



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WARDEN

July 2, 2008

Colonel G. Jerry Russell
Director, Idaho State Police
P.O. Box 700
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**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Re: Law Enforcement Status of the
Peace Officer Standards and Training (POST) Academy Leadership

Dear Col. Russell:

This legal guideline letter is provided to assist you in determining the law enforcement status of the positions of POST Academy Training Coordinator II and III and Executive Director. This letter is the unofficial expression of the views of this office based upon the research of Deputy Attorney General Ralph Blount under the supervision of the author.

QUESTION PRESENTED

Do the positions of POST Academy Training Coordinator II and III and Executive Director meet Idaho's statutory definitions of "peace officer" and "law enforcement" such that they should be considered equivalent to ISP Sergeant, Lieutenant and Major positions? Because this issue is raised in the context of whether the positions of POST Academy Training Coordinator II and III and Executive Director should be non-commissioned employees of the Idaho State Police, issues regarding the Director's personnel power and authority and the effect of decommissioning these positions are also addressed.

CONCLUSION

No. The positions of POST Academy Training Coordinator II and III and Executive Director are not the equivalent of the respective positions of Idaho State Police Sergeant, Lieutenant and Major. Unlike the commissioned "peace officer" positions of Idaho State Police Sergeant, Lieutenant and Major, the Academy Training Coordinator II and III and Executive Director are not required to be commissioned and, therefore, incumbents may, but are not

required to, maintain current POST certification as a condition of employment. The decision to commission or decommission, as officers of the Idaho State Police, the positions of POST Academy Training Coordinators II and III and Executive Director is within the discretion of the Director of Idaho State Police.

Your question did not specifically mention retirement issues. A more complete analysis would require additional facts not currently in our possession, but we do note that existing statutes (in title 59, chapter 13, Idaho Code) governing the Public Employee Retirement System (PERSI) provide for police officer member status for retirement purposes for certain positions or offices at specific state agencies, including ISP. If the decision were made to reclassify the positions of Academy Training Coordinators II and III and Executive Director as regular employees, we believe that such change would be relevant to PERSI and could be considered by PERSI in terms of its potential affect on the eligibility of those positions for police officer membership status. On that, our recommendation is that ISP contact PERSI to discuss this matter as needed and appropriate.

ANALYSIS

THE POST ACADEMY TRAINING COORDINATOR II AND III AND EXECUTIVE DIRECTOR ARE NOT "PEACE OFFICERS" WITHIN THE MEANING OF THE POST COUNCIL STATUTE

A. The POST Academy Training Coordinator II and III and Executive Director Are Employees of the Idaho State Police, a Law Enforcement Agency

“Law enforcement” means any and all activities pertaining to crime prevention or reduction and law enforcement, including police, courts, prosecution, corrections, rehabilitation, and juvenile delinquency.” I.C. § 19-5101(c). Based upon the listing of terms, correct interpretation of the statute requires that “where general words of a statute follow an enumeration of persons or things, such general words will be construed as meaning persons or things of like or similar class or character to those specifically enumerated.” *State v. Kavajecz*, 139 Idaho 482, 486, 80 P.3d 1083, 1087 (2003) (quoting *State v. Hart*, 135 Idaho 827, 831, 25 P.3d 850, 854 (2001)). In I.C. § 19-5101(c), the legislature specifically listed several terms that pertain to crime prevention or reduction and law enforcement. The general words “any and all activities pertaining to crime prevention or reduction and law enforcement including” is found just prior to a list of broad categories of such activities: “police, courts, prosecution, corrections, rehabilitation, and juvenile delinquency.” Training of peace officers is a sub-category of police and is therefore “of like or similar class or character to” police. *Kavajecz*, 139 Idaho at 486, 80 P.3d at 1087. In our opinion police training falls within the broad category of “law enforcement” as defined in I.C. § 19-5101(c).

More clearly, the Idaho Legislature has placed the POST Council and POST Academy within the Idaho State Police. I.C. § 19-5102 (“There is hereby established in the Idaho state police the Idaho peace officer standards and training council”); I.C. § 19-5116(a)(1), (2)

(authorizing the POST Council to expend funds from the Peace Officer Standards and Training fund for “training peace officers . . . [and] [s]alaries, costs and expenses relating to such training”)

Furthermore, an analysis and comparison of the legislation creating the Idaho State Police, I.C. §§ 67-2901, *et seq.*, and the 1981 legislation creating the POST Council, I.C. §§ 19-5102, *et seq.*, reveals that the POST Council does not have personnel powers. The POST Council’s powers are limited to: (1) establishing minimum requirements for employment, retention and promotion of peace officers, including eligibility standards, physical, mental and moral fitness standards, education and training requirements; (2) certifying those peace officers as having completed all established requirements as eligible for permanent employment as peace officers in Idaho; (3) receiving and maintaining copies of current local laws; (4) maintaining files on the accreditation and continuing education status of peace officers in Idaho; and (5) approving or rejecting applications for POST certification. I.C. §§ 19-5109(1)(a) through (i), (8), (9). The POST Council is also authorized to expend funds from the Peace Officer Standards and Training fund for “training peace officers . . . [and] [s]alaries, costs and expenses relating to such training” I.C. § 19-5119(1), (2). However, while having the power and duty to set applicant and training standards, award certification, and exercise the powers of the purse, the POST Council does not have supervisory authority over POST Academy personnel. Instead, the Director of the Idaho State Police has the power to “appoint, subject to the approval of the governor, an administrator for each division within the state police” and all of the “powers and duties necessary to carry out the proper administration of the state police, and [the Director] may delegate duties to employees and officers of the state police.” I.C. § 67-2901(3)-(4). Therefore, the POST Academy Executive Director is an employee of the Idaho State Police, supervised by the Director of the Idaho State Police; although the Executive Director also receives guidance and direction from the POST Council.

This analysis is consistent with the administrative rules promulgated by the Idaho State Police for the POST Council, under which the “Executive Director shall be selected by the POST Council subject to approval of the Director of the Idaho State Police from the approved register established by the Idaho Division of Human Resources after competitive testing.” IDAPA 11.11.01.031.01.b (4-2-08). Pursuant to the Idaho State Police administrative rules, the “Executive Director will be employed by the Idaho State Police to serve under the direction of the POST Council in carrying out the duties and responsibilities of the Council.” IDAPA 11.11.01.031.02 (4-2-08). In turn, the “Executive Director shall have supervision over the employees and other persons necessary in carrying out the functions of POST.” IDAPA 11.11.01.031.03 (4-2-08). Furthermore, the administrative rules provide that the “Executive Director and his staff will be governed by the Policies and Rules of the state of Idaho and the Idaho State Police, concerning but not limited to fiscal, purchasing, and personnel matters.” IDAPA 11.11.01.031.04 (4-2-08).

Under the umbrella of the Idaho State Police, the POST Academy Training Coordinator II and III and Executive Director are employees of “law enforcement” as broadly defined in I.C. § 19-5101(c). Acknowledging their status as “law enforcement”, it must be determined whether

the positions of POST Academy Training Coordinator II and III and Executive Director are "peace officers" under I.C. § 19-5101(d).

B. The Positions of POST Academy Training Coordinator II and III and Executive Director are not Peace Officers Under the POST Council Statute Because Their Duties do not Consist Primarily of the Prevention and Detection of Crime and the Enforcement of Penal, Traffic or Highway Laws of this State or any Political Subdivision

The definition of "Peace Officer" is set forth in I.C. § 19-5101(d). A "Peace Officer" is:

any employee of a police or law enforcement agency which is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision.

I.C. § 19-5101(d) (emphasis added). The Idaho Administrative Code for the Idaho State Police governing the POST Council mirrors the definition of peace officer in I.C. § 19-5101(d). IDAPA 11.11.01.010.30.

1. The POST Academy Training Coordinator II and III and the Executive Director Positions are not Equivalent to the Respective Idaho State Police Positions Sergeant, Lieutenant and Major

The job descriptions for the positions of Idaho State Police Sergeant, Lieutenant and Major indicate that applicants must possess a valid POST certification, although the position of Major may be filled by a non-commissioned manager with equivalent civilian certification to a POST Management certificate. The job descriptions for the positions of Idaho State Police Sergeant, Lieutenant and Major (available from the Idaho Department of Human Resources) establish that each is a supervisory position responsible for overseeing a special project, operation of patrol, traffic enforcement, investigations, crime prevention, public safety or related law enforcement work.

Idaho State Police Sergeants are "first line supervisors and/or shift commanders of a wide range of diverse law enforcement activities" whose work will "regularly involve oversight in planning and executing raids, and in conducting criminal pursuits, complex investigations, and sensitive surveillance." Idaho State Police Lieutenants are distinguished from Sergeants by the added "responsibility to set policies and procedures to achieve defined goals; analyze and determine organizational effectiveness; delegate and coordinate work to achieve goals; and evaluate performance of subordinate supervisors." Idaho State Police Majors are "headquarter-level staff positions responsible for planning, controlling, and directing statewide activities such as communications, patrol, traffic enforcement, investigations, crime prevention, public safety and support programs." The duties of each of these positions include the conduct, supervision

and management of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of Idaho.

In contrast the POST Academy Training Coordinator II and III and the Executive Director positions are training coordinators, supervisors and administrators. The POST Training Coordinator II coordinates, facilitates and supervises criminal justice training programs at the POST Academy or a POST region, serves as a criminal justice resource, and provides direction and informational services to agencies and personnel within a region. Because a POST Training Coordinator II must have a "strong criminal justice foundation in order to deal effectively with issues related to officer performance, equipment needs and application, patrol procedures, detention procedures, prison personnel issues, acceptable administrative practices, political impact and relationships," an incumbent is likely to have background in law enforcement, but is not required to have a POST certification.

The POST Training Coordinator III is primarily a manager of "staff and program operations involving criminal justice training and development programs in the Basic Training Academy or over Regional Training Centers or the criminal justice support systems and services for officer and instructor standards and certifications." Although a Training Coordinator III may be POST certified, there is no requirement that the incumbent be certified or even have any former law enforcement experience.

The POST Executive Director is the chief administrator of the Academy and an incumbent must have a Bachelor's degree or higher, at least five years' experience as a manager, and at least one year's experience in the field of criminal justice as a Peace Officer, Detention Officer, Probation and Parole Officer, Corrections Officer or related field of law enforcement. There is no requirement that the POST Executive Director be POST certified.

The POST Academy Training Coordinator II and III and Executive Director are administrators, instructors and instructor supervisors responsible for peace officer training. The positions of Academy Training Coordinator II and III and Executive Director do not have "duties [that] include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision."

POST certification within one year of employment is required only of peace officers as defined in I.C. § 19-5101(d), with the exception of "any elected official or deputy serving civil process, the deputy director of the Idaho state police, [temporarily commissioned officers in times of emergency,] or those peace officers whose primary duties involve motor vehicle parking and animal control pursuant to city or county ordinance, or any peace officer acting under a special deputy commission from the Idaho state police." I.C. § 19-5109(2). After January 1, 1974, all peace officers, as defined in I.C. § 19-5101(d), "shall be certified by the council within one (1) year of employment." I.C. § 19-5109(2). "No peace officer shall have or exercise any power granted by any statute of this state to peace officers unless such person shall have been certified by the council within one (1) year of the date upon which such person commenced employment as a peace officer," I.C. § 19-5109(3).

The Academy Training Coordinator II and III and Executive Director positions are not required to be POST certified. Nothing in the administrative rules of the Idaho Peace Officer Standards and Training Council requires certification of the Academy Training Coordinator II and III and Executive Director, although nothing in the rules or statutes would prohibit an incumbent in such a position from maintaining an existing Basic Certificate, IDAPA 11.11.01.071-076, 11.11.01.097.02-05, Intermediate Certificate, IDAPA 11.11.01.107, or Advanced Certificate, IDAPA 11.11.01.108. Additionally, under the applicable rules, several classes of law enforcement employees, such as a “full-time peace officer, county detention officer, or communications specialist appointed by a duly constituted Idaho law enforcement agency or a professional member of the POST Council staff”¹ are “eligible for the award of a Supervisor, Master, or Management certificate” through completion of appropriate continuing education. IDAPA 11.11.01.116.01.a. And, a “full-time peace officer appointed by a duly constituted Idaho law enforcement agency or a professional member of the POST Council staff” may be eligible to obtain an Executive certificate. IDAPA 11.11.01.116.01.a. This rule, however, serves to underscore the conclusion that Idaho State Police employees such as the Academy Training Coordinator II and III and Executive Director are not “peace officers” within the meaning of I.C. § 19-5101(d) and are not required to be POST certified pursuant to I.C. § 19-5109(2).

2. The Director of the Idaho State Police may Reclassify the Positions of POST Academy Training Coordinator II and III and Executive Director as Employees Rather Than Officers of the State Police

The Director of the Idaho State Police has statutory power to commission persons as “peace officers.” I.C. §§ 67-2902, 67-2905. The Director’s personnel powers include the power to delegate the constitutional police power or authority vested in the Director. I.C. § 67-2901(4) and (5)(i). The power to commission persons as “peace officers” is within the discretion of the Director, who “may delegate duties to employees and officers of the state police.” I.C. §§ 67-2901(4). The mere possession of a current POST certificate does not automatically grant “peace officer” status to the possessor. The Director has the express authority to “[e]stablish such ranks, grades and positions as shall appear advisable and designate the authority and responsibility in each such rank, grade and position,” and “[a]ppoint such personnel to such rank, grade and position as are deemed by him to be necessary for the efficient operation and administration of the Idaho state police” I.C. § 67-2901(10)(a)(b).

¹ As set forth above, the professional staff assigned to POST are employed by the Idaho State Police. The Rules of the Idaho Peace Officer Standards and Training Council (POST) in one section refers to the Idaho State Police employees assigned to POST as “professional member[s] of the POST Council staff.” IDAPA 11.11.01.116.01.a (4-2-03). This rule appears to contradict another later rule which provides that the “Executive Director and his staff will be governed by the Policies and Rules of the state of Idaho and the Idaho State Police, concerning but not limited to fiscal, purchasing, and personnel matters.” IDAPA 11.11.01.031.04 (4-2-08). Additionally, the POST Council lacks personnel powers.

Only those persons commissioned by the Director of the Idaho State Police are authorized to act as "peace officers." To the extent the Director of the Idaho State Police employs a POST-certified person in a position as a regular employee, *i.e.*, non-commissioned employee as opposed to an officer, the POST-certified person is not a "peace officer." Employees of the Idaho State Police do not have the power to compel the Director to commission them merely by virtue of position and possession of a current POST certificate. A peace officer is a person commissioned by the Director of the Idaho State Police, a sheriff or deputy sheriff, constable, marshal, or policeman of a city or town. I.C. §§ 19-510, 67-2902. Possession of a POST certificate does not confer peace officer authority; it only indicates a possessor's eligibility to continue to be commissioned as a peace officer beyond the one-year anniversary date of hiring by a city, county or the state. I.C. § 19-5109(2).

If the personnel in the positions of Academy Training Coordinator II and III and Executive Director are not commissioned as officers, after their positions are reclassified as regular employees rather than officers, the incumbents will not be able to maintain current POST certificates. Under the current administrative rule:

The certification of any peace officer will be considered lapsed if the officer does not serve as a peace officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified peace officer who remains in an administrative, jail, communications, or [a] civil division duty assignment with a police or law enforcement agency that is a part of or administered by the state of Idaho or any political subdivision thereof or in a duty assignment as a tribal police officer with a federally recognized Indian tribe within Idaho and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision will retain their POST certification provided they satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours per year.

IDAPA 11.11.01.092 (4-2-08).² As set forth above the duties of these positions do not "include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision." Also, the Academy Training Coordinator II and III and Executive Director do not work at least 120 hours per year in the "prevention and detection of crime and the enforcement of penal, traffic or highway laws of this

² This rule appears internally inconsistent as the duties of a "peace officer" assigned to an administrative, jail, communications or civil division duty assignment, will likely not "include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision." An alternative reading of this rule would appear to require that a "peace officer" assigned to POST works at least 120 hours per year in the "prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision."

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state or any political subdivision.” Amendment of the above administrative rule to permit employees in these positions to maintain POST certification indefinitely through continuing education would likely increase retention of former “peace officers” in these positions.

C. Summary

The positions of Academy Training Coordinator II and III and Executive Director are not the equivalent of the respective positions of Idaho State Police Sergeant, Lieutenant and Major. The Academy Training Coordinator II and III and Executive Director do not qualify as positions for which current POST certification is required as a condition of employment. The positions of Idaho State Police Sergeant, Lieutenant and Major are positions for which current POST certification is required as a condition of employment. A reclassification of the Training Coordinator and Executive Director positions could be relevant to PERSI in regard to police officer member status for retirement purposes. If the decision to reclassify is made, we suggest that ISP contact PERSI to discuss this matter.

Sincerely,



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Researched by:

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