

**MEETING MINUTES  
MONTANA POST COUNCIL  
DECEMBER 2, 2015  
POST CONFERENCE ROOM  
HELENA, MT**

**PRESENT**

Tony Harbaugh ~ Chairman ~ by phone  
Laurel Bulson  
Kimberly Burdick ~ by phone  
Jim Cashell ~ by phone  
Bill Dial ~ by phone  
Lewis Matthews ~ by phone  
Kevin Olson  
Ryan Oster ~ by phone  
Tia Robbin ~ by phone  
Jesse Slaughter ~ by phone  
Jim Thomas  
Gina Dahl ~ by phone  
John Strandell

**NOT PRESENT**

**STAFF PRESENT**

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

**LEGAL COUNSEL PRESENT**

Sarah Clerget  
Chris Tweeten by phone

**GUESTS**

Andrea Lower ~ Gallatin County Court Services ~ by phone  
Rich Friedel ~ Billings ~ by phone  
Alex Roth ~ Billings ~ by phone  
Mike Buechler ~ Bridger Police Department ~ by phone  
Steve Ette ~ Gallatin County Court Services ~ by phone  
Curt Stinson ~ Helena Police Department  
Glen Stinar ~ MLEA Administrator  
Truman Tolson ~ Missoula Police Department ~ by phone  
Jim Smith ~ Helena Mayor ~ by phone  
Mike Linder ~ Yellowstone County ~ by phone  
Donna Whitt ~ Toole County ~ by phone  
Roger Nasset ~ Kalispell Police Department ~ by phone  
Rick Musson ~ Laurel Police Department ~ by phone  
Scott Hamilton ~ Park County ~ by phone  
Bill Todd ~ Gallatin County Court Services ~ by phone  
Ryan Finn ~ Gallatin County Court Services ~ by phone  
EJ Clark ~ Belgrade Police Department ~ by phone

John Turner ~ Fort Benton Police Department ~ by phone  
 Doug Colombik ~ Miles City Police Department ~ by phone  
 Rich McLane ~ Bozeman Police Department ~ by phone  
 Bill Cassell ~ Petroleum County ~ by phone  
 John Klobofski ~ Chinook Police Department ~ by phone  
 Gabe Harry ~ City of Chinook ~ by phone  
 Josh McQuillan ~ Carbon County ~ by phone  
 James Marble ~ Stevensville Police Department ~ by phone  
 Bill Dove ~ Gallatin Airport Authority ~ by phone  
 Leo Dutton ~ Lewis & Clark County ~ by phone  
 Travis McElderry ~ Ravalli County ~ by phone  
 Dan Cederberg ~ Missoula County ~ by phone  
 Bill Michaelis ~ Yellowstone County ~ by phone

### WELCOME

Meeting called to order by Tony Harbaugh, Chairman, at 9:00 a.m.

Perry Johnson called roll.

Bill Dial made a motion and Kimberly Burdick seconded to approve the minutes of the September 16, 2015 meeting. Motion carried, all members voting in favor.

### PUBLIC COMMENT/GUEST ISSUES

Glen Stinar thanked the Council members for participating in the survey that was sent out. He said the comments were generally good concerning the training and staff but the facility comments indicated some improvements needed. He is working with the legislative session to give those recommendations. The next briefing will be Tuesday, December 8, 2015 with the Legislative Finance Committee. Revenue expenses and survey results will be discussed. Glen Stinar stated that he will give a copy of the survey results and year-end report to Perry Johnson to disseminate to the Council members.

He also shared that the Model Policy Committee had met and updated the twenty-six Model Policies. Scott Sterland, the MLEA Risk Management Program Manager, developed a two hour ethics training and sent it out to the field.

The MLEA will host a Training Coordinators Conference in March and invited all training staff to attend.

Glen Stinar asked the MLEA Professional Programs Manager to schedule a regional meeting. It will be held in Douglas, Wyoming in the spring. There will be six agencies present with the hopes of staff members bringing home some new ideas.

The MLEA has scheduled an Instructor Development class and a First Line Supervisor class in Miles City in July. If the classes go well the trainings will continue.

Rich Friedel commented that he and Alex Roth, a practicing attorney from Billings, were on the phone together. He mentioned that there has been ongoing dialog with

POST concerning pretrial service officer certification. There are two different avenues they are looking at; having some sort of private certification for private individuals who can't attend the MLEA as a public employee or working on legislation to change the language to make it applicable to the situation here in the state of Montana. Rich Friedel asked Perry Johnson to pass on to the Council the outline he sent to him. Rich Friedel is looking for some guidance and input concerning the curriculum.

Perry Johnson shared that he and Rich Friedel had spoken several times in the last few weeks and Rich Friedel had sent Perry Johnson a curriculum outline that he and Stillwater Tactical had created. Perry Johnson reported that POST hadn't received the outline in time to include it with the meeting agenda. Perry Johnson can push it out to the members, it can be added to the next meeting agenda and it can go before the Curriculum Committee.

Perry Johnson did think the bigger issue is the second item Rich Friedel brought up. What is the status of private misdemeanor officers and collectively as an agency, how does POST manage that in the future and where does POST go from here. He appreciates that Rich Friedel and his group have brought forth an outline of what they think might be a good start.

Perry Johnson also mentioned that Dan Cederberg also represents a group who have some tremendous insight as to what's necessary to be successful with that industry. Perry Johnson isn't convinced that POST is the group that should oversee that industry. He knows it's up to the Council as to what they think about the oversight. It appears to be very similar to private security and Perry Johnson thinks the Department of Labor could have oversight of the group.

Perry Johnson continued that POST has reached out to the Attorney General asking for additional guidance on these topics in regards to who POST has oversight over and who potentially or where potentially these requests could be accommodated.

Rich Friedel responded that he just wanted to get this out on the table and agrees with Perry Johnson that the nature of pretrial services is not within the Department of Corrections and probably should not be burdening POST. He has been having the conversation with several of legislators in his county letting them know that his position is to direct operations to the Department of Labor. He would like to work through legislation for changes and would like to rethink the whole misdemeanor probation officer issue. Some would like to leave the misdemeanor probation piece in the statute in case a governmental agency would like to have misdemeanor probation employees. They would fall under POST since they would have arrest powers and Rich Friedel doesn't think pretrial monitors should have arrest powers.

Perry Johnson assured Rich Friedel that the Council is very interested and wants to be a part of the process to sort this issue out. He offered help if needed.

Perry Johnson asked Dan Cederberg if he had any comments. Dan Cederberg stated that he works with Missoula Correctional Services that operates the Prerelease Center for the Department of Corrections in Missoula and two other programs for the county. Their interest lies in getting certification for their officers. They currently have three officers who have been through a basic academy. He explained they were

at the Council in 2013 with this issue about getting the training and certification so that they could continue running the programs in the same way they have been running them since the mid-nineties.

Dan Cederberg said the Missoula Correctional Services would like the misdemeanor probation and pretrial services officer to have arrest authority. He would like to be on the next meeting agenda and come with a comprehensive plan. His plan is to get in touch with Rich Friedel and come back with some ideas for addressing the situation.

Perry Johnson commented that he thinks Sarah Clerget, Chris Tweeten and himself could collectively come together with Dan Cederberg and Rich Friedel and discuss these issues for the purpose of information for the Council.

Perry Johnson reported that a month earlier Dan Cederberg, Kirsten Pabst, Chris Tweeten and himself met and discussed several issues.

Chris Tweeten added that he and Dan Cederberg had been in contact over the past week and felt like they had clarified for MCS the Council's position with respect to this particular problem. He explained the problem arises from the fact that POST has a statutory requirement for certification of misdemeanor probation officers and pretrial services officers. Chris Tweeten went on to say that while they aren't exactly the same, both groups of officers are obligated by statute to receive the same training as felony probation officers receive. As discussed earlier, this is one of the big issues Rich Friedel is hoping to take to the legislature and get changed since the job duties are considerably different. Chris Tweeten reiterated that if the legislation goes forward, POST would like to be a constructive participant in the process working with the local governments to make it work for all parties.

Chris Tweeten reminded everyone that POST has a request in to the Attorney General asking for an opinion on whether POST has the ability to grant waivers to local governments for a short term fix. The Council is waiting to hear back before it would be receptive to waiving a statutory requirement regarding basic training.

Chris Tweeten explained that the pretrial officers' statute is a little different in the sense that it recognizes that the workers are in a contractual agreement with the county, not actual county employees. The employment question isn't a barrier to getting a person certified. He advised Dan Cederberg to review the ARMs for MCS in regards to steps that need to be followed to get certified and so forth. If pretrial services officers have been properly trained in accordance with the statute they should submit their applications to POST to see if they qualify for a certificate.

Chris Tweeten said he advised Dan Cederberg in regards to misdemeanor probation, the statute doesn't have the language in it allowing contractors to provide the service of misdemeanor probation to a county. Only government employed misdemeanor probation officers would qualify for certification. He related that all of POST's cards are on the table and are committed to work to come up with a constructive solution.

Bill Dial stated that he is concerned with the way the meeting is being conducted. The Public Comment time is for the public to comment, not the members. He would like to see the situation with MCS on the next agenda to be discussed.

Tony Harbaugh told Bill Dial that it is on the agenda and will be discussed later in the meeting and appreciated his comment.

#### **PUBLIC COMMENT REGARDING RESERVE OFFICER ISSUES**

Perry Johnson shared that regardless of what has been discussed or said outside the Council business, POST has never taken the position to eliminate or diminish the role of reserve officers. The agenda item this morning is for discussion. POST wants to share information so that communication with the Council and its partners can take place. POST really feels like the stakeholders and the agencies and administrators are POST's partners. The issue is on the agenda today specifically to start a conversation and to create a process of how to gather information and provide information.

Perry Johnson said at the September Council meeting he and Chris Tweeten were tasked with creating an informational memo to disseminate to all agencies that would contain relevant data that POST could collect and disseminate that would create a common point of reference for future discussions and actions. The Council understands this issue is complex. It relates to statutes, ARMs, AG opinions, definitions and history.

Three years ago POST worked through a very complex case with an agency in western Montana involving reserve officers issues. That contested case cost POST a tremendous amount financially but the bottom line is it cost every agency in Montana in regards to trust and honor and standing as a profession. He reminded everyone that the reserve officer statute was created in 1977 with a requirement of eighty-eight hours of training. That eighty-eight hours of training is still the standard, thirty-eight years later. In 1977 the law enforcement basic academy for full time officers was 120 hours. In 2015 it's 480 hours. If we expanded reserve officer training at the same rate that law enforcement training was expanded, it would be about 352 hours.

Finally, he reminded everybody that this is the way the POST Council does business. This is the only way it does its business. There are no secret meetings. There are no conclave or group that meets and makes decisions outside the scope of these Council meetings. He also remarked that he doesn't pretend to be an expert in any of these matters. This is the stakeholders Council and the way they do business. He is really hoping this will be a positive experience today and a good starting point for this discussion.

Tony Harbaugh opened it up for individuals to voice comments.

James Marble thanked Perry Johnson for the overview of the history regarding reserve officers. He related that awhile back POST attempted to address the issue. There was discussion about the need for legislative change for training hours. He does believe that still needs to happen. One of the biggest factors that came to play was the fact that there was no alternate definition of a reserve officer in 7.32.303 and associated statutes. He thinks that it needs to be addressed. The realization is that the reserve officers fall under POST for training, curriculum and review. He thinks it's imperative to create a canned curriculum so it will be consistent. There was a dacum study done with officers across the state that worked towards developing that canned curriculum that could be disseminated. He would love to see forward momentum with oversight

by POST and some direction towards establishing a goal in consistent training for reserve officers.

Tony Harbaugh said the item is on the agenda today because the Council is seeking input.

Leo Dutton commented that it's time to reevaluate what is required for reserve officers. His agency has a very significant program with a robust training program. He doesn't know if all areas do more than 88 hours or not. He agrees that 88 hours in today's world is a feeding frenzy for defense attorneys. He thinks it would be a good idea to come up with an appropriate number of hours and also agree what the reserve officer would be eligible for and not eligible for. They shouldn't be running full time shifts and he also would like to determine what a stipend really is. He understands that an agency does depend on the reserve officers to help them out. He feels it may be time to go to the legislature with this issue. It's important to open the dialog to discuss how this can be accomplished.

Bill Castle agreed with what Leo Dutton had to say and mentioned that the rural communities value their reserve officers. He also stated that there are many valid points being brought up in regards to training. The more an agency relies on the reserve officers, the more they should be trained, in his opinion. He would like to see a curriculum developed that everyone could function under.

Rick Musson commented that the Laurel Police Department has had a reserve program for much longer than he has been there. They use their reserve officers to transport people. Their agency's reserve program is 150 hours. It's designed that anyone can pick up the book, study and teach it. They train other agency's reserves as well. He offered his curriculum as a guide to go off of and any help needed to develop the material.

Donna Whitt agreed with everything that had been said but asked if the trainers need to be POST certified to teach the reserve officers.

Curt Stinson stated he agreed with what has been said. He pointed out that POST is being asked to certify officers whose training is dependent on the agency and all the other basics are under the control of the MLEA. He would like to see a standard set by POST and possibly the instructors being certified to teach the curriculum.

Jim Thomas asked if these instructors not being POST certified is an issue.

Chris Tweeten asked Perry Johnson to answer that question.

Perry Johnson stated that he appreciated that Bill Dial brought up the need for the Public Comment period to be for the public to comment. He wanted to wait until the next agenda item is called by the chairman and address it then.

Leo Dutton stated that the answer to that question is, "how defensible are your instructors?" It all revolves around court.

## OLD BUSINESS

### Reserve Officers:

**Certificate Application** - Perry Johnson directed the Council members to the legal references notebook, pages 14 & 15. He informed the guests that the Council would be looking at 7-32-214 that talks about the basic training program required for reserve officers. This is the standard that has been adopted by the Council. Subsection (2) reads that the law enforcement agency is responsible for training reserve officers in accordance with minimum training standards established by the Council.

Perry Johnson stated that the minimum standard is 88 hours and, that, being a POST approved minimum would require the instructors to be POST certified. He shared that the baseline for that is; the officer have three years of experience as a public safety officer, a 40 hour or equivalent instructor development class, and submit an application with a completed lesson plan.

Perry Johnson shared that his responsibility and the responsibility of the staff is to make sure of what the ARMs are and the way they interact with the statutes is carried to the administrators of Montana. He related that this is a big program to carry with a small staff. This Council has been tasked with a tremendous amount of responsibility and foot work in regards to the whole law enforcement community in the state. The relationship established with Kevin Olson prior to Glen Stinar was a tremendous resource to Perry Johnson. Glen Stinar's relationship and his staff has been equally beneficial. He believes that POST is in educational mode for both the administrators and the Council. It's important to tie the ARMs to AG opinions to statutes to definitions.

Perry Johnson thinks the availability is there to reach back out to the MLEA and ask them, based on what they've already provided to POST, to provide an expanded view of this curriculum that's in the statutes. He would like them to help POST develop a lesson plan curriculum that can be given to individual agencies where certified instructors can pick it up and present it back to POST to be certified. He would like it to be a "one size fits all" for a minimum standard and if an agency wants to expand beyond that, they can submit their lesson plans to POST for review and issuing of instructor certificates. He feels like the Council is going in the right direction with this issue.

Perry Johnson directed the Council to page 25 of the meeting materials. He remembered that at the last Council meeting the certificate application was discussed. Tia Robin asked if the three requirements for a reserve officer were on the application form.

1. Have you been a reserve for more than a year?
2. Are you a volunteer member?
3. Are you part time?

Katrina Bolger updated the form after the last meeting to reflect those questions.

Perry Johnson explained that the form is on the agenda today to update the Council and ask if there are any additional edits and for a motion to adopt the certificate application so it can start being used online.

Kevin Olson asked Curt Stinson if the retired officers they use in their reserve program have to go back through a separate reserve training or are the credentials accepted.

Curt Stinson said they don't make their retired officers go through additional training and now is wondering if that is correct practice. Kevin Olson agreed that a peace officer basic academy should suffice and wondered if the application should reflect that.

Perry Johnson agreed with that practice and also referenced 7-32-240 about maintaining an active status as a reserve officer. He directed the Council to page 17 of the reference guide. He explained that a retired officer can also maintain their active status by becoming a part time officer. The distinction is a part time officer can be paid a regular salary. It might affect their retirement benefit so it would be something they would have to take a look at.

Kevin Olson didn't agree with that. The reserve officer specifically states that you can't belong to a retirement system. The retirement benefit is based on the last three years of employment. He thinks a part time officer is required to make a contribution to a retirement system. Kevin Olson referred to Randy Robinson who worked part time for the Havre Police Department for three years which reduced his retirement by almost \$1,500.00 a month. That's the benefit to the reserve status in his mind.

Kevin Olson thought another line should be added asking if the officer has met the requirement of 7-32-303, or in the alternative, met the requirement of the reserve statute.

Sarah Clerget added that a problem may arise in regards to 7-32-214 where it states that a reserve must have a minimum of 88 hours of training within 2 years of appointment as a reserve. If they went to basic 15 years prior the training doesn't meet the requirement in terms of time frame.

Curt Stinson disagreed with the interpretation. He said they can't function as law enforcement after 2 years unless they completed the training. It doesn't say that training has to be completed within those 2 years is how he interpreted that.

Chris Tweeten agreed with that interpretation.

Sarah Clerget commented that it might depend on the outcome of the Attorney General's request to see if POST is allowed to waive a statutory requirement. The Council would be able to waive the requirement for officers who have completed an LEOB. She also said that the Council may be able to waive the ARM requirement in (2) instead of the statutory requirement.

Kevin Olson shared that 7-32-240 answered his specific question. Katrina Bolger commented that the question arises as to whether an officer has to have a reserve

basic certificate in addition to law enforcement basic certificate because they are maintaining their law enforcement basic.

Sarah Clerget stated that essentially they aren't certified as a reserve, they are certified as a peace officer. The way to solve it might be to say POST isn't going to give a reserve certificate because in order to receive a reserve certificate you have to meet the requirements of 7-32-214. POST is going to maintain the peace officer's basic certificate. She explained that it matters in regards to what will be taken away if it is ever taken away by POST by a contested case.

Perry Johnson thought it does say that the basic peace officer certificate is maintained. He said Sarah Clerget and Chris Tweeten interpret the requirement differently and it can be resolved outside the scope of the meeting.

Kevin Olson remarked that his comment was specific to the application. Perry Johnson clarified that the question is a matter of an officer being issued a reserve basic certificate if the officer has already received a peace officer basic certificate. If the Council revokes a certificate which would they revoke if they had been issued both.

Chris Tweeten referred to 7-32-211. It states a person who meets minimum standards for appointment as a peace officer may be appointed as a reserve officer. Perry Johnson stated that the minimum standard refers to 7-32-303 where it states a person has to be a citizen and so on. Perry Johnson shared that the minimum standard for basic certification is one year of service with the agency and successful completion of MLEA. He directed the members to 7-32-303, or page 18 in the legal reference book. Sarah Clerget commented that the 1 year could be the same.

Kevin Olson stated that his question pertains to being able to provide clear guidance to the agencies on how they notify POST of who their reserve officers are and what training they have that would qualify them for certification. Perry Johnson asked the Council to allow him to talk to Sarah Clerget and Chris Tweeten to make sure whatever position POST takes is a clear bright line.

Sarah Clerget said a line might be able to be added that asks if the person is a retired law enforcement officer. Perry Johnson asked if they have to be a Montana peace officer. Kevin Olson said no because it is the language of the legal equivalency course.

John Strandell asked if it is absolutely critical to approve the form today or should all the issues be discussed and brought back as an agenda item for the next meeting. Perry agreed to have it on the agenda for the next meeting.

Kevin Olson asked if the Council has to approve forms. John Strandell said they have in the past. Katrina Bolger remarked that there are some forms that the ARMs specifically say have to be approved by the Council, but not all of them.

Kevin Olson made a motion and Jim Thomas seconded that Perry Johnson make a form that works for the office. Motion carried, all members voting in favor.

### **Letter to Agencies**

Perry Johnson directed the Council members to page 27 of the meeting materials. He shared that he and Chris Tweeten were tasked at the last meeting with creating a memo to send out to the agencies in Montana that relates to the questions about reserve officers. Pages 27, 28 and 29 contain the information that Perry Johnson, Katrina Bolger and Chris Tweeten created. He asked the Council to review the document to be sure it is what they want sent out after this meeting.

John Strandell thought the document looks fine. Chris Tweeten commented that Katrina Bolger was the one who created the document and complimented her on a job well done. He thinks it is useful guidance for the agencies.

Perry Johnson shared that there are 32 pages of references Katrina Bolger used to create the document. If the stakeholders have questions the reference pages are attached.

Tony Harbaugh asked Katrina Bolger about the last paragraph on page 27, "County public funds may be used to reimburse a reserve deputy sheriff's expenses". He asked if that was referred to in the Attorney General's opinion in the same paragraph. Perry Johnson commented that parenthesis could be added after the sentence as a referral.

Tony Harbaugh told the Council the common question administrators ask him, is how to interpret that part of the statute. Perry Johnson said it is one of the most frequent phone calls he receives as well. He pushes the Attorney General's opinion out to the callers because at this point the 1988 opinion is the most current reference POST can give. He told the Council that all the reference documents would accompany the letter when it is sent out.

Chris Tweeten stated that the workers compensation issue is covered by statute. The statute states that reserve officers have to be carried on the local governments workers comp coverage. When they are acting in the course and scope of their assignment with the local agency and get hurt, they are going to be entitled to workers comp benefits.

Christ Tweeten said he does think there is some room for interpretation on what reasonable benefits constitutes. A reserve can't be paid a salary based on performance or hours worked but a reserve can be paid reasonable benefits. He advised that a local government does have some room for interpretation that might fall in the area of reasonable benefits.

Tony Harbaugh shared that several years ago a work comp claim was filed on behalf of a reserve officer. At that time it was decided that even though the officer was a doctor in his day job, he was only going to be compensated at a beginning officer wage for that agency even though he could no longer function in his day job.

Perry Johnson pointed out that while the letter is instructive and there are numerous attachments that speak for themselves, POST stayed away from span of control. He believes until POST has an opportunity to work with its partners that have these programs, and collectively it needs to be something to develop a discussion on. He also brought up that there hadn't been any discussion about if they had been paid historically. In the last meeting the decision was made to find out if a reserve had

been paid before. How does that affect an appointment as a peace officer? That topic isn't addressed in the letter and hasn't been given a bright line. It is Perry Johnson's opinion to look at that in a case by case basis. He thinks the meeting today and through the efforts of discussion held with MACOP and MSFOA by Ryan Oster and Tony Harbaugh, will get the discussions started. Those discussions will lead to a better understanding with the agencies as to where the Council is going and how deliberately POST is moving into it.

Perry Johnson suggested that if this meets the intent of what the Council asked for at the last meeting that the staff go ahead and send it out. If there are other edits wanted, they could be incorporated.

Katrina Bolger will add an "s" to "reserve" on the first bold heading.

Curt Stinson wondered about the second page of the letter, under "What training do reserves need?" He referred to the discussion that Kevin Olson and him were having concerning the 88 hours having to be completed in 2 years. He wondered if the interpretation was still undetermined and needed to be determined before the letter goes out. Perry Johnson thanked Curt Stinson for reminding the Council about that. Perry Johnson asked the Council to allow for edits after a legal review.

Tony Harbaugh opened the floor for comments by the members. None were spoken so the go ahead was given to do some research and make the necessary edits. Perry Johnson advised the changes will be made. When it is sent out to the agencies each Council member will receive a copy as well.

Ryan Oster wanted to know if the letter goes out now, then changes are made to the whole reserve scheme, will it create confusion among the agencies. Perry Johnson would like to add a final paragraph to the letter stating that this is a starting point and as POST moves forward it will be done in partnership with the stakeholders and the affected parties as a team. Ryan Oster agreed with that.

Chris Tweeten reported that the federal law suit going on in Ronan may use the document as an exhibit once it is distributed. He also stated that Perry Johnson may be noticed for a deposition with respect to the contents of this letter since it will be going out with his signature on it. POST may get somewhat further entangled in the law suit after the issuance of the letter.

Tony Harbaugh asked Chris Tweeten if there is any concern on his part in regards to POST remaining consistent in how it has been dealt with previously. Chris Tweeten is comfortable with POST's consistency as far as he knows in recent years.

Perry Johnson asked Tony Harbaugh to ask Sarah Clerget the same question. Sarah Clerget thinks the memo doesn't take a position on anything. The memo just explains what the law is with no interpretation at all in the memo.

Perry Johnson reviewed the decision of the Council. There will be an edit to the one area that was talked about and the final paragraph written about future changes. When those are completed the letter will be sent out in the next couple of weeks.

Bill Dial asked Kevin Olson to call him about an issue that needs to be addressed after the Council meeting.

The Council took a 7 minute break. 10:45 – 10:52.

Tony Harbaugh called the meeting to order again.

### **Minimum Standards**

Perry Johnson directed the member to page 58 to a list that Katrina Bolger polled through IADLEST. The list shows the responses to who has reserve officer requirements. The findings were substantial. Not only is Montana's requirement for peace officer basic the lowest in the nation, the reserve officer basic requirements are also the lowest in the nation.

Perry Johnson directed the Council to the work product Glen Stinar and his staff produced on pages 59-66 in the meeting materials. They created an expansion of 7-32-214, the 88 hours now required by law for the reserve training. POST asked the MLEA to take a look at it and make suggestions and specific recommendations for expanding those areas. There are specific steps in the training they produced and he thinks it could be the prequel to asking them to develop a curriculum. When the MLEA staff applied the minimum amount of training for the skillset, they came up with 122 hours. Perry Johnson appreciated all the work the academy staff did for POST.

Jim Thomas asked about the "Laws of Arrest" heading with 4 hours by statute and the staff recommended 2 hours. Perry Johnson explained that it's a statutory requirement and though we have a letter into the Attorney General asking what the Council can waive and not waive he doesn't feel like anything can be reduced in the 88 training hours.

Tony Harbaugh thanked the MLEA for the effort they put into the training document.

Mike Linder said his phone cut out when Perry Johnson reported the number of hours the MLEA staff came up with for the reserve basic training. Perry Johnson report 122 hours. Mike Linder said his agency is looking at their entire reserve program now so it's very important to him.

### **Lake County Lawsuit**

Chris Tweeten updated the Council on the lawsuit involving the officers up in the Flathead. POST has been sued in the case along with Clay Coker and Wayne Ternes. Anne Brodsky filed a motion to dismiss the two individually named staffers from POST and to dismiss the claim and complaint that seeks punitive damages against all of the defendants on the grounds that the statutes don't allow the recovery of punitive damages against a government agency under state law. That motion has been granted so Clay Coker and Wayne Ternes are no longer named defendants in this case although they will be witnesses if it ever goes to trial.

The claim for punitive damages is no longer part of the case so that means that to the extent any liability is ever established the plaintiffs are going to have a burden of

showing the extent to which they were actually damaged by what was published in the Missoula Independent. That's a fairly significant win for POST.

Anne Brodsky has also filed a motion seeking summary judgment which would result in the dismissal of the entire case against all of the state defendants. That motion was argued in front of Judge Dayton. Anne Brodsky is still waiting to hear the ruling. Chris Tweeten said in his experience, courts are reluctant to grant those kinds of motions until discovery has been taken. The case is static at this time.

### **Request for AG Opinion Letters For More Time**

Chris Tweeten directed the members to the AG request letters in the meeting materials. The materials also has a letter back from a member of the AG's staff. The letter from the AG's staff pertains to a statutory requirement that opinion requests be answered within 90 days unless the AG certifies that more time is needed to fully research and respond. The 2 letters by the AG staff are the certification that they aren't going to get this out within 90 days.

Chris Tweeten sent a communication to the attorney who sent the 2 letters asking for a guess as to how long POST will have to wait for a response. He hasn't gotten a response yet. He will certainly advise if he hears anything.

Chris Tweeten explained that 1 of the opinions requests deals with the misdemeanor probation and pretrial services officers and if POST has the authority to waive the statutory requirements associated with training. The general rule is agencies don't have the authority to waive statutory requirements but there is some language in 44 that gives the Council the authority to waive any standard or qualification.

Chris Tweeten also told the Council that the second opinion requested has to do with POST's responsibilities in respect to the desire by DOC to have POST certify investigative officers working under the offices of the Department of Corrections. Corrections and Justice had been discussing a memorandum of understanding under which these DOC officers would actually be appointed by the Attorney General just as the officer from the Department of Criminal Investigation are. The thinking by the agencies is that if that happens they are eligible to become public safety officers. The problem is, there is language in the AG appointment power statute that seems to limit those appointments to officers or agents that work within the Department of Justice. Chris Tweeten thinks there's a serious question as to whether it has legal legs or not. POST is being requested to certify these officers. POST has asked the AG for a response with respect to whether the AG can appoint DOC employees to be agents within the appointment powers of the AG, or if he can only appoint officers who work for DOJ. POST will wait for the opinion to be issued.

### **Misdemeanor Probation, Pretrial Services Officers Letter to Kirsten Pabst**

Chris Tweeten directed the members to Kirsten Pabst's letter in the meeting materials, page 76. The letter has to do with the information the Council received earlier from Dan Cederberg about misdemeanor probation and pretrial services officers in Missoula County. The letter takes POST to task because the Missoula County Attorney disagrees with POST's interpretation of its responsibilities in respect to these officers. Chris Tweeten's letter of response starts on page 80 in which he takes issue with

some of the things that are in the County Attorney's letter. Most notably, the assertion in the letter that Missoula County is operating its government under a local self-government charter. That would greatly expand Missoula County's power and create a nice issue as to whether the county could hire these officers while disregarding the general requirements of the statute that the officers have to be employed by a local government. He added that, in fact, Missoula County is not a self-governing local government. The last time the issue was put in front of the voters it lost by about 2 1/2 to 1. It's clear that they don't have these self-government powers which eliminates the argument that they aren't bound by the statute.

Chris Tweeten also explained in the letter that POST has a responsibility as a government agency to administer its program bound by statutory requirements. POST has asked the Attorney General if POST is right about that. Until POST receives any guidance from the AG, its position isn't going to change unless the Council wants to provide any different guidance with respect to how we ought to be handling ourselves on this question.

#### **October 29, 2015 Meeting with MCS – Chris Tweeten and Sarah Clerget**

Chris Tweeten shared he had been having conversations with Dan Cederberg about this problem and it was suggested that a meeting be arranged between POST staff and staff in the Missoula County Attorney's office to deal with this issue. That meeting was held on October 29, 2015. Chris Tweeten and Perry Johnson were present and Sarah Clerget participated by phone. From the county side, Dan Cederberg, Kirsten Pabst, and Matt Jennings were in attendance. The meeting lasted for a couple of hours in which they batted all these issues back and forth and trying to basically clear the air as to where the respective parties stood on this dispute.

Chris Tweeten told the Council that it became apparent as a result of the conversation at this meeting that POST needed to develop more information regarding the actual status of the MCS employees that they were talking about. They had all received different kinds of training. Some were probation officers, some were pretrial services officers. Some sort of further information identifying the officers that the county believes are authorized to be certified by POST needed to be brought to the surface in order to fully understand what's going on.

Chris Tweeten continued that Perry Johnson has had conversations with some of the staff at MCS and Chris Tweeten had spoken with Dan Cederberg on 3 or 4 occasions since that meeting to try and move the ball forward and clarify those things that needed to be clarified. Three of the MCS staff have been issued certificates and Dan Cederberg is going to get Chris Tweeten information to identify which certificates were issued. MCS is saying that the certificates they received are based on the probation and parole basic course which is what the statute requires. That keys up the question as to whether POST will or has the authority to issue the necessary waivers for the probation officers to qualify them so they can be POST certified as public safety officers for purposes of their services for MCS.

Chris Tweeten shared that the information came in within the last couple of days and Perry Johnson looked at it. Chris Tweeten and Dan Cederberg talked yesterday and Chris Tweeten told him that his understanding of statutes would indicate that MCS

employs pretrial services officers who have received appropriate training and could apply to POST and would get a basic certificate as a pretrial services officer.

The statutes are different for the misdemeanor probation officers. There is specific language for pretrial services officers authorizing contractors with the county to provide those services but that line is absent for misdemeanor probation from the statute. Until the Council has an answer to its ability to waive the employment requirement for probation officers they are still in limbo.

Chris Tweeten encouraged Dan Cederberg to take a look at the administrative regulations and requirements for meeting POST certification and to communicate with the staff and if there are people who are legally eligible to apply for certification, he encouraged them to do so.

Perry Johnson and Sarah Clerget had nothing to add.

Dan Cederberg commented Chris Tweeten encapsulated what has happened correctly. He called POST that morning and Mary Ann Keune emailed him the basic certificate application for the 3 officers who have been through an MLEA basic and he intends to process those applications right away. Two of the officers are working in misdemeanor probation now and one is working in pretrial services. The training is all the same so their position is that they can perform services as either. He did confirm that they have the basic disagreement with POST as to whether the statute prohibits people who work for private nonprofit companies from being certified for misdemeanor probation officers. He thinks they will be on the agenda next time and will let the Council know what their position is in regard to that.

Dan Cederberg knows that Chris Tweeten and Sarah Clerget disagree with the position MCS takes but they think they have a good point as far as the statute doesn't prohibit them from being certified. He shared that the programs are very valuable to the county attorney and the judges and they like and use the program a lot. They would like to work with POST to continue those programs.

Chris Tweeten wanted to make it clear that no one at POST has ever disputed the usefulness and value of the MCS programs. This is simply a legal dispute that everyone is trying to drill through right now.

Perry Johnson remarked that he heard Dan Cederberg say he has 2 privately employed misdemeanor probation officers and one privately employed pretrial services officer. The position Chris Tweeten, Sarah Clerget and he defined to MCS is, at no point has this Council endorsed that it would ever certify private misdemeanor probation. The Council has identified through the statute that it has a responsibility to certify private pretrial. When Dan Cederberg said he is going to put applications in for private misdemeanor the Council should be aware that that is adverse to the position that has been discussed and analyzed for many Council meetings. Perry Johnson told Dan Cederberg that until POST gets further direction from the Council or an opinion from the AG that tells POST they must do something different, this will be the marching orders he received from the Council.

Dan Cederberg acknowledged that there is a disagreement but would like to put their position forward to the Council. MCS appreciates the fact that Chris Tweeten and Perry Johnson don't think this can be worked out but MCS thinks it can and that's the point they want to make to the Council. As far as the pretrial services and misdemeanor folks go, MCS believes since they receive the same training misdemeanor people can be transferred into pretrial services in their job with MCS to get them certified to be doing that. If the misdemeanor probation apply and are denied then they will move them and apply for pretrial services certificates.

Dan Cederberg said after the meeting with POST in October, then they had all their officers stop doing arrests. He reiterated that they want to work through this and try and solve the issue the best way they can, they just have a difference of opinion on one issue that they would like the Council to hear.

John Strandell asked Tony Harbaugh why the Council should discuss the opinion until the AG opinion is issued. He thinks it's a waste of time to do so.

Tony Harbaugh concurs with John Strandell but thinks it doesn't hurt to hear the argument at the next meeting but wait for the AG opinion until a decision can be made. John Strandell recommends not listening to the argument that Dan Cederberg would like to submit and wait for the AG opinion to give the Council direction on where they need to go.

John Strandell made a motion and Kimberly Burdick seconded that the Council hold off placing this item on the agenda until they have further information in the form of an Attorney General's opinion. Kevin Olson said he will abstain from voting since MCS contracts with DOC.

Chris Tweeten told the Council that at the meeting they had with MCS there seemed to be some uncertainty from Kirsten Pabst and possibly others from Missoula as to why POST was taking the position that it took. Part of the meeting was spent dispelling any thoughts that this was something POST was doing lightly or that somehow POST wasn't trying to be a constructive part of the conversation on these questions. He understands that it would take time to hear the argument by MCS at the next meeting but on the other hand it would be a strong demonstration of POST's good faith on this matter if the Council were to agree to hear MCS as an information item not an action item.

Perry Johnson asked Chris Tweeten if this might be an action or a decision already made by the Director that might create a contested case therefore the Council can't hear it.

Sarah Clerget shared if they would be talking about the three officers that could absolutely be the case. Perry Johnson shared that POST has already established some processes in regards to the contested case issues and that there could be an aggrieved party that asks for POST to use the process. It's only after the process is used that the Council gets to hear about the issues. He doesn't know if the Council has already heard too much about it.

Chris Tweeten stated there is a procedure in MAPA through which MCS could make this into a matter that's right for a contested case but they haven't done it at this stage. That procedure would be to file a petition at POST asking for a declaratory ruling on the interpretation of statute and those kinds of declaratory rulings can be the subject of a contested case if the requesting party decides they disagree with the interpretation and want to take the matter further.

Chris Tweeten also added that MCS could also file a declaratory judgment action in district court but he's not inviting them to do that. He cautioned that if the Council decided to hear MCS, MCS shouldn't delve too deeply into the 3 officers because they may become contested cases in front of the Council. He doesn't think there is any harm in hearing what MCS has to say about the difference in interpretation of the statute.

Tony Harbaugh stated he thinks the motion on the floor needs to be addressed and asked if there was any further discussion.

Dan Cederberg stated that he is confused as to what his ability is to discuss this. He doesn't want to be out of order. He said that MCS would be amenable to any kind of restriction on the presentation they would make. They wouldn't create any contested case issues. It's never been their intention, in fact, they specifically decided not to file any lawsuits. They have been in favor of trying to work this out towards a common goal. They thought they were moving down that line based on a presentation they made back in 2013. Recently they learned that they weren't and needed to take a different path in the dispute in regard to whether or not the private employed individuals could be certified as misdemeanor probation officers. They've been working on this issue for a couple of years and would like to continue working with the Council and did feel like being able to speak at the next meeting would be helpful in forwarding that process.

Rich Friedel encouraged the Council to hear what MCS had to say.

Jim Cashell asked for the motion to be repeated.

Joh Strandell repeated the motion. "My motion is that we not place it on the agenda or hear any more information until the Attorney General opinion is issued and gives us clarification."

Jim Cashell called for the question.

Ryan Oster asked if since this wouldn't be an action item there's no way POST could stop them from bringing there discussion to the public comment period. John Strandell told Ryan Oster his motion is because he doesn't want it as an agenda item that they would have to take action on. If they want to have the discussion during the public comment period, John Strandell is fine with that. Ryan Oster said he was a little confused because it sounded like it was just going to be a presentation. John Strandell answered that he thought it goes a bit further than that and that's his concern. They've already said they are going to submit material for consideration on the certification.

Motion carried, all members voting in favor.

#### **Letter to Steve Ette**

Perry Johnson directed the Council to page 84 in the meeting materials. He explained this is the letter he has reached out to Steve Ette with to let him know that because of the training issue related to his employee and the application for POST credit for some other training, POST wouldn't recognize the training until the officer is able to get into the basic and gain compliance and regain that status as an officer.

Sarah Clerget warned that this needs to be handled carefully since it has the potential to come back as contested case. She said that the specifics to the case will not be talked about. The subject can only be talked about in the general, hypothetical of how it is moving forward.

Perry Johnson noted that the letter was redacted of any officer's name that may have been affected. This is only an informational item on the agenda but it's the Council's business and he wants them to know where it's going.

Steve Ette thanked Perry Johnson for including the letter. He was concerned as he was looking through the agenda materials and noticed the letter. He hasn't ever received a copy of it but was copied on the letter to the Attorney General. Nor did he receive a copy of the one that went to MCS. He does have them now and appreciates having them and appreciates that the Council moved forward and sent the letter of clarification to the Attorney General. He would like to get the information back from the Attorney General before he responds to the letter Perry Johnson has in the materials addressed to Steve Ette.

Perry Johnson asked Steve Ette if his address is 1709 West College, Bozeman. Steve Ette confirmed the address and said he received the letter about the officer but hadn't received the copies on the other 2 letters. Perry Johnson apologized and said he would work harder on that.

#### **NEW BUSINESS:**

##### **Director's Report**

Perry Johnson directed the Council to page 86 in their meeting materials. He shared the short syllabus that CDOB uses as a study guide to challenge the CDOB basic. The officer is sent all the information to study. At the end of the basic training the officer travels to Helena to sit and take the final examination. Perry Johnson asked for a motion to approve as the syllabus for CDOB Equivalency.

Katrina Bolger added that Rebecca Guyer-Strait wanted her to share that they send the officer everything but the legal manual.

John Strandell made a motion and Laurel Bulson seconded to approve the syllabus presented as the CDOB Equivalency.

Jim Thomas saw that they get a PFCT Defensive Tactics manual. He stated there is a written test by itself for PFCT and wondered if there are also questions on the final exam about PFCT. Kevin Olson said there are PFCT questions on the final exam.

Motion carried, all members voting in favor.

### **Training Issues**

#### **POST Credit Hours for Teaching Classes**

Perry Johnson brought up the subject of POST credit hours for teaching classes. He said POST receives instructor applications for classes that a person participates in where they are actually instructing and they want course credit for that. Perry Johnson doesn't like to give them credit for the class but he wants to be reasonable too. He gave the example of a person who is at an 8 hour class and instructs for 2 hours. He asks for 6 hours of POST credit for the 6 hours he isn't instructing. He would like direction on it.

Laurel Bulson pointed out that its voluntary. He is volunteering to stay.

Jim Thomas thought it's a slippery slope. It reminded him of the Firearms Instructor course where the participant was required to give instruction as part of the requirement to pass the course. Are they going to get credit for a 40 hour week when they were required to give instruction for part of it?

Kevin Olson thought it requires full participation. All the students in that class are required to attend the class to get credit. He said this has been an agenda item for many years. Based upon his years of teaching, when you do teach a course you learn something as an instructor every time. However, he doesn't think the person should get credit for the class when they are teaching part of the class.

Bill Dial recalls that they just gave Perry Johnson a huge raise and that's a decision he should make. He said that the Council has empowered Perry Johnson to be the Director and he should make that decision.

John Strandell shared that he wonders if the person signed up for the training ahead of time and has his name on the roster, if that would make a difference. He used the example of a 40 hour class and the instructor attends the whole thing except for the 2 hours he teaches.

Perry Johnson thinks that Bill Dial is right. The Council has empowered him to make some decisions and that is a business decision. He struggles with some of these things and was looking for some opinions. He said the Council meeting is the venue that he gets to hold this stuff up and get some feedback.

#### **Opened and Advertised**

Perry Johnson shared that since he has the discretion to make some of these decisions that point is moot. He is good to go with it and doesn't need any feedback.

### **Budget Report**

Perry Johnson asked the group to turn to pages 87 and 88, the budget report. Page 88 shows where POST is with the accruals from last year. Page 87 shows the budget for this year is \$450,262.00 and POST has expended \$97,740.28. POST is through

just about 50% of the year. There is some contested case exposure out there and that's where a lot of money can be spent.

### **Legislative Update**

Perry Johnson report that this is something that is going to come before the Planning Committee. He put some reminders on the agenda to remind the Council of some of the discussion from the last meeting.

### **Board of Crime Control**

Perry Johnson said the Board of Crime Control issue was discussed at the last meeting and Bill Dial and Jim Cashell both thought it would be a good idea for POST to participate with the BOCC in any decision or any action prior to any legislative movement on our interaction with them or their review of any of POST's cases. Perry Johnson thinks that would be good business but it hasn't happened yet.

### **Amendment to 44-4-403 MCA**

Perry Johnson told the Council that it is some technical wording that would be added. Before he brings it to the full Council it will go before the Business Committee.

Perry Johnson reminded the Council that he has enlisted the help of Kirsten Madsen to review some of the statutes and the interactions they have with the ARMs. He felt like things are moving forward in a productive way. He hoped by the next time the Council meets in March there will be a draft submitted by the Business Plan Committee.

### **Certificates Awarded**

#### **Charles Leonard**

Perry Johnson directed the Council to pages 92 in the meeting materials. He reminded the Council that at the last meeting he was directed to reach out and find out about Charles Leonard. POST had no record of it so Perry Johnson reached out to his training officer at Yellowstone County Sheriff's Office. Steve Metzger had recall of the situation and Perry Johnson was able to put it all back together so POST was able to award the certificate.

Perry Johnson shared there were around 220 certificates issued for the quarter and over 1,100 for the year.

### **Equivalency**

#### **Equivalency Request Form**

Perry Johnson directed the members to turn to page 99 in the meeting materials. This is an informational item only since the Council does not have to approve all of our forms. This is a work product of Katrina Bolger. For POST's purposes it's a good tool. There are frequent calls by agencies asking if we have a form to use when requesting EQ. Katrina Bolger became aware of it and created a form that will be listed on POST's website.

**Request for Reserve Officer Equivalency**

Perry Johnson directed the members to page 100 in the meeting materials. These are informational items since the Council empowered the Director to approve EQ and Extension requests.

Perry Johnson pointed out that he granted one DCOB EQ request to Tyler Adams. This is a work product of Katrina Bolger who really works through these issues, takes a look at the backgrounds and makes sure to reach out to other POST agencies to ensure certificates in other states are in good standing.

**Extensions**

Perry Johnson asked the members to turn to pages 101 and 102 for the extension requests. All 10 of the extension requests were granted.

Perry Johnson asked the members to turn to page 103. John Moore is the Chief of Police in Ennis. At the last Council meeting he asked for an extension. The Council asked Perry Johnson to find out if he was ever paid when he was a reserve officer. Through a series of phone calls it was determined that John Moore had never been paid outside the scope of his vendor business for the city. His extension request was granted.

**Office Updates****Sugar CRM**

Sugar CRM is the database that POST purchased a year ago in June. Justin Stolp is our project manager and is very consumer oriented. There have been a lot of issues in regards to supporting the database that was purchased. Things are going well now and getting closer to being able to use it.

**Death Investigation Class**

Perry Johnson directed the members to page 107 to the advertisement for the Death Investigation Class that POST will hold next week in Great Falls at the Cascade Co Sheriff's Officer.

**Coroner Basic Class**

Perry Johnson told the Council that Bob Edwards, Sheriff from Cascade County and Bob Rosipal will be conducting the training. The statutory requirement is that POST holds the training every other year but this group has held it 4 years in a row.

John Strandell wondered if the civilian coroners have been attending the basic. Perry Johnson said they have been attending. He is hoping to have face to face administrator trainings in the future. Perry Johnson would like to be able to reach out the civilian coroners and let them know what the statutory requirements are and why POST is involved.

Perry Johnson said he has been invited to the Coroner Board meetings. He said they are really interested in POST's involvement. He said Dick Brown, the Fergus County Coroner has been a good partner to POST as well.

Tony Harbaugh reported that he received a call from Sheriff Eades from Fergus County who mentioned his county commission is looking at moving the Coroners Officer in Fergus County into the Sheriff's Office.

Perry Johnson related that in the last couple of months Sweet Grass County moved their coroner into the Sheriff's Office. There are 37 Sheriff/Coroners in the state and 19 Civilian Coroners. He shared that it's important to have Civilian Coroners. Anytime there is an officer involved shooting a Civilian Coroner has to process the case. John Strandell added that it's the same way with jail deaths.

#### **U of M –School of Extended and Lifelong Learning**

Perry Johnson reported that Roger McLean is the Dean of the School of Extended and Lifelong Learning. He invited Perry Johnson to a meeting along with an instructor named Lily White. They are in Missoula and are interested in putting together an online curriculum that may meet the need of the ongoing 16 hours of continuing education requirement for death investigations for coroners. They are also interested in putting together an online training that may meet the needs for the coroner basic. Perry Johnson really liked the discussion with the university and thinks there is an opportunity for POST to review that lesson plan. It has been done with the University Of North Dakota already.

#### **Facebook-Newsletter**

Perry Johnson put it on the agenda to let the Council know he hasn't forgotten it. He would like to be able to say there is a newsletter in the hopper but he doesn't have one.

Perry Johnson shared that he attended the Interim Law and Justice on Monday. He likes to attend the meetings to hear what's being talked about and be in the room a little bit. Next year POST is going to be in the room with a legislative package and could be better received if we have an opportunity to talk after the meeting informally with those committee members.

Perry Johnson wanted everyone to know what a big deal it is to have 13 members present for the meeting and all the stakeholders who call in and come to the meetings. He appreciates everyone participating.

#### **COMMITTEE REPORTS:**

**ARM Committee:** ~ Bill Dial ~ Perry Johnson is going to arrange a meeting with Bill Dial.

**Coroner Committee:** ~ Jim Cashell ~ Nothing new

**Case Status Committee** ~ John Strandell ~ Explained what the committee does

**Curriculum Committee:** ~ Jim Thomas ~ Nothing new

**Business Plan/Policy Committee:** ~ Kimberly Burdick ~ Nothing new

Kevin Olson suggested moving public comment to the end of the agenda. He said most boards have the public comment period at the end and thought it would be a wise business decision. Katrina Bolger explained that public comment was moved to the beginning of meetings because that part of the meeting has to be at the time it appears on the agenda. If the Council finishes a meeting early, the Council members would have to stay around until it's time for public comment so the public knows when to be there.

Bill Dial made a motion and John Strandell seconded to adjourn the meeting.

Submitted by  
Mary Ann Keune  
MAK  
2/17/16