



Pete Ricketts, Governor

**REGULAR MEETING OF THE  
POLICE STANDARDS ADVISORY COUNCIL  
AUGUST 15, 2018**

**I. CALL TO ORDER**

Chairman Chief Wolf called the monthly meeting of the Police Standards Advisory Council to order at 9:01 AM. A current copy of the Nebraska Open Meetings Act was on hand and available for reference. Notice of the meeting was published in the Lincoln Journal Star on Friday, August 3, 2018. Roll call of members; Chief Tracy Wolf, Chief Jeff Bliemeister, Sheriff Larry Koranda, and Sheriff Jerry Watson were present. Lieutenant Colonel Andrew Duis, Chief Timothy Larby and Mr. Matthew McCarthy were not present.

**II. APPROVAL OF JULY 18, 2018 P.S.A.C. MINUTES**

**MOTION**

Sheriff Koranda motioned to approve as presented. Chief Bliemeister seconded the motion. Voting in favor; Chief Wolf, Chief Bliemeister, Sheriff Koranda, Sheriff Watson.

**III. ACADEMY REPORTS**

**A. Director – N.L.E.T.C.**

Director Urbanek stated the PRET was conducted yesterday for the 200<sup>th</sup> Basic class. We had 50 approved packets, all were invited and 39 passed so invitations were extended to those 39 to attend the September 9<sup>th</sup>, 200<sup>th</sup> Basic Training Session. The average scores of those who did not pass were between 7% and 27%. Out of the 50, there were 3 female applicants with only one passing.

We will have a conference call regarding the Database Integration Project on Thursday with the Office Excellence Representative, Habib Olomi to hopefully wrap the project up.

I begin the Executive Green Belt Process later today.



architects moving forward on phase two of that project which will be the firearms component. In our strategic plan, as presented to the budget committee, phase one will be the acquisition of land then the design development and construction and off site driving course and then once the driving course is moved offsite from here we'll move into phase two which is reconfiguring a firearms facility/range. Phase three of that project would be expansion of the actual physical plant here. Depending on if and when money becomes available. This will be a long term project.

SDLEA conducted their PRET, one of our staff members who is Cooper certified attended to help them audit and make sure everything went alright. They tested 14 people, 12 passed so 2 are not employed with their agencies.

August 9<sup>th</sup> I traveled to LaVista and administered the pretest for their academy; we should have the results today. None of their lead instructors have audited any of our courses yet. Director Wagner has been out several times. One of their students left training last Friday so they are down to 11 students in their academy without having their first exam.

I was in McCook for a meeting with local law enforcement representatives and stopped in North Platte to give an update on the Training Center and the 791 issue. I continue to actively work several Revocation investigations as does the instructional staff. August 8<sup>th</sup> I attended the Nebraska Sheriff's Association meeting.

#### **B. Deputy Director – N.L.E.T.C.**

Mr. Keeling addressed the Council stating the 199<sup>th</sup> Basic was currently in their 15<sup>th</sup> week of training and in the middle of Accident Investigation practical commands and Preliminary Breath Testing. Last week they completed the final practical assessments with three failures; retakes were done Monday and all three passed. One student was separated for disciplinary reasons on Monday, August 6<sup>th</sup>. Graduation is August 24<sup>th</sup> at 11:00 AM.

The 200<sup>th</sup> Basic is scheduled to begin with an orientation Sunday evening, September 9<sup>th</sup> and classes beginning the following morning. It looks like we will have 39 enrolled.

The SPS Command School will commence Monday, August 20, 2018 with 28 students. 23 have registered to stay at the Training Center. Recertification/Reciprocity training will also begin August 20<sup>th</sup> with Mr. Stolz's online Legal class. Currently there are 8 Reciprocity students with one still waiting admission; he is testing this morning. There are 7 Reactivations and 1 Limited Tribal student for a potential total enrollment of 17. August is a pretty busy month, there are two more Patrol Rifle certification courses scheduled with another weeklong Patrol Rifle new instructor course and as a result the dorm rooms will once again be at a premium this fall.

SLDEA has been out several times to observe quite a bit, Mr. Stevenson and Director Urbanek have been down to LaVista, and we have the rest of the instructional staff here who are also trying to work out times to go down and audit classes over the next few weeks.

### **C. Nebraska State Patrol**

Lieutenant Dain Hicks reported in Captain Roby's absence.

Camp 59 was in week 14 of 22 with the last few weeks of EVOC and DT training, this week they will be working on Patrolling. Upcoming we have Building Search and Active Killer going that they will be taking part of. For Nebraska Patrol business we will be conducting the Police Service Dog camp the first part of September, that's Narcotics Detection Dog Camp, it will last roughly 5 weeks. There are currently 8 signed up.

We will have 23 people attending the Command School the next two and a half months. Currently we are in the planning stages for in-service for our personnel for the fall of this year and the spring of next year. The dates for Camp 60 is January 7, 2019 with graduation June 21st and Camp 61 will begin July 8<sup>th</sup> and graduate December 20<sup>th</sup>.

### **IV. CRIME COMMISSION REPORT**

Darrell Fisher reported last month that the President had allowed the 2017 Byrne Jag Funds to be released. Again, the issues that caused the delay were immigration of sanctuary cities. At the July meeting I mentioned that the two special conditions and the one special condition was to provide immigration and customs with access to all prisons and jails and the second one was to offer 48 hours' notice before any individual of interest of ICE was released. Those two special conditions of ICE were caught up in federal lawsuits right now. To date there have been two judges and they have ruled three times now on it the one has ruled twice that the special conditions were unconstitutional. It appears this is headed for the US Supreme Court. If the Supreme Court will pick it up in October, they don't have to hear it, I'm sure it will be appealed. The DOJ has gone ahead and allowed the release of the funds, through special conditions that say there has to be a state law or a rule and regulation or a policy or a practice, well in our haste to try to work through this we completely missed the work, practice, so the last time I was here, I said we were looking at trying to get an emergency rule and regulation, we can do that for up to 90 days, if we did it twice, that would give us 180 days to get our Rule and Regulation written, we don't believe we're even going to need that now since our eyes are focused squarely on the practice. The Department of Corrections has always allowed ICE into their facilities so we are considering that our best practice. Scott Frakes, Director of Corrections, has formalized that in a memo to that, that we have submitted and are grant award has been approved. So while we don't have the money in our bank account yet, and we won't for a while, we believe we will have our Burn 17 JAG funds within the foreseeable future. It will not at the point negate the locals responsibility to sign the certification assurances as well if the locals do not sign the certification and assurances and allow ICE into their local facilities then we cannot sub grant the money. That's the way it stands today. If for some reason the Supreme Court does not pick this up, the end to this could come sooner rather than later, that's the best information I have today.

The Crime Commission is the sub grantee and we can sub grant the money out to the local agencies. Our first step is to make sure Nebraska can even get the money. We believe we have satisfied the first step. The question remains whether or not the locals will be required to sign the certification assurances. But first we got to get the money.

There is a special form to fill out for the money, but we haven't given them out yet because we haven't gotten the money yet.

Revocation Cases – There are currently 24 active cases. Yesterday I looked at the information we have, of the 24 cases, 4 are at the Attorney General's Office, the Investigative Reviews have been done, we believe revocations are the order of the day, so we have asked the Attorney General to file complaints. He has filed complaints on two and is reviewing the other 2. 3 are scheduled for dismissal at the upcoming, August 17<sup>th</sup> Crime Commission Meeting. 3 have submitted voluntary surrenders, which this body will hear today and 3 are felony cases that are being handled by the Training Center as automatic revocations at this time. So of the 24 cases 9 are in the works of being disposed of soon or litigated.

We are working them as hard as we can with the limited resources we have. It does not take into account the 12 - 791 cases that are currently with Brenda being reviewed.

Mr. Stolz stated the two that have formal complaints have been filed for the September 19<sup>th</sup> PSAC Council meeting. Neither have responded.

Chairman Wolf agenda item VI. A next.

## **VI. NEW BUSINESS**

### **A. Management Training Curriculum Omaha Police Department**

Director Urbanek stated the Council had been provided a copy of the Management Curriculum and had identified a couple areas she wasn't seeing in the Omaha curriculum and they had come back with a new curriculum that now shows they are addressing Backgrounds, Generational Differences, the only difference is where we are spending 4 hours on backgrounds/internal affairs, they are spending 1 hour on background, but down the road they cover internal affairs, so it is apples/apples, and I feel comfortable that they are addressing the topics that the academy here is addressing in their management curriculum, maybe not hour per hour, but I will say that having no job task analysis to hang my hat on for a Management or Supervision curriculum is more if the Council is comfortable approving the curriculum for an outside agency. I can't match up tasks like I do for a basic curriculum.

Lieutenant Cate Milone, training commander for the Omaha Police Department and Sergeant Allen Straub addressed the Council. Sergeant Straub stated he had reduced the body worn camera class to an hour and increased the Generational Differences to two hours. The back page showed a comparison of the state's classes and vs. OPD's classes.

Chief Bliemeister stated the total number of hours exceeded 8.

Mrs. Urbanek stated an onsite management course would be conducted here in November then Mr. Stolz's online Legal course would be held.

Mr. Stolz stated to keep it manageable, he likes to have no more than 20 in the online portion. To get this done student's need to schedule 2 to 3 hours a day for reading, homework and posting.

### MOTION

Chief Bliemeister motioned to approve OPD's Management Training Course scheduled for October 1-5, 2018 with the amendment mentioned by Sergeant Straub in-lieu-of the Management Course at NLETC. Sheriff Watson stated is it in-lieu-of or are we just approving the curriculum? We're finding that it meets or exceeds the standards of the Nebraska Law Enforcement Training Center.

Ms. Urbanek stated; to the best of our abilities to compare, yes. Sheriff Koranda asked for another clarification. Is this just a one time or do they have to come back every year? Director Urbanek stated it was good for 1 year. Sheriff Koranda seconded the motion. Voting in favor; Chief Bliemeister, Sheriff Koranda, Sheriff Watson, and Chief Wolf.

## **V. OLD BUSINESS**

### **A. Waiver of One-Year Management Training Requirement Lieutenant Steve Meister, Omaha Police Department**

Director Urbanek stated based on the Council's approval of the OPD Curriculum for Management training. I would recommend they grant a similar waiver for Lt. Meister of Omaha P.D. to attend that course in-lieu-of the Training Center's Management Course.

### MOTION

Chief Bliemeister motioned Sheriff Koranda seconded the motion. Voting in favor; Sheriff Koranda, Sheriff Watson, Chief Wolf and Chief Bliemeister.

Chief Wolf took agenda items out of order taking agenda items G. and H next.

### **G. Waiver of One Year Management Training Lt. Tracy Scherer, Omaha Police Department**

Director Urbanek stated this was another issue as Lt. Scherer was asking that she be allowed to attend the Management course offered in October by OPD.

### MOTION

Sheriff Watson motioned to grant the waiver of one year management training for Lt. Tracy Scherer of the Omaha Police Department. Sheriff Koranda seconded the motion. Voting in favor; Sheriff Watson, Chief Wolf, Chief Bliemeister and Sheriff Koranda.

**H. Waiver of One Year Management Training  
Lt. Amy Oetter, Omaha Police Department**

Director Urbanek stated this was the same request from OPD reference Lt. Oetter, all three of these individuals were promoted approximately the same time last year. Couldn't all come to our session so they are asking that they be able to attend their session in October.

**MOTION**

Sheriff Koranda motioned to approve the waiver for Lieutenant Amy Oetter. Sheriff Watson seconded the motion. Voting in favor; Chief Wolf, Chief Bliemeister, Sheriff Koranda, and Sheriff Watson.

**VI. NEW BUSINESS**

**B. Continuing Education Audit Report**

Director Urbanek reported a random audit had been sent to 26 different agencies, all agencies responded to the audit and were in compliance for calendar year 2017. No action was necessary

**C. Revocation LR-131-17 Derek Kermoade**

Mr. Stolz presented the Consent to Revocation of Law Enforcement Certificate and Waiver of Notice and Hearing signed by Derek Kermoade. He asked to have it marked as Exhibit #1 and received into evidence.

Chairman Wolf marked the Consent to Revocation as Exhibit #1 and received it into evidence.

Mr. Stolz gave a factual basis of the record and asked the Council to accept the relinquishment and recommend to the Commission that the respondent's law enforcement certification be revoked based upon Title 79 of the Nebraska Administrative Code, Chapter 9, Section 013. He acknowledged that a written complaint was made against him, he reviewed it, was aware of his rights under the rules and regulations and statutes and rather than to dispute or contest it, he wished to voluntarily surrender his law enforcement certifications.

Based on the following, I would ask this body to accept his relinquishment and recommend to the Commission that his law enforcement certificates be revoked based upon the statutory grounds of incompetence and neglect of duty and on the basis of the violation of his oath of office and the code of ethics.

**MOTION**

Chief Jeffrey Bliemeister motioned; based upon the fact that the respondent had signed a consent to revocation of law enforcement certificate and waiver of notice and hearing and has voluntarily surrendered his certificate. I make a motion that the Council accept the surrender of Derek Kermoade's Nebraska Law Enforcement Certificate as evidence of incompetence and neglect of duty. Said

revocation effective upon review and acceptance of the surrender of the Nebraska Commission on Law Enforcement and Criminal Justice. Sheriff Larry Koranda seconded the motion. Voting in favor; Chief Bliemeister, Sheriff Koranda, Sheriff Watson, and Chief Wolf.

**D. Revocation LR-132-17 Jeremy Wilhelm**

Mr. Stolz presented the Consent to Revocation of Law Enforcement Certificate and Waiver of Notice and Hearing signed by Jeremy Wilhelm and asked to have it marked as Exhibit #1 and received into evidence.

Chairman Wolf marked the Consent to Revocation as Exhibit #1 and received it into evidence.

Mr. Stolz gave a factual basis of the record and asked the Council to accept the relinquishment and recommend to the Commission that the respondent's law enforcement certification be revoked based upon Title 79 of the Nebraska Administrative Code, Chapter 9, Section 013. He acknowledged that he was and is the current holder of a law enforcement certificates issued on June 5, 2001 when he became a Lincoln Police Officer and then again on May 1, 2015 when he completed his Nebraska State Patrol training. So we will have the revocation apply to both. He acknowledged that a written complaint was made against him, he reviewed it, and is aware of his rights under the rules and regulations and statutes and rather than to dispute or contest it, he wishes to voluntarily surrender his law enforcement certifications.

Based on the following, I would ask this body to accept his relinquishment and recommend to the Commission that his law enforcement certificates be revoked based upon the statutory grounds of incompetence and neglect of duty and on the basis of the violation of his oath of office and the code of ethics.

**MOTION**

Chief Jeffrey Bliemeister motioned; based upon the fact that the respondent had signed a consent to revocation of law enforcement certificate and waiver of notice and hearing and has voluntarily surrendered his Certificate or certificates in this case, I make a motion that the Council accept the surrender of Jeremy Wilhelm's Nebraska Law Enforcement Certificates as evidence of incompetence and neglect of duty. Said revocation be effective upon review and acceptance of the surrender of the Nebraska Commission on Law Enforcement and Criminal Justice. Chief Wolf seconded the motion. Voting in favor; Sheriff Watson, Chief Wolf, Chief Bliemeister, and Sheriff Koranda.

**E. Revocation LR-123-17 Jerry Esch**

Mr. Stolz offered an email dated July 8, 2018, from Steven Delaney sent to John Jelkin and Laura Nigel both of the Attorney General's Office, who were prosecutors in this case, as well as to me, your legal representative. The email notifies that after careful consideration and discussion with his family, Mr. Esch decided that he will voluntarily surrender his law enforcement certification rather than to go forward with the revocation trial. This will be marked as Exhibit #1.

Exhibit #2 is an email from Steven Delaney's Law Office, Melissa Padgett, dated July 20, 2018, please find the attached the signed Consent to Revocation of Certificate and Waiver of Notice and Hearing regarding the above matter referenced, which was the Jerry Esch case and the next two pages are a scanned copy of the revocation surrenderment dated July 11, 2018 signed by Jerry Esch and the reason I am including the email is because we never did receive the original despite my requests. But I think the evidence shows that was clearly the intent. I would ask this be marked as Exhibit #2 and received into evidence.

Chairman Wolf received Exhibits #1 and #2 into evidence.

Mr. Stolz gave a factual basis of the record and asked that the Council accept the relinquishment and recommend to the Commission that the respondent's law enforcement certification be revoked based upon Title 79 of the Nebraska Administrative Code, Chapter 9, Section 013. He acknowledges that he was and is a current holder of a Nebraska Law Enforcement Certificate issued on April 13, 2006 when he was a Hastings Police Officer. He acknowledged that a written complaint was made against him, he reviewed it, he is aware of his rights under the rules and regulations and statutes and rather than to dispute or contest it, he wishes to voluntarily surrender his law enforcement certification in the State of Nebraska.

Based on the following, I would ask this body accept his relinquishment and recommend to the Commission that his law enforcement certificate be revoked based upon the statutory grounds of incompetence and neglect of duty.

### MOTION

Chief Jeffrey Bliemeister motioned; based upon the fact that the respondent has signed a consent to revocation of law enforcement certificate and waiver of notice and hearing and has voluntarily surrendered his Certificate. I make a motion that the Council accept the surrender of Jerry Esch's Nebraska Law Enforcement Certificate as evidence of incompetence and neglect of duty. Said revocation be effective upon review and acceptance of the surrender by the Nebraska Commission on Law Enforcement and Criminal Justice. Sheriff Watson seconded the motion. Voting in favor; Chief Wolf, Chief Bliemeister, Sheriff Koranda, and Sheriff Watson.

The meeting broke at 10:02 and resumed at 10:15 am.

#### **F. Repeal – Operating Instruction 50-31 Sheriffs Continuing Education**

Director Urbanek stated the practice for sheriffs individually obtaining continuing education hours was no longer necessary since implementation of continuing education is required for all officers in the state. She presented the idea of repealing the Operating Instruction at the last sheriff's meeting and they were supportive of it. Based on that, I would recommend the Council repeal Operating Instruction 50-31 Sheriff's Continuing Education.



## MOTION

Chief Wolf motioned to repeal Operating Instruction 50-31, Sheriff's Continuing Education Reporting. Chief Bliemeister seconded the motion. Voting in favor; Chief Bliemeister, Sheriff Koranda, Sheriff Watson, and Chief Wolf.

### **I. Rail Officer Certification Status**

Deputy Director reviewed some of the issues with rail officer certification. 10 years ago there were numerous budget cuts and lost staff, our resources are even more stretched now. Railroads are not considered a law enforcement agency by statutory definition. They are a private sector business; as a private sector they are paying a tuition to come to a course that law enforcement agencies are also paying to come to, Reactivation and Reciprocity.

Since 2005 Railroad Officers have attended Reciprocity training but would not become certified because they are not a law enforcement agency. When they complete the training they have been issued a letter attesting they have completed the course training. Never been issued a certificate. But the issue that comes up for me is that they have attended the training without meeting all the admission requirements and I am not sure where that came from. We have an applicant who wishes to attend and I have not done a curriculum comparison, haven't said that they can sit for the admissions test, don't have letters of good standing from previous agencies, all of which are requirements for law enforcement agency employees. My concern is that someone could say, I have been through reciprocity training in Nebraska and use it in another state and for the States not familiar with Nebraska's process, could say, they are Nebraska certified so we will grant them Reciprocity in our state.

I brought this issue up, and I wanted the Railroads at the table for the discussion today. If we are going to teach people in Reciprocity, I believe they need to meet the reciprocity requirements in order to come to the program. Before 2005 if a Railroad hired somebody from out of state that did not meet Reciprocity, they had to go through Basic. If they meet Reciprocity, they went through the Reciprocity Course. I'm not sure why it happened in 2005 with the statutory changes, but at one time a long time ago, Railroad officers were included in the definition of a law enforcement officer, they are currently not. It is really kind of a cloudy issue for us. We look at the Reciprocity and Reactivations it is a load, when we look at conducting the training itself, I struggle signing my name to something where I am not sure the person has meet all of the admission standards to even come into the training program even though they complete the program. Brand Officers have commission status through their state special deputy status, they are considered law enforcement officers and have to come through Basic or Reciprocity training.

Sheriff Koranda questioned if Railroad officers could be treated as tuition/non-law students, someone hoping to get a job in law enforcement someday?

Director Urbanek stated non-laws don't get a certificate, they get a diploma, and then when they are employed with an agency, they are issued a certificate. If we treated them as a non-law, they would have to go through the whole vetting process to get into the program as a non-law which comes right back to the training center doing it. If it is with an agency, they do the process.

Tom Mengel, Bruce Bombeck, and Brian Jarrett of the Union Pacific Railroad and Matt Shannon of the Burlington Northern Santa Fe Railroad introduced themselves to the Council.

Ms. Urbanek stated the State Special Deputy credentials come from the Governor through the State Patrol. If the State Patrol/Governor is amendable granting that status based off of another state's credentials then that takes us completely out of the training loop and I am not sure where the State Patrol sits these days. In the past you had to be Nebraska Certified to get those.

When they are certified and working with a law enforcement agency then get hired with the railroad, our database shows them as active officers because of their state deputy credentials, so they are still considered law enforcement.

Mr. Stolz stated under federal law Railroad is law enforcement. So the issue then turns to when you are leaving the railroad property proper for enforcement that is when we need the state deputy sheriff status, correct?

Mr. Mengel stated the State Deputy Sheriff status allows them to apply state law (trespass, etc.) State vs. Federal. As I see the issue, we are the only state, that we are not included in state statute as law enforcement. The argument might be that by state deputy sheriff through the commission of state patrol other law enforcement but not the statute our training records, we are a certified agency, everything but we are not in the statute and that's where it comes into a rub. Traditionally we like to hire Nebraska certified officers because they understand the laws and have practiced in this state so by chance we hire somebody from Utah and they come in and we are eager to put them through Nebraska training so they are familiar with Nebraska law.

Ms. Urbanek stated you have (6) six rail officers in Nebraska, do they ever go to Colorado or other states and work and how are they looked at in those states? Do they have to go through their training and how would they enforce Colorado law?

Mr. Mengel stated they did not because that is where the federal commission authorities would go state to state on the federal side. We have several agents that were certified and commissioned in the state of Iowa, we have at least one certified through Colorado, who has now moved to Omaha and he went through the Reciprocity process. They are recognized in Colorado, we all have federal we all can go up to Colorado and enforce law except for in Denver County, Colorado. We try to pair up with an agent from Colorado so they are with us.

Mr. Bombeck stated the Federal authority allows us to assume the rights and privileges of the law enforcement officers in that state, that's what federal authority is, so we assume the rights and authority of the Colorado Law Enforcement Officer.

Ms. Urbanek stated at the end of the day, I am concerned about my office issuing a letter that says you have been through Reciprocity, but you might not have been properly vetted on the front end. If you are not giving us a curriculum or sitting for the admissions test. If the railroads are comfortable with going through this checklist of needing a letter from the previous employer that they left in good standing, curriculum comparison, etc. we can come to an agreement that in the future we will treat any applicants

from the railroads as full Reciprocity students and they will have to meet all the admission standards for Reciprocity, and then be issued a Diploma only attesting they have completed all the requirements.

Council members and Railroad officers agreed with the Director's Reciprocity recommendations and agreed to bring it for a MOU or motion for approval by the Council at the October meeting.

#### **J. Appointment of Hearing Officer**

Mr. Stolz addressed the Council stating he had served as the legal advisory to the body for well over 10 years and in this role, served as the legal representative to the Council in revocation cases. Per Title 79 of the NAC, Chapter 9, §010.01, the Council is the Hearing Board in matters. The Council, sitting as the Hearing Board, shall have a legal representative to rule on all questions of law that may arise in the course of the prehearing conference and the hearing and to assist in the preparation of the findings of fact and conclusions of law. As the legal advisor, I rule on all evidentiary questions that arise during the course of the hearing and course of the prehearing if there are any.

Title 79, Chapter 9, §009 provides that the Chairperson of the Council or an individual so designated by the Council will serve as the hearing officer, presiding officer, and may make any rulings consistent with section 009. The rulings include conducting prehearing conferences, ruling on discovery issues (motions to compel discovery, protective motions etc.).

Per Neb. Rev. Stat. §84-913.02, sets out the duties of the hearing officer which include the powers I listed under section 009 of Chapter 9, issuing subpoenas and control the number of witnesses and the extent of direct, rebuttal and cross examination.

What is outlined in Chapter 9 and 84-913.02 is also consistent with the powers and duties listed in Title 53, Nebraska Administrative Code, Chapter 4, the Model Rules of Agency Procedure as promulgated by the Office of the Nebraska Attorney General. The idea trying to keep all agencies consistent with what we do. The hearing officer serving essentially the same role with regards to those rules.

What I am proposing is based essentially on the basis on the number of potential hearings coming up and could be coming up that we move me into the hearing officer. Section 009 says that as the Chairperson or and individual designated by the Council. It doesn't say Council member, it says a person designated by you. When I drafted this years ago, I had this in mind at least maybe if not me maybe someone else so it gives you the latitude to do that. Now there are some caveats I have got to put out there. When I look at the Administrative Procedure Act, Neb. Rev. Stat. 84-913.04, it talks about individuals who should not serve as hearing officers; it's specific in that. The first thing it says is (1) A person who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer.

Since I began serving as legal advisor, legal representative during contested hearings, I don't serve as an investigator, I never have. While I was once upon a time a prosecutor of these things, I did the first one, the first contested one, I don't fulfil that role anymore. We have gone to a designated counsel, the Attorney General's Office, and I think that works quite well since they have the most resources.

(2) A person who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing state may not serve as hearing officer or assist or advise a hearing officer in the same proceeding except as provided in subsection (3) of this section.

I do not get involved in the decisions of a revocation case as to whether there is a decision to move forward with an informal complaint or dismiss it. That is the province of the executive director and as a rule, I am not even consulted in such matters and that is done so that I am free from any type of alleged bias in a contested case.

Additionally, once a formal complaint is filed, I operate independently of the executive director (or the director of the TC, who ultimately assigns investigators). I am not subject to either position's authority and I do not take direction from either during the contested case.

(3) If all parties consent, a person who has served as, or who is subject to the authority, direction, or discretion of one who has served as, investigator, prosecutor, or advocate in a contested case or in its prehearing stage may assist a hearing officer in the preparation of orders.

(4) A person who has participated in a determination of probable cause or other equivalent preliminary determination in a contested case may serve as hearing officer or assist or advise a hearing officer in the same proceeding.

(5) A person may serve as hearing officer at successive stages of the same contested case.

I conducted research on this topic and could not find any precedential authority which would prohibit my serving as the hearing officer and legal representative to rule on the legal matters that arise during the course of the prehearing conferences.

Just to be clear, if the Council were to so designate me as the presiding officer, which would include continuing to serve as the legal representative as specified in Chapter 9, 010.01, I would also have the duties set out in the Nebraska Administrative Procedures Act, including 84-913.01 & 913.02, Title 53 NAC Chapter 4, and Title 79 NAC Chapter 9. I would not determine the merits of a revocation matter nor rule on issues that are only for the Council (e.g., motions for closed hearings, executive sessions, etc.)

What I am asking you to consider today is to designate me as the presiding officer/hearing officer for revocations consistent with the duties outlined in the Administrative Procedure Act and Title 79, Chapter 9 and to continue my role as legal representative. But having no authority to render substantive decisions as they relate to recommendations to the Commission or the actual findings.

Mr. Stolz asked the Council to consider a motion designating him as the presiding officer or hearing officer as in Title 79, Chapter 9, Section 009 and to continue his duties as the Council's legal representative under Section 010.01 of Title 79.

**MOTION**

Chief Wolf motioned for the remainder of this year and to be renewed annually every year thereafter or January the beginning of each year. Chief Bliemeister seconded the motion. Voting in favor; Sheriff Watson, Chief Wolf, Chief Bliemeister, and Sheriff Koranda.

**K. Academy Instructor Applications**  
**PROFESSIONAL – Original**

Director Urbanek recommended approval in the areas listed on the form.

Chief Bliemeister questioned if there would be an issue he abstained from the vote.

Mr. Stolz stated if you abstain and not recuse, according to the Attorney General's opinion, you still have a quorum.

Clements, Corey – Omaha Police Department  
Gallagher, Andrew – Lincoln Police Department  
Glantz, Jennifer – Lincoln Police Department  
Jacobs, Jordan – Omaha Police Department  
Jarecke, Scott – Lincoln Police Department  
Kelley, Joshua – Omaha Police Department  
Nissen, Cassandra – Lincoln Police Department  
Noordhoek, Emily – Lincoln Police Department  
Schwartz, Jefforey – Lincoln Police Department  
Stegman, Matthew – Lincoln Police Department

**MOTION**

Chief Wolf motioned Sheriff Koranda seconded the motion. Voting in favor; Chief Wolf, Sheriff Koranda, and Sheriff Watson. Chief Bliemeister abstained. Motion carried.

**PROFESSIONAL – Recertification**

Baker, Jeff – Omaha Police Department  
Crinklaw, Devin – Omaha Police Department  
Crouch, Jeff – Omaha Police Department  
Hudec, John – Lincoln Police Department  
Lashley, Rusty – Lincoln Police Department  
McGahan, John – Lancaster Co. for NLETC  
Ritonya, Jacob – Omaha Police Department  
White, Eric – Omaha Police Department  
Wilke, Luke – NE Dept of Insurance for NLETC

Director Urbanek stated these individuals had all received certification previously and applied for recertification as instructors in the areas. She recommended approval based on the areas designated on their forms.

**MOTION**

Sheriff Koranda motioned to approve the ones that are represented with the understanding just in the subject areas that they have been approved by the Director. Sheriff Watson seconded the motion. Voting in favor; Sheriff Koranda, Sheriff Watson, and Chief Wolf. Chief Bliemeister abstained.

**VII. OTHER BUSINESS**

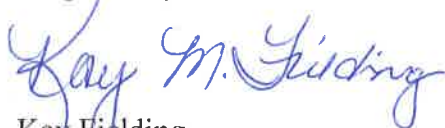
Discussion on the information items was held.

**A. Date, Time & Location of Next Meeting**

September 19, 2018, 9:00; Library, Nebraska Law Enforcement Training Center,  
3600 North Academy Road, Grand Island, Nebraska

Hearing no further business Chief Wolf adjourned the meeting at 11:40 AM.

Respectfully submitted,



Kay Fielding,  
Secretary to the Council