successful completion of the probationary period, namely, certification by the local supervisory official.

Subdivision I is disapproved because it is not severable from subdivisions which were disapproved above.

Subdivision J is approved conditioned upon its severability.

Subdivision K is disapproved. The Board does not establish the standards upon which reactivation of a license will be granted or denied.

Subdivision L is approved conditioned on its severability, except for item No. 3 listed therein. That item is disapproved because it is not severable for H which was disapproved above.

Subdivision M is approved conditioned on its severability.

5. 13.0010: Subdivision A is approved conditioned upon its severability.

Subdivision B is approved if severable from the unapproved subdivisions.

Subdivision C is approved conditioned upon its severability.

Subdivision D is approved conditioned upon its severability.

Subdivision E is approved conditioned upon its severability.

Subdivision F is not approved at this time. "Approval" criteria must be established by rule. Further, the entitlement to "equal share" established by the rule is vague and should be clarified as to the means of computation of equal share. However, the agency may wish to add additional language which would permit approval of this rule.

Subdivision G is disapproved for the same reason.

Subdivision H is approved.

Subdivision I is approved.

6. 13.020: Subdivision A is approved conditioned upon its severability.

Subdivision B is approved conditioned upon its severability.

Subdivision C is approved conditioned upon its severability.

The issue of whether the remaining rules, or portions thereof, are severable from rules disapproved above is a difficult question. The tentative decision of this office is that the portions which may be approved are not severable. This decision is subject to reconsideration upon further argument by the agency.

If you have questions, do not hesitate to call me.

LES:mb

STATE OF MINNESOTA

Village of Trimont

THE CONSOLIDATED VILLAGES OF TRIUMPH AND MONTEREY

OFFICE OF Councilman

Trimont, Minnesota

May 26, 1978

Mr. Mark Shulds, Executive Director
POST Board
5th Floor
Metro Square Building
St. Paul, Minn. 55101

Dear Mr. Shulds:

I have been provided with a copy of the proposed temporary rules governing the selection, training and licensing of peace officers in Minnesota. This was provided to me by Marie DeVries, Criminal Justice Planner with Region Nine located in Mankato.

I wish to express my views in that I don't like some of the proposed rules for police officers. To me this is just another example of Minnesota government telling small town city councils how to hire and train police officers. I get the feeling the State feels we are incompetent in hiring police officers, so they have proposed theses rules for us to follow. I am not saying that a BCA certified officer is to a cities disadvantage. Its just with more regulation you require more training resulting in added expense for small communities such as ours. When an officer is sent to training a city incurs double expense. Another officer must be hired to replace the one in training. I could go on as to the effects these rules will have on small cities such as ours.

Sincerely yours,

Donald Wellner

Donald Wellner, Coucilman
City of Trimont
Trimont, Mn 56176

RECEIVED

MAY 30 1978

MINN. PEACE OFFICER
TRAINING BOARD

College by the Lake

Willmar Community College, Willmar, Minnesota. 56201

PHONE: 612-235-2131

May 26, 1978

Mr. Mark K. Shields
Executive Director - POST Board
Fifth Floor - Metro Square Building
St. Paul, Minnesota 55101

Dear Mark:

I am writing in regard to our telephone conversation of May 26, 1978 in which we discussed the issue of instructor qualifications for certified post-secondary law enforcement programs.

My concern rests with the requirement that an individual who has professional experience and teaches such material in the law enforcement program must have completed a Board approved instructor's course. Specifically, our program employs Chief Lyle Goeddertz of the Willmar Police Department in the instruction of Police Community Relations. Chief Goeddertz does this not for the remuneration involved, but as an obligation that he feels towards our law enforcement program and community service. It would be my feeling that our requesting or requiring him to take a Board approved instructor's course is an unnecessary obligation upon him, particularly in light of his performance in the classroom, and I am concerned that it may make it impossible for him to continue in our program. There is no question that the loss of this type of an instructor would not strengthen but, indeed, would weaken our offering. Therefore, I urge you to seriously consider dropping the rule that requires "successfully completed the Board approved instructor's course."

If you have any further questions or concerns regarding this issue and its impact upon one college--Willmar Community College--please do not hesitate in contacting me.

Sincerely,

Harold G. Conradi

Harold G. Conradi
Dean of Instruction

HGC:ep
xc: Lyle Goeddertz

RECEIVED

MAY 30 1978

MINN. PEACE OFFICER
TRAINING BOARD