

POST COUNCIL MEETING

March 24, 2016

Santa Clara Town Hall, 2603 Santa Clara Drive, Santa Clara, Utah

MINUTES

On March 24, 2016, a regularly scheduled POST Council meeting was held at 1:00 p.m. at the Santa Clara Town Hall in Santa Clara, Utah. Chairman James O. Tracy conducted and welcomed those in attendance.

The following POST Council members were in attendance:

Sheriff James O. Tracy, Chairman, Utah County Sheriff's Office
Chief Wade Carpenter, Vice-Chairman, Park City Police Department
Chief Spencer Austin, Representing Utah Attorney General
Frank Budd, At Large
Colonel Danny Fuhr, Superintendent, Utah Highway Patrol
Dr. Matthew Checketts, At Large
John Crowley, UPOA Representative
Chief Marlon Stratton, St. George City Police Department
Sheriff Robert Dekker, Millard County Sheriff's Office
Mayor Toby Mileski, Pleasant View City
Chief Kim Hawkes, North Park Police Department
London Stromberg, (proxy for Executive Director Rollin Cook), Utah Department of Corrections
Commissioner Kerry Gibson, Weber County Commissioner
Bruce Bayley, Weber State University
Victoria McFarland, At Large
Sheriff Cameron Noel, Beaver County Sheriff's Office

The following were excused and/or absent:

Christie Moren, At Large

POST staff present:

Scott Stephenson, Director
Kelly Sparks, Deputy Director
Atty. Kevin Bolander, DPS Legal Counsel representing POST, Asst. Attorney General
Atty. Marcus Yockey, DPS Legal Counsel representing POST, Asst. Attorney General
Julie Gomez, Administrative Secretary
Al Acosta, POST Investigations Bureau Chief
Brad Macfarlane, POST Investigations
Robert Bench, POST Investigations
Jaclyn Moore, POST Investigations
Jeff Adams, POST Investigations
Wade Breur, POST Basic Training Bureau Chief
Christopher Fielding, POST Media Producer
Taylor Conti, POST Investigations Technician

Others present:

Lindsay Jarvis
Holly Ziegenhorn
Chad Ziegenhorn
Ben Poucher
DJ Bolerjack
Nate Carlisle
Steve Adams
Marla Adams
Christopher Walden
Brad James
Brian Gwilliam

WELCOME AND INTRODUCTIONS

The meeting was called to order at 1:02pm. Chairman James Tracy welcomed those in attendance and excused Christie Moren. He then turned the time over to Director Scott Stephenson for some new POST staff member introductions. Director Stephenson introduced POST administrative secretary, Julie Gomez as well as the two new POST investigators, Jaclyn Moore who came to us from Draper Police Department and Jeff Adams who came to us from the State Bureau of Investigations (SBI). POST will soon have another investigator. The candidate is currently going through the process of the background investigation (also from Draper Police Department). POST anticipates having five investigators to help with some of the investigation backlog.

APPROVAL OF POST COUNCIL MINUTES

The POST Council minutes of January 4, 2016, were reviewed and the following motion was made:

Motion: *Chief Spencer Austin motioned to approve the minutes of January 4, 2016.*

Second: *John Crowley seconded the motion.*

Vote: *The motion passed with all in favor.*

ANNUAL AND QUARTERLY REPORTS

Lt. Al Acosta introduced Taylor Conti as the investigations technician. Lt. Acosta presented the following annual report for investigations in 2014 and 2015.

	2014	2015
Total Complaints Received	157	128
Investigations Opened	94	83
Administrative Hearings Conducted	2	1
Cases Closed No Action Following Investigation	22	16
Voluntary Relinquishments Received	16	17
Cases Presented to the POST Council	54	42
Revocation Issued	5	3

Suspensions Issued	36	32
Letter of Caution	11	7
Peace Officer Application Reviews	757	746
Waiver and Reactivation Application Reviews	63	81
Dispatcher Application Reviews	127	158
Total Applications Reviews	947	985

Lt. Acosta reported, since the last Council meeting POST has received 36 complaints and opened 23 investigations. Six cases have been closed with no action after review. Ten officers have signed a voluntary relinquishment. The allegations related to voluntary relinquishment were: sexual abuse of a child, assault, domestic violence in the presence of a child, fitness for duty, obstruction of justice, public urination, custodial sexual misconduct, voyeurism, trespassing, child abuse and neglect, and possession of controlled substance and paraphernalia. Currently there are 91 active investigations with a total of 100 open cases. POST has reviewed 136 applications for peace officers, 24 applications for waivers and reactivations, and 22 applications for dispatchers, for a total of 182 applications.

Chairman Tracy introduced Victoria McFarland to the Council. Victoria is our newest POST Council member. She comes from the US Attorney's office and will be filling the at large position. Chairman Tracy asked Victoria to tell a little about herself. Victoria stated that she has been with the US Attorney's office for about a year and a half. Prior to that, she was a prosecutor with West Valley City for about six years. Prior to that, she was a prosecutor on contract with some of the local municipalities in Salt Lake for about a year and a half. She has always been interested in what the Council does, so when this opportunity presented itself, she was anxious to be part of this process. Chairman Tracy then turned the time over to Lt Breur for the basic training and in-service reports.

Lt Breur gave the basic training annual report for 2015. He stated that 114 in-service training programs were conducted on 17 different topics. There were a total of 2,230 individuals that attended those courses. POST held six basic training academy sessions and 148 individuals were certified as peace officers. The total number of new peace officer certifications issued by POST, including all satellite training programs is: 434 Special Function Officers, 313 Correctional Officers, and 423 Law Enforcement Officers. If you compare that number to previous years, you will see we are on a slight upward trend. POST wants to make sure to meet the demands that agencies have for hiring new officers. POST is committed to meet the training needs of Utah's law enforcement community.

The attrition rate for the POST program is around six percent. Historically, that number has been somewhere around seven to nine percent. In 2015, 4 of the 16 failures were for failing the certification exams. Two individuals failed the LEO entrance exam. One individual failed to pass the National Peace Officer Selection Test (NPOST) by the deadline. There were three agency dismissals, and one cadet withdrew due to an injury during 2015.

Lt. Breur presented the following quarterly reports for basic training and in-service.

Training Section First Quarter Report - 2016

Session 318 SFO started January 4, 2016, and concluded February 9, 2016. The session started with 24 cadets and certified 22 Special Function Officers--one failed the PT exit exam and one failed the SFO certification exam.

Session 318 LEO is currently in session with 33 cadets. Projected graduation date is April 21, 2016.

Session 319 SFO started January 25, 2016, and concluded March 1, 2016. The session started with 17 cadets and certified 17 Special Function Officers.

Session 319 LEO is currently in session with 25 cadets. Projected graduation date is May 12, 2016.

Session 320 SFO started February 22, 2016, with six cadets enrolled. They are scheduled to finish March 29, 2016. The LEO block starts March 30 with a total of 17 cadets scheduled to attend. Projected graduation date is June 9, 2016.

In-Service Training

From January until the end of March, POST has offered 29 In-service classes training 664 officers and dispatchers for a total of 468 hours of training.

Classes Administered:

• Basic Dispatch	1	(13 enrolled)
• Defensive Tactics Instructor	2	(60 enrolled)
• Defensive Tactics Instructor Re-Cert	2	(9 enrolled)
• Employee Discipline	1	(27 enrolled)
• EVO, not including POST cadets	3	(59 enrolled)
• EVO Instructor	1	(24 enrolled)
• Firearms Handgun Instructor	1	(22 enrolled)
• Firearms Handgun Instructor Re-Cert	2	(25 enrolled)
• Field Training Officer (FTO)	1	(13 enrolled)
• Impact Weapon Instructor/Re-Cert	1	(14 enrolled)
• Instructor Development	1	(28 enrolled)
• Intoxilyzer Certification	9	(326 enrolled)
• RADAR/LIDAR Certification	12	(282 enrolled)

TOTALCLASSES	37	
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***AGENDA CHANGE**

Chairman Tracy moved item "Administrative Rule – Defining Actively Engaged" to after Satellite Academy Audits on the agenda.

SATELLITE AUDITS

Lt. Wade Breur reported POST conducted three satellite academy audits; the first was on Salt Lake City Police Department Academy. They currently have 17 individuals in their academy. They are scheduled to graduate the first week of April. There were no exceptions to their administrative audit.

The second audit was on the Utah Department of Corrections Academy (UDC). There were no exceptions to the administrative audit.

The third audit was on Uintah Basin Applied Technology College Academy (UBATC). Lt. Breur and Cpt. Sparks recently visited their training facility to conduct a site visit. A retired peace officer, Carlos Reed was

selected to be the director of the new UBATC Academy. They would like to start training in May of this year. They will be offering SFO, LEO and BCO blocks in their training. POST staff will work closely with UBATC during the first year, similar to what has been done with other new academies.

ADMINISTRATIVE RULE- Defining Actively Engaged

Director Stephenson informed the Council that he would like to define what actively engaged means.

Director Stephenson stated that in our statute sections 53-6-206 and 53-6-208, and maybe a couple of other times, actively engaged is the term that is used. There is really no clear definition. In 2009 or 2010 Director Stephenson sent out a letter attempting to define what actively engaged means. Director Stephenson went on to give some background on why he is asking the Council for consent and approval to move forward on this administrative rule proposal. This rule would expound on an existing rule and would pertain to auxiliary officers and reserve officers.

An auxiliary officer is a special functions officer. They get five weeks of training and they can function as an officer as long as they are in the presence of a law enforcement officer (LEO). A reserve officer is a law enforcement officer (LEO). They have gone through the entire academy and may be working full time for one agency and then are employed by another law enforcement agency to work as a part time officer.

The impetus for defining "actively engaged" is to create uniformity across the state in how administrators deal and interact with officers in this classification. The previously mentioned letter did not provide a clear avenue or guideline for an administrator to manage their reserve or auxiliary programs. The initial proposal for defining actively engaged was 120 hours, this would include 40 hours of inservice training, which is required by statute, and 80 hours shift work throughout the year. The initial proposal included a requirement for the auxiliary officer or reserve officer to work, on average, eight hours per month. Director Stephenson said, after sending the initial proposal to the chiefs and sheriffs and receiving feedback, he realized this was a little too restrictive. Some people are busy and they can't always work that one shift a month.

After considering the feedback, Director Stephenson is now proposing 60 hours of shift work and 40 hours of in-service training annually. These officers are interacting with the public and it exposes departments and administrators to a higher level of liability. Director Stephenson believes it is important for somebody to go to training and also apply that training as they interact with the public. That is the reasoning for this definition. Director Stephenson asked for a vote of support to move forward in creating an administrative rule that clearly defines what actively engaged means.

Chairman Tracy opened it up for discussion from the Council. Chief Carpenter stated that he and the director had a conversation earlier. He agrees we need to have some consistency throughout the state. As far as making sure our officers are receiving the training and are staying up to date with what is going on in our individual agencies, Chief Carpenter said he thinks this a reasonable approach. Chief Carpenter is not opposed to supporting this proposal personally. He thinks it's a good policy. Colonel Fuhr commented that prior to this, actively engaged could have been defined as a person getting 40 hours of in-service training and spending one hour or no hours working per year or just actively hanging out. Director Stephenson stated that it was left up to your interpretation. Colonel Fuhr said he would show support for this proposal as well.

Commissioner Gibson asked if this would complete the process for administrative rule or what would it need to go through to become statute [rule]. Director Stephenson stated that if this body chose to support it, it would be put to administrative rule. It would need to go to public review for 30 days and we would have to answer any questions that come up. It would then go before the rules committee if they had any questions or concerns. Chairman Tracy noted that as a matter of state policy, administrative rules, if needed, can be reviewed by the legislature each year. There is an opportunity for the legislature's input should they have any.

Commissioner Gibson shared his perspective. On his county commission, he serves with two law enforcement officers. They are convinced they are going to be returning to law enforcement after their political stints. They are reserve officers and they are busy. They are trying to figure out how make it all work. Their concerns are that it is hard to get good people in this profession and if they do something else for a while, it is hard to come back. Commissioner Gibson said that he does not pretend to be an expert on what level of maintenance that skill set would require. He thinks it makes sense that there should be a level there, but he doesn't know what that level should be. One of the officers he serves with mentioned to Commissioner Gibson on the phone that maybe working 40 hours and completing 40 of training makes more sense. Commissioner Gibson is going to trust those in the room to decide what an appropriate level would be for that training. He thinks we are on the right path; he just wanted the Council to hear the perspective from some of the voices that he has heard.

Director Stephenson spoke about some of the feedback he has received from various Sheriffs and Chiefs from across the state. Some struggled with having a set number of hours because of their unique situations, while other administrators thought anything under 180 was not enough. Director Stephenson did take into consideration several opinions and recommendations. Colonel Fuhr stated that from his understanding, it is not like POST is trying to micromanage the departments, this is simply 60 hours working within the respective department. Colonel Fuhr does not believe this proposed rule restricts an administrator's management, but maintains flexibility in finding ways officers can help out within their areas of expertise for their agency. Director Stephenson agreed and stated that this is a minimum standard and how administrators put officers to work, is really meeting the needs of their agency's individual circumstances. Sheriff Tracy stated that for comment and background, his agency hires probably as many as 50 part time officers. His agency requirement is 300 hours, that covers the issues of competency and includes their required 40 hours of in-service training. He feels this proposal is a good compromise.

Motion: *Sheriff Dekker motioned to adopt the proposed definition of actively engaged.*
Second: *John Crowley seconded the motion.*
Vote: *The motion passed with all in favor.*

DISCIPLINARY CASES

Attorney Marcus Yockey presented the following cases to the POST Council:

DENISE JONES

Offence – Driving under the influence of alcohol

Category –D

Recommended Discipline – 2 year suspension

Status – Terminated 1/27/2015

Agency – Salt Lake City Airport PD

On December 16, 2014, Denise Jones was involved in a two vehicle traffic crash in which Jones drifted out of her lane to the left and sideswiped another vehicle. During the crash investigation, officers detected the odor of alcohol coming from Jones. When asked to perform field sobriety tests, Jones said, "I have been drinking, I will fail the tests." While receiving the instructions for the nine step walk and turn, Jones said she was too intoxicated to do the test. When the officer asked Jones if she was impaired, Jones replied, "I'm drunk, let's call it quits." Jones was subsequently arrested for driving under the influence. Jones submitted to an Intoxilyzer test which indicated she had a breath alcohol content of .181. Charges of driving under the influence and fail to operate within a single lane were subsequently filed on Jones and on May 19, 2015, Jones entered a plea of guilty to the amended charge of impaired driving.

Jones failed to respond to the notice of agency action. On January 27, 2016, an order of default

was signed by the administrative law judge and mailed to Jones.

Motion: *John Crowley motioned to accept recommended 2 year suspension of Denise Jones' peace officer certification.*
Second: *Commissioner Kerry Gibson seconded the motion.*
Vote: *The motion passed with all in favor.*

HOLLY ZIEGENHORN

Offence – BCI Violation

Category – E

Recommended Discipline – 9 month suspension

Status – Suspended 151 hours without pay

Agency – West Valley Police Department

On May 16, 2014, Holly Ziegenhorn was investigated by her agency for accessing Utah Bureau of Criminal Information (BCI) records for non-law enforcement purposes. On June 26, 2014, WVCPD conducted a *Garrity* interview with Ziegenhorn. During the interview, Ziegenhorn admitted to accessing BCI records for non-law enforcement purposes. The administrative investigation determined Ziegenhorn unlawfully accessed BCI records on eight different people. The case was investigated criminally by a local law enforcement agency and on October 27, 2014, charges were filed in a local justice court for three BCI violations. On October 26, 2015, the charges were dismissed.

On September 3, 2015, POST conducted a *Garrity* interview with Ziegenhorn. Ziegenhorn admitted to accessing driver license records through BCI on the eight people, explaining five records were accessed for personal reasons and three were accessed as part of her assigned duties as a peace officer. At the conclusion of the POST investigation, POST determined Ziegenhorn accessed five BCI records unlawfully.

On March 8, 2016, Ziegenhorn waived her right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action.

Lindsay Jarvis, attorney for Holly Ziegenhorn addressed the Council. Ms. Jarvis stated she has looked at the discipline the Council has imposed for this violation since the law changed in 2011. What she found is that in a lot of these cases, the officers were using the database system in an effort to stalk ex-wives, to try to get information about cadets to see if they are single, or to look up information about their aliases because they are narcotics officers. Ms. Jarvis found that their discipline ranged from a letter of caution all the way up to two years suspension when coupled with other offenses. Ms. Jarvis stated that Ms. Ziegenhorn committed these offenses. She accessed this for purposes of her family.

In two of the instances, it was a situation where she was looking for driver license information to get her children insurance. Another situation, she was helping her elderly parents get an address and she accessed the driver license information. Ms. Jarvis said they dealt with the criminal charges and they were thrown out for a lack of evidence. They were able to show Ms. Ziegenhorn was acting in a law enforcement purpose. Ms. Jarvis stated they are requesting the Council consider deviating downward given the fact that this falls under category B [E], she asked the council to look at the six month suspension on this one. This was not something where Ms. Ziegenhorn was stalking or received any sort of personal gain. She was trying to help family members. She understands, without question, there were better ways she could have done this. She's been put through the ringer with the criminal process. She received a 30 day suspension from her agency. After the charges were brought to Ms. Ziegenhorn's attention, she took a BCI training course and recognized the fact that West Valley had failed to update their policies and procedures since the law had changed. She

was instrumental in bringing this to the chief's attention. Ms. Jarvis asked the Council to consider reducing the discipline to six months so they can get Ms Ziegenhorn back to work immediately.

Ms. Ziegenhorn addressed the Council. She thanked the Council and stated that she is grateful this is at the ending stages. She has learned a lot. She hoped the Council would take into consideration everything that had been presented.

Attorney Yockey stated that POST feels the nine month suspension recommendation is very generous. There are five separate incidents on this matter, with each incident being a six month general baseline.

Mayor Mileski asked if there has been any prior disciplinary history with POST and how long she has been a peace officer. Attorney Yockey said there is no prior history with POST. Lindsay Jarvis said Ms. Ziegenhorn has been a law enforcement officer for 18 years. Mayor Mileski shared his concerns over another BCI violation case getting a lesser discipline recommendation. He feels it is the same act we are looking at. He stated he is not comfortable with the nine month suspension if we are looking at a letter of caution for the other case. Attorney Yockey stated the facts on the other case will be presented later and are slightly different. We had an active case on the other one in which the individual was looking at the records for another agency. He was looking at the records for a friend. He then handed the records to the friend to hand to the other agency. This one is a little more for the personal use. Mayor Mileski feels the other case was just as much for personal use as this one.

After further discussion and clarifying questions from the Council, the following motion was made.

Motion: *Mayor Mileski motioned to not accept the 9 month suspension recommendation and recommended a letter of caution be given.*

Second: *Sheriff Dekker seconded the motion.*

Vote: *The motion was tied with 7 in favor and 7 against. (Victoria McFarland recused herself) Chairman Tracy voted against the motion and the motion failed.*

Motion: *Colonel Fuhr motioned to recommend a 6 month suspension of Holly Ziegenhorn's peace officer certification.*

Second: *Chief Spencer Austin seconded the motion.*

Discussion: *Frank Budd asked a clarifying question about when the suspension would begin. Chairman Tracy stated a six month suspension would have started in July (July 21, 2015).*

Vote: *The motion passed with 12 in favor and 2 against. (Victoria McFarland recused herself)*

SEAN CANNON

Offence – BCI Violation

Category – E

Recommended Discipline – Letter of Caution

Status – 1 day suspension, No BCI access for 10 months

Agency – Utah Highway Patrol

On July 13, 2015, Sean Cannon conducted a license plate search through BCI in an attempt to help a friend identify a subject who had assaulted the friend. The friend said he made a report to the local police agency, but felt dismissed by the investigating officer. Cannon conducted a records search with the partial plate information provided by the friend and found some possible license plate matches. Cannon provided the plate numbers to the friend to give to

the investigating agency. When the friend gave the license plate information to the investigating officer he was told Cannon should not have conducted the records search.

Cannon was investigated by his agency and, during a *Garrity* interview, admitted accessing vehicle registration records through BCI to assist a friend in identifying a suspect for another agency's police investigation. Cannon was suspended for one day without pay and lost BCI access for 10 months.

A local law enforcement agency conducted a criminal investigation on Cannon for a BCI violation. The case was screened with the county attorney who declined to file charges.

On February 24, 2016, Cannon waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action.

Bruce Bailey asked if it was correct that along with the license plate number, he turned over one address. Attorney Yockey said that was correct. Chief Carpenter asked for an explanation on why there was a recommended letter of caution on this case and a nine month suspension on the other case. Attorney Yockey stated that POST determined the recommendation on the other case was due to the fact that the five violations were for personal reasons. The violation occurred when the individual provided the information to the friend to give to the local law enforcement agency. We felt a letter of caution was significant because although it was a violation, it was technically for a law enforcement purpose and not a personal one.

Sheriff Tracy asked if the act was for legal purpose, but the manner was inappropriate. Attorney Yockey said that was correct. Mayor Mileski asked clarifying questions about the number of counties the search accessed on BCI. Attorney Yockey stated the discussion is getting very technical on the BCI stuff. When you do a records search through BCI for partial plate, it pulls up everything for that partial plate. The offense occurred in one county and Cannon just did one partial plate search. Mayor Mileski asked Attorney Yockey to clarify if Sean Cannon had any jurisdiction over the case itself or if his agency was in any way connected. Attorney Yockey replied that he did not and his agency was not connected.

Motion: Mayor Mileski motioned a recommendation for a six month suspension of Sean Cannon's peace officer certification.

Motion failed due to the lack of a second.

2nd Motion: Bruce Bailey motioned to recommend a 3 month suspension of Sean Cannon's peace officer certification.

Second: Mayor Mileski seconded the motion.

Vote: The motion passed with all in favor. (Colonel Fuhr recused himself)

CHAD JOHNSON KLOEPFER

Offence – Threat/use of a dangerous weapon in a fight or quarrel

Category – A

Recommended Discipline – Revocation

Status – Terminated 3/13/2014

Agency – Iron County Sheriff's Office

On March 12, 2014, Chad Kloepfer, three other cadets, and two teenage children of one of the cadets, went to a local restaurant for dinner. Kloepfer sat on the inside of the booth with two other cadets to his right. While at dinner, Kloepfer and one of the other cadets engaged in what began as playful banter. Kloepfer thought the banter went too far and got upset. Kloepfer stated he needed to go to the restroom and the cadet with whom he had been bantering with made

a comment, joking about Kloepper having a small bladder. Kloepper got upset at the comment, and was also upset that the other two cadets had not moved to let him out of the booth. Kloepper removed his Sig 1911 from its holster on his right hip, lightly pressed the muzzle of the gun into the side of the cadet he had been bantering with and told him to move. Kloepper then re-holstered his weapon. The other cadets let Kloepper out of the booth. An argument ensued and continued in the restroom and into the parking lot of the restaurant. The incident was investigated by the academy staff as well as by the police. On March 13, 2014, Kloepper was dismissed from the academy and terminated from Iron County Sheriff's Office. On April 8, 2014, charges were filed on Kloepper for threatening with or using a dangerous weapon in a fight or quarrel, a class A misdemeanor.

Kloepper has not responded to multiple attempts by POST to contact him. The criminal case is still pending.

Kloepper failed to respond to the notice of agency action. On March 14, 2016, an order of default was signed by the administrative law judge and mailed to Kloepper.

Motion: *John Crowley motioned to accept the revocation of Chad Kloepper's peace officer certification.*

Second: *Chief Wade Carpenter seconded the motion.*

Vote: *The motion passed with all in favor.*

DUSTIN J. NIELSON

Offence – Theft, Possession of Controlled Substance (Prescription Drugs)

Category/s – A & D

Recommended Discipline – Revocation

Status – Terminated 6/26/2015

Agency – Millard County Sheriff's Office

On June 23, 2015, Dustin Nielson removed an evidence bag containing three Oxycodone tablets from an inmate's intake folder for the purpose of using them at a later time. When the theft was discovered an investigation was initiated. On June 24, 2015, Nielson reported to a supervisor he had stolen the Oxycodone. During *Garrity* interviews with both his agency and POST, Nielson admitted to taking the tablets, however, denied using any of them. Nielson was terminated by his agency. No criminal charges were filed. Nielson failed to respond to the notice of agency action. On January 27, 2016, an order of default was signed by the administrative law judge and mailed to Nielson.

Motion: *Frank Budd motioned to accept recommended revocation of Dustin Nielson's peace officer certification.*

Second: *Dr. Bruce Bailey seconded the motion.*

Vote: *The motion passed with all in favor. (Sheriff Dekker recused himself)*

CHERYL PICKETT

Offence – Driving under the influence of alcohol

Category – D

Recommended Discipline – 1 year suspension

Status – Still Employed

Agency – Bountiful Police Department

On September 7, 2015, Cheryl Pickett was pulled over for a speeding violation in Wyoming by a local agency. The investigating officer had Pickett perform field sobriety tests. It was determined Pickett was under the influence of alcohol. Pickett was arrested and submitted to a breath test. Her breath alcohol content was 0.121. Pickett was booked into the county jail and charged with driving under the influence. On December 29, 2015, Pickett pled guilty to the charge of driving under the influence, to be held in abeyance, and was sentenced to three years' probation.

On February 25, 2016, Cheryl Pickett waived her right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action.

Attorney Yockey informed the council that there is a letter of support from Cheryl's administration for review.

Sheriff Noel asked about the difference in the disciplinary recommendation in this case and the case of Denise Jones. Attorney Yockey stated that the reason POST recommended two years in other case was because of the high alcohol content. Jones' alcohol content was essentially double and the traffic crash. This one was .121 vs. the .181 on the other one with a traffic crash.

Frank Budd asked if we have ever discussed the difference between a non certified peace officer and dispatcher. Attorney Yockey stated the statutes are the same. The Council and POST have never addressed this. According to the statute, a certification is a certification. Chairman Tracy stated it is a public safety position under the statute.

Victoria McFarland asked if POST makes any considerations for acceptance of responsibility. Attorney Yockey answered that we do when an individual self reports or takes responsibility and comes forth. In the past we have done that. Victoria noted that in comparison to the case of Denise Jones, where there was no response to the inquiry. It appears that Ms. Pickett was cooperative with all the proceedings and engaged in substance abuse counseling. It appears Ms. Jones didn't even respond to requests from the investigators. Attorney Yockey replied that he wasn't aware if POST has necessarily considered that before. That would be up to the Council to decide. Sheriff Tracy stated that as a Council we are free to consider any of the issues or facts as either mitigating or aggravating. Director Stephenson stated that POST looks at the guidelines. It would need to be very compelling for POST to go outside of the baseline. That baseline provides the consistency that was agreed on when this document was created. It is the Council's prerogative to deviate from the approved guideline and/or recommendation.

Bruce Bailey asked if it was correct that Cheryl Pickett lied to the officer on contact. Attorney Yockey answered that she did.

Motion: *Colonel Fuhr motioned to accept recommended a one year suspension of Cheryl Pickett's dispatcher certification.*

Second: *John Crowley seconded the motion.*

Vote: *The motion passed with all in favor. (Mayor Mileski recused himself)*

ERIC ZEEMAN

Offence – Unlawful taking/possession of protected wildlife

Category – E

Recommended Discipline – Letter of Caution

Status – No Action

Agency – Utah Highway Patrol

On October 10, 2015, Eric Zeeman was hunting spike elk with a friend when he accidentally shot a cow elk. Zeeman was trying to shoot a spike elk in a herd of cow elk. Zeeman immediately contacted law enforcement and reported his actions. Zeeman also notified his supervisor. Zeeman took the dead elk to the trailhead where he met a law enforcement officer who conducted an investigation. The officer took the elk, but allowed Zeeman to keep his hunting license and permit. The case was screened with the county attorney and Zeeman was issued a written warning. Administrative investigations were conducted by Zeeman's agency and POST. Zeeman's agency determined he did violate the law, but he retained his employment and was not disciplined. During a *Garrity* interview with POST Zeeman admitted accidentally shooting the cow elk while only having a spike elk permit. Zeeman explained he was aiming at a spike elk and he did not intentionally shoot the cow.

On March 7, 2016, Zeeman waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action.

Mayor Mileski asked if a letter of caution is the lowest form of discipline that we have available or do we have an option for no action. Director Stephenson said the Council has an option to vote no action. Mayor Mileski stated that he felt that Eric Zeeman did everything correctly and he feels that a letter of caution shouldn't be placed in Eric Zeeman's file. Director Stephenson stated that he will never go outside the guidelines. It is the prerogative of the Council to hand out any sanction or not. Matthew Checketts added that he feels it is okay to caution this officer.

Motion: *Mayor Mileski motioned a recommendation of no action be taken on Eric Zeeman's peace officer certification.*
Second: *Sheriff Noel seconded the motion.*
Vote: *The motion passed with 11 in favor and three opposed. (Colonel Fuhr recused himself)*

Brittney R. Washington

Offence – Driving under the influence of alcohol
Category – D
Recommended Discipline – 1 year suspension
Status – Retained Employment
Agency – Unified Police Department

On January 25, 2015, Brittney Washington was investigated by a local agency for driving under the influence after being stopped for not having her head lights turned on. Washington submitted to standardized field sobriety tests which indicated impairment. Washington was charged with DUI. Washington submitted to an Intoxilyzer test which indicated a BrAC of .139. Washington subsequently pled guilty to the amended charge of impaired driving. During *Garrity* interviews with POST and her agency Washington admitted to consuming alcohol and then driving her vehicle.

On February 20, 2016, Ms. Brittney Washington, Dispatcher with Unified Police Department, waived her right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action.

Motion: *Commissioner Gibson motioned to accept the recommended 1 year suspension of Brittney Washington's dispatcher certification.*
Second: *Mayor Mileski seconded the motion.*
Vote: *The motion passed with all in favor.*

Chairman Tracy turned the time over to Director Stephenson to address the Council.

Director Stephenson stated that first; he would like to thank his staff. These are difficult cases to investigate. A lot of time we know these individuals, they are our peers. It can be very stressful. Often times the charge itself may not seem egregious, but as you are aware in different cases, there are intricate nuances. There are a couple of cases when a different charge was recommended to POST, but through our investigative work we were able to figure out that was not the case. That independent investigation is vital. Director Stephenson then thanked the Council for serving and taking on this difficult assignment. It's never popular to vote to take action on an officer's certification.

Director Stephenson spoke about his recent trip to Washington DC. He attended a meeting with DOJ and the COPS office. They invited POST directors to comment and make suggestions on the President's 21st century policing that came out last year. Director Stephenson stated he is thankful that he works in Utah. The professionalism of our law enforcement community, you included as administrators that manage these areas and pockets of Utah, are second to none. Utah is leading the charge when it comes to disciplinary action. Some states don't even investigate officers for misconduct. If they do, it has to be a felony conviction. He appreciates the consistency that this Council has shown.

Director Stephenson appreciates the professionalism of the Council in coming prepared. Sometimes there are questions that are asked that may be uncomfortable, but that's part of the process and he values that interaction. Thank you and let's keep making Utah the best state in the Union. Chairman Tracy agreed. He feels after going across the nation with the National Sheriff's Association and looking at standards, conditions and expectations, Utah leads the way in many of these areas. What we do is important to keep that public trust.

SCHEDULE NEXT MEETING

Next meeting will be held at POST on June 2, 2016 at 10:00 a.m.

Adjourn

Meeting adjourned at 2:14 pm.