

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

August 24, 2005

Opinion No. 05-131

Certification Requirements for Police Officers

QUESTIONS

1. Is a law enforcement agency certified by the Peace Officer Standards and Training (POST) Commission required to seek a waiver of pre-employment requirements prior to hiring a person as a part-time/temporary/reserve/auxiliary law enforcement officer when that person does not meet the pre-employment requirements set forth at Tenn. Code Ann. § 38-8-106?

2. Is the POST Commission required to put a request for waiver of pre-employment requirements on its meeting agenda for consideration?

3. Is a law enforcement agency required to seek a second waiver for a peace officer whose status is changing from part-time/temporary/reserve/auxiliary to full time when such officer has already been granted a waiver for the same matters as a part-time/temporary/reserve/auxiliary officer?

4. If an individual successfully completes training at a POST-approved academy, but is not employed by an agency at the time of graduation, what are the time limitations for a person to be certified upon completion of training from a POST-approved police academy?

5. Is the POST Commission required to certify and regulate all public and private agencies who are granted police powers under the laws of the State of Tennessee?

OPINIONS

1. Yes. Under Tenn. Code Ann. § 38-8-106, “any person employed as a full-time police officer, and after January 1, 1989, any person employed/utilized as a part-time/temporary/reserve/auxiliary police officer or as a special deputy” is required to meet pre-employment requirements as set forth therein or obtain a waiver of any pre-employment requirement which that person may not meet. Further, the minimum standards set forth for such officers are “mandatory and binding upon any municipality, county or political subdivision of this state.” Tenn. Code Ann. § 38-8-105.

2. Yes. The obvious implication of Tenn. Code Ann. § 38-8-104 is that the POST Commission must consider an agency's request for a waiver on behalf of a person to be employed by the agency.

3. No. When the POST Commission has granted a waiver of pre-employment requirements for a part-time/temporary/reserve/auxiliary applicant with respect to a particular matter, such a waiver remains valid when that applicant seeks employment as a full-time police officer.

4. Where an applicant has previously attended a police academy at his/her own expense without being employed by an agency, the applicant may be employed by an agency within one year following completion of the Basic Law Enforcement Course without taking the POST test. Thereafter, and up to ten years following completion of the Basic Law Enforcement Course, an employing agency may request that an applicant be allowed to take the POST test without repeating Basic Law Enforcement training. After that time, the POST Commission determines on a case-by-case basis whether an applicant may be certified upon passing the POST test or whether such an applicant may be required to repeat the Basic Law Enforcement Course.

5. No. The Peace Officers Standards and Training Commission does not certify agencies, public or private. The duties of the Commission extend to the training and employment of police officers by any "municipality, county or political subdivision" of the State of Tennessee. While the Tennessee legislature has required college and university security personnel to meet certification requirements established by the POST Commission under Tenn. Code Ann. § 49-7-118(b), there is no other statutory authority for the POST Commission to monitor and/or regulate the activities of any entities beyond the parameters of Tenn. Code Ann. § 38-8-104.

ANALYSIS

1. Waivers for part-time/temporary/reserve/auxiliary law enforcement officers.

Tenn. Code Ann. § 38-8-101 *et seq.* addresses the employment and training of police officers and establishes minimum standards for persons employed as police officers in the State of Tennessee. The Peace Officers Standards and Training Commission is specifically "charged with the duty of observing, administering, and enforcing all the provisions of this chapter." Tenn. Code Ann. § 38-8-104(b). The minimum standards set forth under the Code or as required by the POST Commission "are mandatory and binding upon any municipality, county or political subdivision of this state." Tenn. Code Ann. § 38-8-105(a). The obligation of an agency to maintain the standards for the employment and training of police officers is enforceable through criminal sanctions:

Any person who shall appoint any applicant, who, to the knowledge of the appointor, fails to meet the minimum standards as set forth herein or required by the commission, and any person who signs the warrant or check for the payment of the salary of any person who, to the knowledge of the signer, fails to meet the qualifications as a police officer as provided herein or required by the commission,

commits a misdemeanor and upon conviction shall be subject to a fine not exceeding one thousand dollars (\$1,000).

Tenn. Code Ann. § 38-8-105(b).

Full-time police officers in Tennessee are certified after a determination that they meet pre-employment requirements and their completion of basic training. Tenn. Code Ann. § 38-8-107(a); POST Rule 1110-2-.01. While part-time/temporary/reserve/auxiliary officers are not certified, they are nonetheless required to meet the same pre-employment requirements. Tenn. Code Ann. § 38-8-106; POST Rule 1110-8-.02. In the event that applicants do not meet the pre-employment requirements, the POST Commission may consider a waiver of certain requirements as set forth under POST Rule 1110-8-.02(1)(d).

An agency's employment of a part-time/temporary/reserve/auxiliary law enforcement officer who fails to meet pre-employment requirements is in violation of Tennessee law unless an appropriate waiver is obtained. Although the POST Commission does not certify agencies, the failure of any agency to maintain standards of employment and training "may result in an agency's being declared out of compliance with state standards and thereby not eligible to participate in the commission's training programs at no cost." Tenn. Code Ann. 38-8-107(b).

2. The requirement for the POST Commission to include requests for waivers of pre-employment requirements on its meeting agenda.

Tenn. Code Ann. § 38-8-104 sets forth the powers and duties of the POST Commission. While nothing in that section specifically requires the Commission to consider all waiver requests by placing them on a meeting agenda, the Commission is required to "establish criteria for determining whether to grant an exception to or to waive the qualifications of § 38-8-106" with certain limitations. The clear expectation of the legislature is that the Commission would consider requests for such waivers. The Code states: "The commission's decisions with regard to exceptions or waivers granted under this subsection shall be appealable to the commissioner of safety." Tenn. Code Ann. § 38-8-104(e). Where the statutory language establishes a clear right to appeal the decisions of the Commission, it follows that an agency has a right to the Commission's initial consideration of its request for waiver.

3. Continuing validity of a waiver where an applicant's status changes from part-time/temporary/reserve/auxiliary to full-time.

Where an employing agency requests and is granted a waiver on behalf of a person seeking to serve as a part-time/temporary/reserve/auxiliary police officer, the waiver is applicable to the police officer's employment eligibility. The pre-employment requirements for part-time/temporary/reserve/auxiliary law enforcement officers listed under POST Rule 1110-8-.02(1) are substantially the same as the pre-employment requirements for full-time officers stated under POST Rule 1110-2-.03(1). When the status of a part-time/ temporary/reserve/auxiliary officer is elevated to that of a full-time officer, the employing agency is obligated to ensure that the officer meets all the

requirements of POST Rule 1110-2-.03(1). However, where an agency has previously requested and has been granted a waiver of pre-employment requirements, such a waiver remains effective and the agency is not required to obtain a second waiver.

4. Training requirements for POST certification.

Under POST Rule 1110-2-.03(3), an officer seeking certification is required to complete the Basic Law Enforcement Course within six months of initial employment as a full-time law enforcement officer. Where an applicant has previously attended a police academy at his/her own expense before being employed by an agency, POST Rule 1110-2-.03(7)(d) allows such an officer to apply for certification based on this training. The rule states:

Officers who have attended an approved basic law enforcement school and who were not required to be certified at that time, may apply for certification based on this training. These officers must also take the POST Certification Test to qualify for certification. The POST test is not required if the officer is employed full time by a law enforcement agency within a year of the date of completion of the basic law enforcement school.

The rule allows a one-year grace period between completion of an approved law enforcement training course and full-time employment without a requirement for taking the POST test. After that one-year period, the applicant is required under the rule to pass the test. The rule does not state a deadline following completion of the Basic Law Enforcement Course by which an applicant would be required to repeat the course before he/she could be certified. Where an applicant attended the Basic Course more than one year prior to application, the Commission views the period of inactivity as a break in full-time law enforcement service under POST Rule 1110-2-.03(7)(a), which allows the POST Commission to require attendance at a Basic Law Enforcement Academy on a case-by-case basis when an applicant has had a break in full-time service exceeding ten years. Considering POST Rules 1110-2-.03(7)(a) and (d) together, an applicant who has finished the Basic Course could be certified upon successful completion of the POST test without repeating the Basic Law Enforcement Course up to ten years following completion of the academy. After that time, the POST Commission may consider a request for a waiver of the “ten-year rule” on a case-by-case basis.

5. Requirement on the POST Commission to regulate and certify agencies.

The powers and duties of the POST Commission, as set forth under Tenn. Code Ann. § 38-8-104, extend to the development, planning and implementation of law enforcement training programs for all local law enforcement officers in Tennessee. Additionally, the POST Commission is required to establish uniform standards for the employment and training of police officers and establish minimum standards and curriculum requirements for the training of police recruits or police officers by “any municipality, the state of Tennessee or any political subdivision thereof.” Under Tenn. Code Ann. § 38-8-110, employees of the State of Tennessee, such as state policemen and state park rangers are not subject to the requirements of Tenn. Code Ann. § 38-8-101 *et seq.* Except as

otherwise provided by statute, the provisions of that chapter apply only to police officers “employed by any municipality or political subdivision of the state of Tennessee whose primary responsibility is the prevention and detection of crime and the apprehension of offenders.” Tenn. Code Ann. § 38-8-101(a)(1). Nothing in Tenn. Code Ann. § 38-1-101 *et seq.* authorizes the POST Commission to certify or otherwise regulate other employing agencies.¹

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

BRENT C. CHERRY
Assistant Attorney General

Requested by:

W.C. “Bubba” Pleasant
State Representative
99th Legislative District
104 War Memorial Building
Nashville, TN 37243-0199

¹The only provision “otherwise provided by statute” for the training and certification of police officers employed by entities other than a municipality or political subdivision of the state of Tennessee is Tenn. Code Ann. § 49-7-118, which authorizes “[t]he board of regents of the state university and community college system and the board of trustees of the University of Tennessee . . . to establish policies pursuant to which a suitable number of persons may be employed and commissioned as security officers by institutions and schools governed by the respective boards.” Under that statute, “[a]ll security officers employed pursuant to this section must meet the minimum certification requirements of the peace officers standards and training commission.” Tenn. Code Ann. § 49-7-118(b).