

**MEETING MINUTES
MONTANA POST COUNCIL
March 11, 2015
POST Conference Room
HELENA, MT**

PRESENT

Tony Harbaugh ~ Chairman ~ by phone
Kimberly Burdick ~ by phone
Jim Cashell
Gina Dahl ~ by phone
Bill Dial ~ by phone
Kevin Olson ~ by phone
Ryan Oster ~ by phone
Tia Robbins ~ by phone
Jesse Slaughter ~ by phone
Jim Thomas

NOT PRESENT

Laurel Bulson
Lewis Matthews
John Strandell

STAFF PRESENT

Perry Johnson ~ Executive Director
Katrina Bolger ~ Paralegal/Investigator
Mary Ann Keune ~ Administrative Assistant

LEGAL COUNSEL PRESENT

Sarah Clerget
Chris Tweeten ~ by phone

GUESTS

Truman Tolson ~ Missoula Police Department
Curt Stinson ~ Helena Police Department
Andrea Lower ~ Pretrial Services for Gallatin County Court Services
Rich McLean ~ Bozeman Police Department
John Dynneson ~ Richland County Sheriff
Glen Stinar ~ MLEA Administrator

WELCOME

Meeting called to order by Tony Harbaugh, Chairman at 9:01.

Roll call was taken by Perry Johnson.

Bill Dial made a motion and Kimberly Burdick seconded to approve the minutes of the December 3, 2014 meeting. Motion carried, all members voting in favor.

PUBLIC COMMENT

John Dynneson thanked Tony for letting people listen in. John Dynneson is the new Sheriff in Richland County and is trying to learn as much as possible about the POST Council.

Andrea Lower thanked the Council for continuing the discussion regarding the county funded Pretrial/Misdemeanor Probation Officers positions. Andrea Lower offered her services to discuss the training for these positions. Perry Johnson and Kevin Olson discussed the basic for Probation and Parole as it relates to Pretrial/Misdemeanor Probation.

Gina Dahl stated that she was told the misdemeanor/pretrial officers didn't have to participate in the firearms portion of basic. Kevin Olson reported that they did have to participate to meet the POST standard. Kevin Olson suggested Lisa Hunter as a point of contact for Gina Dahl.

Rich McLain had nothing to add but was glad to be part of the conversations.
Curt Stinson had nothing to add.
Glen Stinar introduced himself as the new Administrator for the MLEA.
Truman Tolson had nothing to add.

Perry Johnson shared that Wibaux County Sheriff Shane Harrington had been in contact with Katrina Bolger. He felt like he had been left out of the loop during the ARM updates and edits.

Tony Harbaugh remarked that he had an hour long conversation with Shane Harrington and felt like they had worked through a lot of those issues.

Bill Dial felt that Perry Johnson and the Council did an excellent job of being transparent.

OLD BUSINESS

ARM Updates: Katrina Bolger commented that the new ARMs are in effect and have been posted on the Secretary of States website. POST is operating under the new ARMs.

Perry Johnson remarked that he would like to see this be an agenda item for each of the Council meetings. The staff is constantly finding areas of concern in the ARMs. Perry Johnson explained there isn't a definition in the ARMs concerning the Professional and Master instructors and their requirements. Another area of concern is the Advanced Certificate requirements and needs to be made consistent with the Basic and Intermediate requirements.

The word "surrender" is used in the contested case forms but is not listed in the definitions. Perry Johnson believes fixing the ARMs should be an ongoing process.

Bill Dial commented that he believes the Council should empower the Executive Director to adjust and interrupt as he needs to. If something comes up down the road the Council could look at it then.

Tony Harbaugh stated that the Council should keep the ARM committee in place and Bill Dial agreed.

Chris Tweeten shared there is a statute in the Administrative Procedures Act that requires each agency to review its rules at least biannually. He suggested that the ARMs should be an agenda item every two years. He also suggested two categories, one of tweaks and modifications and the other items that require attention immediately. Chris Tweeten stated the staff needs to keep an eye on the ARMs for any issues that come up.

Bill Dial made a motion and Kevin Olson seconded that the staff should on a quarterly basis review the ARMs especially those that have been challenged or there are questions on. They should maintain a list of the ARMs that should be examined and should there be an emergency one it should be brought to the Council's attention immediately. At least every two years the standing Subcommittee should review those and present them to the Council for action. Motion carries, all members voting in favor.

PART TIME OFFICERS: Perry Johnson spoke concerning part time officers not defined by statute and asked the Council if they want to pursue adding this to the legislative package.

Jim Thomas commented that he thought all four categories of officers should be defined at the same time; part time temporary, part time permanent, full time temporary and full time permanent. Tony Harbaugh thought there may be a fifth category; special service officer found in 7-32-239.

Tony Harbaugh asked if this is an item that the Integrity and Standards Committee could have a look at with suggestions for further discussion.

Perry Johnson mentioned that it would be a good idea for a committee to look into the scope of the Council, what the footprint is and who the Council actually has responsibility for.

Sarah Clerget asked if this would answer the question of who should be covered by POST. Perry Johnson said he thought it would.

Bill Dial wanted to look at 46-1-202(17) and stated he thought that would cover part time officers but warned POST has to be careful on who is defined. Perry Johnson commented that 46-1-202 opens the door to everybody and that doesn't allow POST to limit anything. He stated that if a person has the ability to make arrests while acting in the scope of a person's authority that fits 44-4-401.

Katrina Bolger commented that 7-32-201 pertains to full and part time officers.

Jim Cashell agreed that it needs to be sorted out but it doesn't really matter if you are full or part time, it's what you are going to be doing that matters. He thought adding part time to that particular statute might solve the problem.

Bill Dial, Tony Harbaugh and Perry Johnson all agreed that the staff should do the research, collect everything that is relevant to the scope of what POST does and to the discussion about part time officers.

Kimberly Burdick stated she wouldn't be at the next face to face committee. Sarah Clerget asked Perry Johnson if he needs the Council to approve money being spent for legal fees since there will be extra legal expenses with Katrina on maternity leave. Tony Harbaugh stated that Perry Johnson has the authority to use his own judgment on that matter and Chris Tweeten said legally there is no reason Perry Johnson can't do that.

Pretrial/Misdemeanor Probation Officers: Chris Tweeten spoke about his research into what circumstances the Council can utilize the provision in 44-4-403(2) that allows the Council to waive the training requirement for a qualification. Chris Tweeten feels like the statute is unclear and the Council would be on shaky ground other than as a case by case analysis to a particular request from a particular officer to waive a particular requirement or training standard. He thinks giving a group of officers a pass on training has a potential liability aspect that needs to be carefully considered.

Kevin Olson added that this subject has been spoken of for years now. He spoke about Felony Probation and Parole and stated that there aren't any private Felony Probation and Parole Officers in the state. He explained how the Pretrial/Misdemeanor Officers are employed and how they are used.

Perry Johnson explained what the statute says and what's required as far as basic is concerned for Pretrial/Misdemeanor Officers.

Kevin Olson suggested waiving part of the training with a resolution then fix it statutorily.

Chris Tweeten said it would have to be done with an ARM. He didn't think it could be done by policy or resolution. He explained how he thought it could be drafted in an ARM but it would go against the statute. He thinks there is a question about the Council having the authority to do that in the first place. He still thinks there is a liability by trying to do this. Chris Tweeten remarked that fixing this legislatively is the safest course.

Brian Gootkin commented that they have Court Services in Bozeman. He said they do provide a service but the most uncomfortable part of the statute to him is the arrest provision. He would like to see that part addressed in statute and that might help with the training issue. Kevin Olson agreed with Brian Gootkin.

Perry Johnson added that he doesn't want to expose this Council to a possible lawsuit. He believes the legislative fix is the way to go with it but wondered if there was a sense of urgency to it or could it wait for the next session.

Kevin Olson made a motion and Bill Dial seconded to proceed to fixing the issues pertaining to Pretrial Service Officers and Private Misdemeanor Probation Officers legislatively. Motion carried, all members voting in favor.

Kevin Olson shared that we have left people hanging on this situation.

Perry Johnson remarked that POST is reaching out to agencies and are finding that many people haven't been through a basic yet.

Kevin Olson stated that POST doesn't certify Private Enterprise.

Tony Harbaugh commented that statutorily they have been put under POST's umbrella but it's in conflict to the statute Kevin Olson has referred the Council to and has understood if they are private they can't be trained at the Academy.

Sarah Clerget suggested the committee look at ARM 23.13.206 which requires a basic for Probation and Parole officers. She continued that 46-23-1003 might be a fix for the situation.

Kevin Olson thought that Perry Johnson and Sarah Clerget could get this put on paper and bring it back to the Council in June. Tony Harbaugh agreed. Perry Johnson said they would do that.

Amicus Brief: Sarah Clerget updated the Council about the lawsuit that is going on in Ronan and POST using the opportunity to write an amicus brief about the position of Reserve Officers. Sarah Clerget has tried to meet with Bill Gianoulis but hasn't been able to meet. She is hoping to have a meeting with him before the next Council meeting in June.

Perry Johnson, Bill Dial, Chris Tweeten and Sarah Clerget continued to discuss the possibility of being involved with the Amicus Brief. Chris Tweeten suggested waiting until they see what's going to happen with the lawsuit. The Council decided to table this issue until the next meeting when Sarah Clerget will hopefully be able to meet with Bill Gianoulis and report back.

LAWSUIT UPDATE: Chris Tweeten reported that nothing has changed at this point concerning the lawsuit in Lake County. The plaintiff's haven't shown any inclination of moving forward.

NEW BUSINESS

Director's Report:

Stipulations: Perry Johnson shared that Austin Vielle, Kristy Salway and Cory Anderson have all signed stipulations. Jim Cashell made a motion and Bill Dial seconded to approve all three stipulations.

Kevin Olson and Jim Cashell asked if this was the third case for Cory Anderson. Perry Johnson explained the circumstances surrounding this case.

Perry Johnson and Katrina Bolger described the circumstances and details surrounding the other two stipulations as well.

Motion carried, all members voting in favor.

Coroners: Perry Johnson reported the Montana Coroners Association will be meeting on May 3-5 in Lewistown. Perry Johnson asked the Council to approve a \$1500.00 stipend if necessary to help them fulfill the mission of the Advanced Death Investigation training for these Coroners.

Jim Cashell wondered if we have \$1,500.00 in the budget to put toward this training and Perry Johnson answered that we do. Perry Johnson explained some of the history between POST and the Coroner's Association. He is helping the Coroners to change the way their training has been held and feels like things are changing. Jim Cashell asked if Perry Johnson is satisfied with how things are going and are they changing. Perry responded with a yes, he is really satisfied because there are new board members that are invested and historically we did invest some money in their training.

Jim Cashell made a motion and Jim Thomas and Jesse Slaughter seconded to authorize the expenditure. Motion carried, all members voting in favor.

Perry Johnson gave a brief report on the Death Investigation training that POST hosted in December 2014 and said POST will host it again in December 2015.

MLEA Basic Syllabi: Perry Johnson explained the syllabi that were located in the documents handed out to the Council.

LEOB: 480 hours, CDOB-160 hours, PSC-40 hours, P&P, EQ-32 hours. Perry Johnson suggested that the Council review and approve these Basic syllabi consistently the first meeting of the year to stay current.

Kevin Olson asked Glen Stinar if he had any questions about this subject. He stated he did not but reported he and his staff will sit down and review all the curriculum over the summer break.

Kevin Olson made a motion and Jim Thomas seconded to approve all the course syllabi except for the Probation and Parole Officer syllabus until they are sure it is reflective of what they intend to do in April. Motion carried, all members voting in favor.

Online Training: Perry Johnson explained to the Council that online training receives the same credit as all other trainings submitted. Kimberly Burdick and Bill Dial were in favor of online training. Jim Cashell felt POST needs to be careful that officers aren't using fake trainings. Ryan Oster asked Perry Johnson if he has been having problems getting what he needs in order to give POST credit for these trainings. Perry remarked that he really hasn't had any problem. Vendors are reaching out to POST asking for Perry Johnson to look at their trainings and approve for POST credit. He also shared that it has been exciting to see the quality of trainings out there. Tony Harbaugh and Jim Cashell felt like validation is important.

Certifying Non-Montana Officers: Perry Johnson explained a situation about an out of state officer who wants to be certified in Montana. Kevin Olson commented and Tony Harbaugh thinks it's important to help these small agencies in any way we can. Kevin Olson asked Tony Harbaugh if his thinking was right in regards to POST

accrediting the trainings from out of state but not certify officers from out of state. Tony agreed.

Perry Johnson read 23.13.205 concerning certification and 44-4-401. Jesse Slaughter stated that since it is a firearm qualification it's very different than a firearms training and complicates the matter. Sarah Clerget noted that the POST Council can interrupt the ARMs as they see fit. They could state that they would certify officers of bordering states if they wanted to. Jesse Slaughter asked if they want this instructor as a stop-gap as they are working on getting someone from their agency qualified. Perry Johnson thinks they plan on using him as a regular resource. Sarah Clerget remarked that the other option is to set a policy. Tony Harbaugh said he would be comfortable with Perry Johnson interpreting the ARM. Katrina Bolger wondered if POST could recognize a POST certified instructor as someone who is an instructor in a neighboring state. Kevin Olson was more comfortable with that idea. He wasn't in favor of giving someone from out of state a POST certificate. Sarah Clerget reminded the Council that if you certify someone POST owns the certificate and can take it away. She was afraid that it could wreak havoc in other areas as well.

Chris Tweeten commented that 44-4-403(2) could be used to interpret the training standard for now. He believes the fix should be done by an ARM.

Jesse Slaughter asked if officers are sworn in between state lines and could that work for the purpose of firearms qualifications. Tony Harbaugh thought that would be a good way to handle it. Kevin Olson thought if POST starts issuing certificates to out of state officers it could cause mission creep and take it to places POST doesn't want to go. He feels like POST would need to look at the firearms training the officer had to be sure it was a significant training and use their state POST certificate but not certify them in Montana.

Perry Johnson is hesitant to let this start as agencies may opt not to train their officers to be firearms instructors anymore and will bring in a POST certified instructor from another state. Perry Johnson is concerned that the office staff won't have time to work through all these different issues.

Jim Thomas made a motion and Kevin Olson seconded that we make the exception to the training that Chris Tweeten was talking about for firearms instructors who are POST certified by their states in the neighboring states around Montana for the purpose of qualification that relates to the ARMs that POST recently passed if they meet or surpass the requirements that the POST Council has.

Jesse Slaughter asked if the term training should be removed and replaced with qualification. Kevin Olson withdrew his second and Jim Thomas amended the words from training to qualification.

Perry Johnson commented on the waiving using 44-4-403 as it lends itself to the next agenda item. The officers who come from out of state but haven't worked yet. The wording in 7-32-303 states that the officer has previously been employed. Perry Johnson said the Council does use 44-4-403 to waive that requirement. He feels like this is the same type of thing.

Jim Thomas restated his motion and Kevin Olson seconded it that the Council pursuant to its authority under MCA 44-4-403(2) qualifies the firearms training standard found in ARM 23.13.215 as follows; The Council interprets the requirement that an agency provide firearms instruction through an instructor who is "POST Certified" to mean certified by the Montana POST Council or by an agency responsible for certifying firearms instructors in a neighboring state if the instructor is certified as a firearms instructor pursuant to requirements that are substantially equivalent to those adopted by the Montana POST Council. Motion carried, all members voting in favor.

Equivalency: Perry Johnson asked for a motion of the same type to deal with officers who come from another state and haven't worked yet. Tony Harbaugh, Bill Dial and Kevin Olson felt like these situations with officers need to be looked at on a case by case basis. Perry Johnson replied that the staff would continue to bring these officers to the Council on a case by case basis.

Case Files: Perry Johnson reported there is one open case from 2011, all the cases from 2010 are closed now. POST has one open case from 2012, six open from 2013, three open from 2014, and two open from 2015. Perry Johnson said he had one more case on his desk that the Case Status Subcommittee will take a look at. There are thirteen open cases at this point. Katrina Bolger reported that three more cases had recently been opened so there are actually sixteen cases open.

Office Updates: Katrina Bolger talked about the new forms that are fillable and that she is able to manage POST's website. She shared that POST has a "Bulletin Board" on the website that lists POST approved trainings and job postings.

Temporary Hire: Perry Johnson shared that Shan Johnson has been hired to help with the roster clean up in order to issue basic certificates to those officers who qualify.

VISTA Volunteer: Perry Johnson told the Council that John Strandell had mentioned the possibility of hiring a Vista Volunteer to help with a project at POST. Mary Ann Keune and Katrina Bolger listened to a webinar and realized this program won't work for POST.

Budget Report: Perry Johnson reported on the budget. POST is within budget and feels like he has been successful in managing the budget that has been given to POST.

Legislative Updates: Perry Johnson reported that Frank Garner carried POST's legislative package. The bill went through the House Judicial Committee easily and came out of committee with a 17 to 4 pass vote. It came out of the House with a 95 to 4 pass vote. It went to the Senate Committee with a 7 to 0 pass vote. It then went to the Senate floor and resubmitted to the Committee with one amendment. The amendment was to the GED recommendation. They changed the language from "been issued an equivalency certificate" to "a high school equivalency diploma." Perry Johnson thought that today is the second reading in that Committee. He thought it would come out of committee and go through the Senate without a problem. He testified to it two or three times and had a lot of good questions come forward. Perry Johnson thought it was a great opportunity to reach out and explain what goes on at POST as a lot of freshman legislators don't know. Bill Dial

commented that Frank Garner shared with him that Perry Johnson knocked the ball out of the park in his testifying and commended Perry Johnson for a job well done.

Chris Tweeten commented that since it was amended it would have to go back to the House for another vote.

Perry Johnson told the Council that POST asked for \$100,000.00 per year in the next biennium for legal costs. The Committee added \$50,000.00 for the biennium. Chris Tweeten added that this is pretty standard for the way business is done. Someone needs to make a motion to put the money back in so he suggested finding someone to be there to make a motion when they make amendments to House Bill 2.

Kevin Olson reported that the best approach now is the Senate Finance Committee.

Nominees to the Council: Perry Johnson shared that Senate Resolution #9 was approved by the Committee. He thinks the final step on that is Senate confirmation. Kevin Olson added that he thought it passed yesterday.

Approval/Denial Of Certificate Requests: Perry Johnson reported there were between 260 and 270 requests this time. Kevin Olson made a motion and Jim Cashell seconded to accept the certificate requests. Motion carried, all members voting in favor.

Extension Requests: Perry Johnson reported there are nine extension requests. Kevin Olson made a motion and Bill Dial seconded to approve the extensions requests. Motion carried, all members voting in favor.

Basic Equivalency Requests: Perry Johnson explained that the syllabus for Michael Baum's Air Force training is attached and reported his training exceeds the MLEA basic training.

Perry Johnson discussed Kelly Cole with the Council. Kelly Cole is a BLM Ranger and his boss, Bryan Sakahara requested basic for him. They are thinking that in the future he could be cross deputized. Perry Johnson hasn't responded to a request for a federal officer to attend an EQ class. Tony Harbaugh added that his wife attended EQ under the same circumstances. Kevin Olson responded that there have been federal officers who have come through the EQ classes in the past.

Perry Johnson commented that he doesn't even have a notice of appointment on Kelly Cole. If he had a Sheriff who wanted to cross deputize an officer and needs to have this ability he would understand that.

Rich McLean commented that a local jurisdiction can work with an MOU to satisfy most of those needs rather than POST being the sanctioning body.

Jim Cashell asked if Kelly Cole is looking for a basic certificate or just to attend EQ. Perry Johnson pointed out that according to the ARM he would have to be issued a basic certificate.

Kevin Olson made the recommendation that if the officer has a notice of appointment then they qualify for EQ.

Perry Johnson stated that a federal agency can supply POST with a notice of appointment.

Jim Thomas asked if the Council could solve the problem by saying that the notice of appointment has to come from a local law enforcement agency. Perry Johnson liked that idea.

Jim Thomas made a motion and Kevin Olson seconded that in order for a federal employee to attend an EQ there has to be a request made to the POST Executive Director through a local administrator, a Sheriff or other local administrators.

Jim Cashell asked if POST issues certificates to tribal officers. Sarah Clerget explained that if the tribal officer has a contract with BIA that requires that they have a POST certificate then POST certifies them. They can however be a tribal officer in their own jurisdiction without being POST certified if they don't have a contract with BIA.

Motion carried, all members voting in favor.

Kevin Olson made a motion and Jim Thomas seconded to approve the EQ requests excluding Kelly Cole of the BLM. Motion carried, all member voting in favor.

COMMITTEE REPORTS:

ARM Committee: Tony Harbaugh had nothing to add.

Coroner Committee: Tony Harbaugh had nothing to add.

Integrity and Profession Standard Committee: Kimberly Burdick is going to be following up with the other members on the committee to see if they have any ideas.

Curriculum Committee: The committee doesn't have a chairman since Chief Smith is no longer a Council member.

Kevin Olson nominated and Bill Dial seconded Jim Thomas be the head of the Curriculum Committee. Kevin Olson closed the nomination and Jim Cashell seconded. Motion carried, all members voting in favor.

Business Plan Committee: Tony Harbaugh didn't have anything new to add but asked if this committee should include Budget and Legislative. Perry Johnson added that he thinks that at the next face to face he would like to discuss some options.

Policy Committee: Perry Johnson told the Council there was a handout with some draft policies on it. There will be some more work done on them and get together with the committee to go over them.

Individual Council Member Reports and Comments:

Kimberly Burdick: She commented that APCO is taking some steps to reclassify dispatchers under the department of labor handbook. Currently they are classified as

clerical. They are trying to reclassify them as Public Safety Tele Communicators and put them under Protective Services.

Bill Dial: no comment:

Ryan Oster: He is feeling overwhelmed but thanked the Council.

Laurel Bulson: not present

John Strandell: not present

Tony Harbaugh: Don't build a new jail!

Lewis Matthews: not present

Jesse Slaughter: no comment

Kevin Olson: no comment

Jim Thomas: no comment

Jim Cashell: Life is good!

Tia Robin: no comment

Gina Dahl: no comment

No Executive session was needed but Bill Dial may want one at the face to face in June.

Perry Johnson commented that Katrina Bolger will be taking twelve weeks of family medical leave until the middle of August.

Bill Dial made a motion to adjourn the meeting. Meeting adjourned

Submitted by
Mary Ann MAK
5/20/15