

## **MINUTES – WORK SESSION**

The work session of the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) was held on Thursday, September 8, 2011 at 9:30 a.m. The meeting was held at the J.J. Pickle Research Campus, The Commons Learning Center, 10100 Burnet Road, Bldg 137, Austin, Texas.

Commissioners attending were: Constable Charles Hall, Presiding Officer; Mr. Steve Griffith, Assistant Presiding Officer; Dr. Johnny E. Lovejoy, II, Secretary; Mr. James Oakley; Senior Police Officer Joe Pennington; Sheriff Joel Richardson; Ms. Patt Scheckel-Hollingsworth; Chief Ruben Villescas; and Mr. Randy Watson.

Also attending were Assistant Attorney's General Raymond Winter and Daniel Wiseman. TCLEOSE staff attending included: Executive Director Kim Vickers, John Helenberg, Chris Davis, Brian Roth, Laurie Abernathy, Lynn Beard, Jim Clifton, Darla Dixon, David Englert, Thurman Felder, Dennis Graffious, Richard Gutierrez, Nicole Hendrickson, Carey McKinney, Kenneth Merchant, Ivan Messer, Ken Mobley, Randy Odom, James Oswalt, Doug Staudt, and Kaye Wilson. Former executive director Tim Braaten was also in attendance.

### **Agenda item #1, Call to order**

Presiding Officer Charles Hall called the meeting to order. The Abilene Police Department Honor Guard presented the flags, Commissioner Richardson led the pledge to the American flag, and Commissioner Lovejoy led the pledge to the Texas flag. Executive Director Vickers gave the invocation. Kaye Wilson called the roll and reported that all commissioners were present.

### **Agenda item #2, Presiding Officer's Report**

Presiding Officer Hall congratulated former executive director Tim Braaten on his retirement August 31, and thanked him for his service. The commissioners presented Mr. Braaten with a pair of custom-made Justin boots, bearing the TCLEOSE seal. Presiding Officer Hall announced that through Mr. Braaten's efforts, the Texas Peace Officers' Memorial received a \$10,000 check from the O'Connor-Hewitt Foundation.

Presiding Officer Hall expressed his appreciation to the commissioners, and spoke of his tenure on the commission which began in 2005 when he was appointed by Governor Rick Perry. In 2007 he was appointed to the presiding officer position. The Presiding Officer thanked the TCLEOSE staff and field service agents. He then expressed appreciation to the Abilene Police Department Honor Guard members Sgt.

Tim Keawmanee, Officer Wallace McDaniel, and Det. Stacy Cisneros for presenting the flags at the meeting.

### **Agenda item #3, Executive Director's Report**

Because Mr. Braaten served as the executive director for the quarter preceding the commission meeting, he reviewed the executive director's report. He also stated that 2,515 of the 2,547 law enforcement agencies in Texas have submitted their racial profile reports for calendar year 2010.

### **Agenda item #4, Reports, items to discuss, follow-up items from previous meeting**

- a. *Review deferred adjudication as a prohibition from law enforcement, as requested by Sheriff Johnny Burks at the June 2011 meeting*

Executive Director Vickers explained that the interpretation of the TCLEOSE rule on deferred adjudication is based on the Texas Occupations Code. The Occupations Code does not address deferred adjudication, but does address community supervision. The rule is based on deferred adjudication as a conviction. Staff brings this to the commission for consideration whether deferred adjudication is an absolute conviction when someone is being considered for hiring.

- b. *Last Chance Agreement – deferred to a future meeting*

Executive Director Vickers explained that this item has been pulled from the agenda for discussion at another time. Mr. Braaten explained that there was confusion at the June commission meeting between the last chance agreement and a rule change on a hard time suspension that was being brought forward. Some thought they had to hire individuals that were committed to a last chance agreement when, in fact, someone with a last chance agreement was required to divulge this to an agency that was considering hiring them. Once the rule change is in place, the commissioners may want to review the last chance agreement.

- c. *Posting proposed rule changes on the TCLEOSE website prior to Commission meetings*

Mr. Vickers stated that the proposed rule changes will be posted on Monday before the meeting. This will give the commissioners appropriate time to review the changes before they are broadcast to the public.

At this point, the Presiding Officer asked about the new phone system at TCLEOSE. Mr. Vickers stated that we are getting a clear picture of the number of calls that are being received. The last week of August, the end of the training unit, we hit our highest number of calls ever received, 2,012 calls in one day. On that same day, over 1,000 calls were made to TCLEOSE in one hour. Through a

new recorded system, a caller can obtain a considerable amount of information without having to speak with a staff person.

*d. Statewide strategic planning workshops*

Mr. Helenberg stated that staff plans to mirror the 2009 strategic planning and the workshops will be held in Midland, Amarillo, and Dallas the week of January 23, 2012, and in Houston, McAllen, and Austin the week of February 20, 2012. The field service agents will coordinate the meetings.

*e. Pros and cons of a one agenda meeting*

Commissioner Oakley expressed his interest in having a one agenda meeting where items are discussed and then voted on which should make the quarterly meetings more efficient. Commissioner Lovejoy indicated that occasionally more information is needed before a vote is taken and the two agenda meeting format allows for extra time to obtain this information. Commissioner Oakley suggested that in the normal course of going through the agenda, if there is an item that requires additional information, that item can be held until later in the meeting after the information has been obtained, or the meeting can be recessed until the information has been gathered. Keeping the two agenda meeting was supported by Commissioner Hollingsworth.

Presiding Officer Hall asked that Executive Director Vickers set a policy that all support documentation for agenda items be submitted to TCLEOSE by a specified date prior to the meeting, and that no handouts be distributed at the meeting. Robert Armbruster, Houston Police Union, asked that this deadline date be included in all notification letters that TCLEOSE sends to those that are scheduled on the agenda.

Henry Fluck, Chief of Police, Cedar Park Police Department and representing the Texas Police Chief's Association, addressed the commission concerning the last chance agreement. Chief Fluck stated that the association is strongly opposed to the last chance agreement. The commissioners directed several questions to Chief Fluck. Commissioner Pennington asked if the position Chief Fluck was presenting was from the TPCA board or from the membership, and Chief Fluck noted that he is presenting the board's position.

**Agenda item #5, Items of Interest**

*a. Non-constitutional chief administrators to have an Intermediate peace officer proficiency certificate*

Mr. Braaten explained that when a civil service city hires a chief, the individual must hold an intermediate certificate or be eligible for the certificate. When a civil service city is considering hiring someone from another state, TCLEOSE is asked to review the candidate's training and certify that he meets the equivalency to the Texas intermediate certificate. Mr. Braaten asked the commissioners to

consider issuing the intermediate certificate based on the equivalency rather than requiring the individual to complete the Texas intermediate course work.

b. *“Street” chief administrator test vs. “Non-street” chief administrator test*

Mr. Braaten explained that a street chief is one that directly supervises the street officers. A non-street chief usually has more than two ranks between himself and the street officer and almost never supervises the street officer. Mr. Braaten suggested that the commission consider defining the two types of chief and create a non-street chief licensing examination. Those that have not attended a Texas basic peace officer course would still need to take course 1018 (supplemental peace officer course) prior to taking the licensing exam.

c. *L-2 Medical and L-3 Psychological, by policy, hiring agency must obtain copies of these forms from the previous agency. Consider rule amendment reference the existing policy.*

Mr. Braaten explained that when an officer moves from agency to agency and has less than a 180-day break in service, he is not required to have a new medical and psychological form completed. By rule, agencies are required to maintain these forms for 5 years, and then the form(s) may be destroyed. However, by policy, TCLEOSE is requiring the hiring agency to obtain past medical and psychological forms. Mr. Braaten would like for the commission to consider making the policy a rule. Staff has questioned TCLEOSE’s authority to require the past medical and psychological forms. The authority is by executive director policy. Mr. Braaten believes this policy needs to either be rescinded by the commission or a rule needs to be created. Commissioner Villegas stated that many agencies have a policy requiring a new medical and psychological regardless of whether there is a 180-day break in service. He asked if there could be a rule requiring all agencies hiring an individual with less than a 180-day break in service to require a new medical and psychological. Mr. Braaten responded that this would be within the commission’s authority. Commissioner Pennington asked if staff believes they could get buy-in from the associations to support this, and Mr. Vickers replied that he supports this idea and is willing to discuss it with the associations.

**Agenda item #6, Discuss Request for Waiver of TCLEOSE Rules 215.15 Enrollment Standards and 217.1 Minimum Standards for Initial Licensure for Mallory D. Melendez and the Fort Bend County Sheriff’s Office.**

Mallory Melendez, Sheriff Milton Wright, Chief Deputy Craig Brady, and Attorney Robert Pelton addressed the commissioners. Sheriff Wright stated the issues of the case, and noted that when Ms. Melendez made application to the Fort Bend County Sheriff’s Office, she disclosed her arrest. Ms. Melendez stated that she noted her arrest on the application to attend training academy. Ms. Melendez responded to several questions from the commissioners. Chief Deputy Brady stated that the background check by the agency was not completed properly. Commissioner Villegas commented that a lack of due diligence seems to be a recurring issue as waiver requests are brought forward.

When asked about convictions and deferred adjudications, OAG Winter stated that a conviction and a deferred adjudication are not the same. However, under some circumstances state law administered by TCLEOSE treats a deferred adjudication as a disability to licensure.

Mr. Vickers noted that as TCLEOSE finds ineligible officers, the officer's training and licenses are cancelled. Commissioner Hollingsworth asked how TCLEOSE is addressing academies that admit ineligible applicants. Mr. Vickers explained that a letter of admonishment is sent, and if TCLEOSE continues to see examples of this action from the same academy, the academy will be placed at risk. The next step is to revoke the academy license.

Commissioner Pennington asked how staff is handling falsification of records by individuals wanting to enter an academy. Mr. Vickers stated that if we find where someone has falsified an official document, we will pursue it.

**Agenda item #7, Discuss request from Johnny Williams that the commission reconsider revoking his TCLEOSE peace officer license and changing the order to a cancellation.**

Mr. Williams gave the history of his employment. He was hired as a jailer, completed the basic peace officer course, and then was hired as a deputy. He stated he didn't know there was a time line on Class B misdemeanors. In 2006, his Class B misdemeanor was reported to TCLEOSE. In December of that year, the commission voted on the revocation of his license. Mr. Williams stated that he did not attend the meeting. He is now asking the commission to change the action taken on his license in December 2006, from revocation to a cancellation. Presiding Officer Hall asked Mr. Williams what difference it would make to him if the license was cancelled or revoked. Mr. Williams stated that this identifies him as someone who files false reports. When applying for other positions, employers will look at whether he has had a state license revoked. After further questioning, Mr. Williams stated that the SOAH judge recommended revocation.

**Agenda item #8, Discussion of a motion for rehearing by commission staff in the matter of Jose C. Blanco, Jr., for Suspension of License.**

Mr. Davis noted that Mr. Blanco's name came before the commissioners at the June meeting concerning compliance in the 2005 – 2009 training cycle. By error, Mr. Blanco was inadvertently left on the list of agreed orders. Mr. Davis has filed a motion for rehearing to have the order set aside and vacated. If so ordered, the matter will be dismissed.

**Agenda item #9, Discuss the proposed orders of amendments to existing TCLEOSE rules**

- 12-01-211.1 Definitions
- 12-02-211.16 Establishment of an Appointing Entity
- 12-03-211.29 Responsibilities of Agency Chief Administrators
- 12-04-215.3 Academy Licensing

- 12-05-215.5 Contractual Training
- 12-06-215.6 Academic Alternative Licensing
- 12-07-215.9 Training Coordinator
- 12-08-215.15 Basic Licensing Enrollment Standards
- 12-09-217.1 Minimum Standards for Initial Licensure
- 12-10-217.3 Application for License and Initial Report of Appointment
- 12-11-217.7 Reporting the Appointment and Termination of a Licensee
- 12-12-217.8 Contesting an Employment Termination Report
- 12-13-217.9 Continuing Education Credit for Licensees
- 12-14-217.11 Legislatively Required Continuing Education for Licensees
- 12-15-217.15 Waiver of Legislatively Required Continuing Education
- 12-16-217.19 Reactivation of a License
- 12-17-219.1 Eligibility to Take State Examinations
- 12-18-219.2 Reciprocity for Out-of-State Peace Officers, Federal Criminal Investigators, and Military Police
- 12-19-219.3 Examination Administration
- 12-20-219.5 Examinee Requirements
- 12-21-221.13 Emergency Telecommunications Proficiency
- 12-22-223.2 Administrative Penalties
- 12-23-223.17 Reinstatement of a License
- 12-24-223.19 Revocation of License
- 12-25-223.15 Suspension of License
- 12-26-223.16 Suspension of License for Constitutionally Elected Officials
- 12-27-211.27 Reporting Responsibilities of Individuals
- 12-28-215.16 Basic Telecommunicator Enrollment Standards
- 12-29-217.2 Minimum Standards for Telecommunicators
- 12-30-Chapter 221 Proficiency Certificates

Dr. Messer noted that most of the proposed changes are due to legislative changes and prior discussions. Presiding Officer Hall asked about the term “fit for duty” that appears in several of the proposed rule changes. Dr. Messer noted that this term is from the Psychological Review Committee to ensure that a chief administrator had officers that were fit for duty, and that the administrator was not hampered by H.R. in reviewing problem areas in their early warning systems. Presiding Officer Hall asked Commissioner Lovejoy why the term “fit for duty” was chosen by the committee. Commissioner Lovejoy noted that this term falls under the fit for duty rule that already exists. Presiding Officer Hall is concerned that some may consider physical agility as a part of fit for duty. Commissioner Lovejoy believes “fit for duty” is the correct term to use and would not want it “marshmallowed” where it becomes meaningless. Commissioner Villescas asked if Chapter 143 was considered by the committee when choosing the term “fit for duty,” and Commissioner Lovejoy confirmed that it was considered and it’s left up to interpretation of the reader to decide their meaning of fit for duty. Presiding Officer Hall suggested that the term be reviewed, as this is the first reading of the proposed rule change. Mr. Braaten stated that this term is used for new

law enforcement agencies and those new agencies will be determining what “fit for duty” means to their agency.

Commissioner Richardson questioned rule 219.5(6)(e) concerning communicating any content of the licensing exam to another person. It is common for an academy coordinator to try to identify any problems with the exam so that the subject matter can be covered more extensively in the basic course. He asked if an exemption can be allowed for the training coordinator to ask the student questions after the exam. Commissioner Lovejoy supported Commissioner Richardson’s concern and asked if there could be a notation in the rule allowing for critique.

**Agenda item #10, Adjourn**

Presiding Officer Hall invited the audience to attend the swearing-in ceremony of the new executive director of TCLEOSE, Kim Vickers, at 10:00 a.m. on Friday September 9.

Presiding Officer Hall adjourned the meeting until 1:00 p.m.

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Dr. Johnny E. Lovejoy, II, Secretary  
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