

**MEETING MINUTES
MONTANA POST COUNCIL
September 16, 2015
Montana Law Enforcement Academy
HELENA, MT**

PRESENT

Tony Harbaugh ~ Chairman
Laurel Bulson
Kimberly Burdick
Jim Cashell
Bill Dial
Lewis Matthews
Kevin Olson
Ryan Oster
Tia Robbin
Jesse Slaughter
Jim Thomas

NOT PRESENT

Gina Dahl
John Strandell

STAFF PRESENT

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

LEGAL COUNSEL PRESENT

Sarah Clerget
Chris Tweeten

GUESTS

Andrea Lower ~ Gallatin County Court Services ~ by phone
Gabe Matosich ~ Havre Police Department ~ by phone
Rich Friedel ~ Yellowstone County ~ by phone
Mike Buechler ~ Bridger Police Department
Steve Ette ~ Gallatin County Court Services
Rick Johnson ~ Deer Lodge Police Department
Jim Wells ~ Great Falls Police Department
Curt Stinson ~ Helena Police Department
Scott Sterland ~ MLEA Risk Management Program Manager
Glen Stinar ~ MLEA Administrator
Truman Tolson ~ Missoula Police Department

WELCOME

Meeting called to order by Tony Harbaugh, Chairman, at 8:00.

The Council, POST staff and members of the audience introduced themselves.

Perry Johnson called roll.

Bill Dial made a motion and Laurel Bulson seconded to approve the minutes of the June 17, 2015 meeting. Motion carried, all members voting in favor.

PUBLIC COMMENT

Rick Johnson spoke about an officer temporarily hired in May who was there when Rick Johnson started. He also wanted to know if the May date was the officer's official start date. Perry Johnson told him that the May date is the official start date if his officer had powers of arrest. Rick Johnson said he did.

Glen Stinar introduced Scott Sterland who is the Risk Management Program Manager for the MLEA. His first task was to review the MLEA policies with the policy committee. They completed the review and drafted a body worn camera policy at the request of the Attorney General's Law Enforcement Advisory Committee. He also invited the Council to come at the lunch break and view the simulator.

Glen Stinar reported that Program Manager, Rick Layng, met with Miles City Community College. Next July the college will be offering Bill Westfall's First Line Supervisors class and a Basic Instructor class for those officers in Eastern Montana. The MLEA is also working with the University of Montana - College of Technology.

The Attorney General's office has agreed to pay \$35.00 for each of the new officers attending the LEOB basic to receive 18 college credits.

The Academy has decided to offer a Taser elective, four nights, two hours a night for a week. There are seventeen or eighteen students signed up through their agencies. The Academy is charging \$35.00 a student and the student supplies the cartridges.

Glen Stinar explained the course of action that will be taken by the Legislative Interim Committee concerning the Academy. The Academy will be a part of each meeting held by the committee between now and June. In June the Academy will present the committee with a "Course of Action" package they would like to see take place.

Perry Johnson asked about the LEOB that just started. Glen Stinar shared there are fifty-five students in attendance, fifteen of which are from tribal agencies.

Richard Friedel explained that he is a private provider of Misdemeanor Probation Officers for Yellowstone County. It was his intent to give Perry Johnson a basic outline of what his industry is proposing but decided to wait until he had a copy of the updated Probation and Parole Syllabus that Kevin Olson is going to present to the Council.

He said that the dilemma faced by their industry is the definition of Public Safety Officer and Misdemeanor Probation Officers. The law seems to be clear that if you are involved in Pretrial Services as a government employee you are a public safety officer and are required under the law to be POST certified. The POST certification is equivalent to a Felony Probation and Parole Officer certification. If a provider has a contract with the government it is considered a government employee therefore the officers must be POST certified. The MLEA isn't able to accommodate such training by

law. He is proposing the Council take a look at a private training. Richard Friedel has been able to assemble a good advisory board that would be part of the training. They are proposing to open up a training facility for that. The question he has, is what to do until the issue can be taken care of with the 2017 Legislature. The Advisory Board would propose to follow the MLEA curriculum even though there's a lot of information they don't need. Richard Friedel doesn't believe that POST can waive any of the requirements. He is willing to move forward with his proposal if it would be acceptable with the Council.

Perry Johnson responded by reviewing what he thought Richard Friedel was asking. He stated that after today Richard Friedel would have the opportunity to review the syllabus that's been created by DOC for Probation and Parole which has been expanded to ten weeks. Four hundred hours. After review of the syllabus Richard Friedel would present to the Council for their consideration and approval at a later date the syllabus, lesson plans, instructors and location for a basic training.

Kevin Olson said one of the priorities he set when he went to DOC was to revamp the basic training for P & P. He shared the history of the basic training for the last eight years. He didn't feel like the basic training in the past was sufficient.

Last fall they put on a P & P basic and bumped it up to seven weeks but felt like there were still many insufficiencies pertaining to survival tactics training. They ended up with ten weeks of instruction, which consists of three hundred ninety-six hours with an additional eleven hours of pre-academy web based instruction.

Kevin Olson explained the unfortunate thing is the new P & P basic truly reflects the essential functions of the position they hold. The basic no longer reflects the day to day roles, responsibilities and duties of misdemeanor probation or pretrial services officers. The law is not reflective of the differences in the needs of the positions. Kevin Olson doesn't think it's fair to these individuals that in order to certify their people they have to go through the time and expense of putting their people through a ten week basic course of instruction of which 60% will do nothing for them pertaining to the functions of their day to day responsibilities.

Kevin Olson added that this subject has been batted around for at least four years and the Council continues to do nothing about it. He stated he intends to make a motion sometime today to waive the training standard for this group of officers. He feels like it's the only logical solution for now until they can handle this with the legislature.

Tony Harbaugh asked if Chris Tweeten would like to speak to the subject but Chris Tweeten said he would wait for the motion.

Jim Cashell asked Richard Friedel if there were any Sheriffs on his advisory board. Richard Friedel replied that he spoke with Yellowstone Co Sheriff, Mike Linder, who said he or Undersheriff Evans would be happy to be an advisor to the board.

Richard Friedel reported that he was going to be meeting with several legislators tonight for dinner to talk about this issue and a proposal for legislation.

GUEST ISSUES

None

Tony Harbaugh ask the Council to take a moment of silence in remembrance of Sheriff Pat Ulrickson from Sheridan County, Undersheriff Mike Lamey from Toole County, James Cashell, Sr. and Ron Rummley from Rosebud County.

OLD BUSINESS

Committees

Perry Johnson commented that at the last meeting the Council decided the Integrity and Professional Standard Committee should be blended in with another committee. They didn't want to do that until they asked Kimberly Burdick, the committee chair, if that would be ok with her. Kimberly Burdick agreed that it should be done. Perry Johnson asked Katrina Bolger to form the language for the motion. Kimberly Burdick made a motion and Bill Dial seconded to dissolve the Integrity & Professional Standards Committee and move those committee members and their duties into the Business & Policy Committee. Motion carried, all members voting in favor.

Lake County Lawsuit

Chris Tweeten updated the Council reporting that Ann Brodsky filed a motion to dismiss some of the allegations as being unsupported by law. More recently, Ann Brodsky has gathered some affidavits from Wayne Ternes, Clay Coker, and Sarah Clerget and has filed a motion for summary judgment. That means that the moving parties, POST and FWP, believe that there are no material issues of fact that need to be decided by a jury. In other words the facts are undisputed and that based on those undisputed facts we are entitled to judgment as a matter of law. The motion was filed, the officers filed their brief response and a reply brief has been filed by Ann Brodsky on behalf of the defendants. A hearing has been set in Lake County in front of Ray Dayton on Friday, November 13, 2015. Chris Tweeten further explained the possibilities of happenings depending on what the judge rules. Chris Tweeten plans to go to the hearing in Polson and bring a report to the December Council meeting.

Amicus Brief – Ronan Lawsuit

Sarah Clerget reported that the court dodged the Reserve Officer issue so she believes POST's concern in the lawsuit may have waned a bit. Chris Tweeten added that he read the plaintiffs are planning to refile in State Court. Sarah Clerget thinks the Council should just wait and see what happens.

Kevin Olson, Sarah Clerget and Chris Tweeten made further comments about the State Court possibilities. Tony Harbaugh asked the Council what their pleasure is concerning this matter. The consensus was standby and continue to monitor.

Forms

Perry Johnson pointed out the Notice of Appointment or Rank Change draft form in the meeting materials. At the June Council meeting there was discussion about the National Decertification Index link being placed on the form. Katrina Bolger created a couple of different options for forms. She created a POST New Hire checklist as

well. Perry Johnson explained that POST used to have a check list available for an agency to use when they hired an officer.

Katrina Bolger explained that the National Decertification Index is not a required field. Truman Tolson commented that he likes the new checklist.

Perry Johnson referred the Council to the Notice of Termination draft form with a “Resigned Under Investigation” line added. He proposed that it be a permanent addition to the form. Perry Johnson shared that this type of resignation is going on out there in the agencies. He thinks for POST’s purposes it would pull the trigger on a phone call to the administrator of the agency.

Jim Thomas asked if this would cover the “quit or be fired” option. Perry Johnson said he thought this would cover that situation. He knows the agencies get legal advice when an officer is terminated but this would give POST the opportunity to look at the conduct and circumstances surrounding the termination.

Bill Dial asked Sarah Clerget and Chris Tweeten if an agency enters into an agreement not to reveal the circumstances of the officer’s discharge what affect does this question on the form have on the agreement. Chris Tweeten replied that it doesn’t give a defense to discovery. If you get subpoenaed and are asked to produce the documentation surrounding the investigation an agency would offer to produce under seal for the court to review to make sure there is nothing confidential in it. He continued that as far as POST is concerned our responsibilities regarding the lawsuit aren’t going to change that much. His opinion is that an agency can’t really keep this stuff secret.

Sarah Clerget added that if there is a noisy resignation POST can do its own investigation of the facts. Even though an employer doesn’t turn information over, POST we can still go find out what the facts are.

Kevin Olson pointed out that an agreement with a municipality or a county with a confidentiality clause can’t be binding on POST because it is a regulatory agency.

Bill Dial stated that there are agencies out there who have an agreement with an officer and part of that agreement is to take all the information about the discharge out of the file. Sarah Clerget remarked that there are still witnesses that POST could go talk to and can deal with the documents. Chris Tweeten pointed out that the state has regulations concerning the destruction of documents which would need to be considered by the agencies.

Ryan Oster talked about a case out of Billings where the media sued. He doesn’t think an agency is going to be able to keep the termination of a police officer a secret, especially if there is an allegation of criminal activity. That is public record.

Chris Tweeten added that the courts have pretty clearly said that the employee’s right of individual privacy does clearly outweigh the public’s right to know.

Tony Harbaugh likes the addition to the form.

Certification of Reserve Officers

Perry Johnson shared that he was instructed at the last Council meeting to reach out to different agencies and ask for lesson plans for Reserve Officer training. He received them from Dillon, Flathead County, Ravalli County and Fromberg. It is a tremendous amount of information for a Curriculum Committee review. Perry Johnson explained when Jim Thomas and he were trying to come up with a curriculum several months ago they decided to come back to the Council and find out where they want to go with this.

Perry Johnson reported that he had a staff attorney from ALSB take a look at the ARMs which included the Reserve ARMs. He reminded the Council that they approved 7-32-214, 88 hours of training, as the standard for Reserves. He asked Katrina Bolger to expand on the suggestions made by Kirsten Madsen. Katrina Bolger pointed out that the Council has a Reserve training ARM, 23.13.214 which says that Reserves need to be trained in accordance with the statute. She explained that Kristen Madsen suggested to put together some points that need to be discussed and include them in the ARM. POST wouldn't direct how long a subject should be talked about, just have a list of topics to be touched on. The idea is that it allows some freedom to the agencies to train the reserves in the other things that are going to matter specifically to them but also sets a standard.

Katrina Bolger commented that the staff has the what, that is to certify Reserve Officer, now we need help with the how. Perry Johnson shared that he made a call to Glen Stinar and asked if his staff would sit down with the standards and come up with some points they think are important to train. Glen Stinar agreed that his staff would sit down and help develop an outline for Reserves that the agency would need to train too. Perry Johnson further explained that he really doesn't want to get to the point with the agencies that they feel like POST is trying to manage their staff. He wants to make sure we partner with these agencies and make sure this Council develops a product that gives them specific direct guidance but allows them the flexibility to present the way that they would.

Jim Thomas agreed with what Perry said. He feels it is too big of a job for the Curriculum Committee to tackle and if POST can come up with some topics to teach to would be the best solution. Kevin Olson shared that the Reserve statute was created in the early 1970's. It was eighty-eight hours back then and is still eighty-eight hours. He feels like it is grossly insufficient and should be fixed legislatively.

Perry Johnson stated that he reached out to Chris Tweeten after the June 17, 2015 Council meeting and asked him if POST would assume any additional risk or liability by expanding this list. Chris Tweeten's answer was no, there would be no additional liability for expanding the list.

Kevin Olson pointed out that there is disparity on how reserve officers are used across the state. Some agencies train their officers for hundreds of hours and others use their reserves for county fairs and that plays a role in the training.

Chief Buechler stated that he has five reserve officers in Bridger and he couldn't manage without them. He has them do certain duties. There are a couple who are allowed to run traffic or things like that and the rest of them work special events in

the community only. They all have training from Laurel and are way over the eight-eight hours required.

Bill Dial commented that perhaps we should have a minimum standard but create an ARM that states they have to have continuing education. He is afraid if the hours required are increased the number of volunteers will decrease as people just don't have the time to give. Kevin Olson remarked when you strap a gun on someone there shouldn't be any difference in their training. The same competencies are in play whether you are a Peace Officer or a Reserve Officer.

Jim Cashell compared this situation to the Detention Officers. He feels like Detention Officers were put in place with a lower pay scale and less training to save the counties money. The same is true with the Reserve Officers. They were set in place to save the counties money by hiring less officers for a county and using reserves.

Ryan Oster added he feels like some of these agencies want a standard from POST that is going to be their liability coverage because they can say they trained to the standards.

Tony Harbaugh explained that the statutory language has always been there as a minimum for reserves. He assumes the intent of the legislature was the recognition that we are dealing with volunteers and all those people have day jobs that work as Reserve Officers. He said the decision the Council has to make is if POST is going to take the responsibility of adding over and above that statute or does the Council leave that in the hands of the administrators based on what their need is.

Jim Thomas stated he would like to hear it in a motion to have the MLEA staff outline what our requirements are would be for those eighty-eight hours. In addition to that, ask the Legislative Interim Committee if they would be interested in tackling this thing in whether we need to expand that eighty-eight hours.

Rick Johnson commented that he understands POST has different levels for Public Safety Officers. He asked if it was a possibility to do the same thing with Reserve Officers by them completing additional training hours. Perry Johnson replied that the way the statute is now if you complete the eighty-eight hours of training the person is a Reserve Officer. The record keeping for all the education falls on the head of the agency and is subject to audit by the POST Council.

Perry Johnson reiterated the point Katrina Bolger made earlier which is, we have the mandate to certify these Reserve Officers, we don't have the "how" do we certify these officers. He explained that if the Council establishes the minimum standard, we can be specific about the ongoing training standard for the Reserve Officers. Tony Harbaugh wonders how this would be received by the individuals themselves. Does it shrink that pool? Can they meet x number of hours when they're volunteering x number of shifts per month in order to remain part of the Reserves.

Sarah Clerget suggested that a gradation could be put in place in the ARMs according to what the duties are of the officer. Chris Tweeten added that there are Auxiliary Officers addressed in 7-32-231 ~ 234 as well. Auxiliary Officers aren't authorized to carry weapons with only citizen arrest powers. He suggests that might

be the first step of gradation in the statute. Chris Tweeten reiterated that the Council has the authority to create additional standards of achievement for Reserve Officers under the statute. His concerns stems from the news these days about excessive force by Law Enforcement Officers. The general perception that exists is that officers aren't trained well enough to deal with use of force especially use of force matters involving minorities. Montana hasn't had a well-publicized case but he thinks that it is bound to happen one of these days.

Bill Dial made a motion and Jim Thomas seconded to send this back to the Business/Policy Committee for review and make a recommendation to the Council at the next meeting pertaining to the minimum training standards.

Jesse Slaughter thinks that POST should stay away from the certificate levels for Reserve Officers. He think that should be dealt with in statute. He added that it would open up POST to undo headaches, stress and liability.

Bill Dial asked if all our certificate are from the statutory level. Sarah Clerget advised that the basic is statutory but the other levels are from ARMs.

Ryan Oster mentioned that he didn't understand why the staff has the "what" but not the "how" with certifying the Reserve Officers. Katrina Bolger explained that a couple of people have sent in the draft form requesting a Reserve Officer certificate but we don't have the standards in place for that. She added the Council has mentioned several options to expand on the training standards. The staff needs to know what qualifies a Reserve Officer to receive a basic certificate.

Ryan Oster reminded the Council that the discussion at the June 17, 2015 Council meeting directed the staff to add a notary line attesting to the requirement of eighty-eight hours of training completed. Ryan Oster said he left the last meeting with the understanding that POST would start issuing basic certificates based on a signature and a notary. Katrina Bolger commented that there was a lot of discussion as to what the standards could be from POST but there wasn't a determination that this is how we want to establish that standard such as, we are going to do a test, or an ARM or whatever. The staff is still unsure if it can start issuing the basic certificates.

Chris Tweeten didn't agree that POST has to go above and beyond the statute. Katrina Bolger stated that Kirsten Madsen felt that POST needs to expand on those standards but Chris Tweeten said he doesn't think there is any requirement in the statute to adopt anything extra. Katrina Bolger and Chris Tweeten continued the discussion and Katrina Bolger asked what the Council would like to have in place so that the staff can start issuing certificates. Tony Harbaugh commented that the last paragraph on page eleven of the June 17, 2015 meeting minutes states the form would be amended to include the ethic oath and notary line.

Bill Dial suggested the Policy committee take a look at some additional training and in 2017 present some statutory amendments or ARMs.

Bill Dial clarified his motion to continue on with the current way we're certifying Reserve Officers currently and refer to the Policy committee for further examination or possible statutory or ARMs changes. Perry Johnson asked if the Curriculum

Committee should be the group looking at the additional training. Bill Dial and Jim Thomas thought the Policy Committee is the right place for it.

Sarah Clerget asked if the Curriculum Committee is still going to be looking at the Reserve curriculum to create a possible test. Jim Thomas thinks that there is a new direction with the Council and if the task is going to move to the MLEA staff there is no further reason for the Curriculum Committee to review curriculum. Tony Harbaugh agreed that it is the intent on the motion.

Motion carried, all members voting in favor.

Tony Harbaugh asked if that includes the notary portion. Perry Johnson commented that the Council had the discussion about the notary at the last meeting. He reported in regards to the office procedures this is the only document that needs to be notarized. The only people who would be affected by the notary are the agency administrators. Perry Johnson struggles with asking an administrator to also get a notary signature for this one form. Kevin Olson commented that with all other forms we have the records to verify the submission but with this form there are no records of submission. With the Reserves the agencies themselves are the record holders and POST has nothing. Perry Johnson replied that he feels that the administrators in place in the agencies of Montana are honorable and he respects them and trusts them. It feels personal to Perry Johnson.

Tony Harbaugh asked if the notary is an issue of identity of the agency administrator or something else. Jesse Slaughter said he brought this up last time. He understands where Perry Johnson is coming from and partly agrees. However, he said that police swear to documents all the time because it's part of the job. He doesn't believe anyone would take offense to this especially when we are telling them they are keeping the records and documents but we need them to swear that they do have the documents. Bill Dial remarked that he wouldn't be offended to have to have a notary for this form.

Sarah Clerget commented that POST does have a new ARM that may help with the worry behind this form. The new ARM puts whomever signs the form on the hook.

Kevin Olson asked the attorneys what is the ramification of falsifying this document. Sarah Clerget explained that from a contested case point of view she would go after the person for perjury. Even if it weren't notarized she would add the charge of falsification of documents under the ARM.

Kevin Olson stated that through his years at the Academy on the basic application form he had a block where the agency administrator attested that the candidate met the qualification outlined in 7-32-303. The administrators would sign the forms but only a few of the candidates met the qualifications. Many of the officers hadn't been given an interview or had a background check run on them. Sarah Clerget replied that having a notary line would be an extra safeguard but thinks the ARM POST put in place has stopped that gap a little bit.

Jim Thomas believes the administrators who signed the MLEA basic application didn't really know what they were signing off on. They didn't bother reading it but didn't think they did it with malice.

Kevin Olson agreed that if it is advantageous for legal counsel to have a notary block then leave it but if not, then he agrees with Perry. Tony Harbaugh said it would take a motion to change the requirement of a notary. Jim Thomas made a motion that it be removed from the form. There was no second so the current status remains in place.

The Council took a 15 minute break.

NEW BUSINESS:

Copyrighted Lesson Plans and Training Credit

Jesse Slaughter brought up a POST Certification question that has come up to him often. He stated that there are lots of good companies that provide training but they have proprietary lesson plans. They don't want to release their lesson plans for POST credit. He would rather get the training and isn't really worried about getting POST credit for the training however, it's important to the agencies to receive POST credit for the trainings they attend.

He explained that in years gone by if an application, bio and agenda were submitted to POST, even if there were no lesson plans, credit was given. Many people in his agency remember when that would happen and wonder why there has to be a lesson plan included now. Jesse Slaughter asked what the flexibility was with that when it comes to those proprietary schools and is there a way we can maybe get around it? He wondered if the student could write the lesson plan.

Tony Harbaugh asked how the law is worded. He wondered if the lesson plan had to come from the instructor. Perry Johnson shared that there are options but often he gets an outline with very little information on it. He sends it back and asks for the lesson plan that goes with it. He further explained, if he can't understand from the outline what training the student actually would have received he can't see the value of POST collecting and maintaining a record that has no value to him. He said many of the outlines are broken down and explained what is going to be taught hour by hour. Perry Johnson said POST has had the discussion before concerning the proprietary lesson plans. He thinks that there is a recourse for the companies who release the lesson plan to POST and someone else uses it from then on. He likes the idea that the student could break down the training if requested by the Director.

Chris Tweeten stated that POST could enter into a confidentiality agreement with the company. Jesse Slaughter commented that they have instructors that will not release the lesson plans under any circumstances. He agrees with Chris Tweeten that signing a confidentiality agreement may work. He asked again if the student were to break down the training and write a syllabus would the Council accept that. Perry Johnson referred to 23.13.301(3)(c) material showing course content, including a syllabus and/or lesson plan and student handouts. He explained that he represents the Council. He never wants to be in the position where a training is challenged by someone wondering why it was given POST credit without sufficient documentation and he can't defend it. He also doesn't want the Council to end up in court with someone saying there's no value in a training with the training documentation. Perry

Johnson also commented that he doesn't see much push back from the private companies. They end up giving POST notebooks and three ring binders with their curriculum.

Jesse Slaughter said Perry Johnson answered the question. He needs to make a recommendation to his agency. He agrees with Perry Johnson that there has to be value and the way the trainings are being approved is good. He is going to recommend that the students take notes and write up an agenda hour by hour explaining what was taught.

Lewis Matthews asked if the Council thought the agenda should be notarized since an officer is submitting their own syllabus. Jesse Slaughter agrees with that. Kevin Olson stated that he couldn't comprehend a private organization not having a syllabus. He said in almost every state POST requires a syllabus in order for credit to be given. The private organizations must be training across the nation so Montana really isn't asking for anything different than any other state would ask for. Jesse Slaughter said they get a minimal syllabus and he has run into it from more than one company. He said the firearm niche market is very cutthroat right now and the companies are protecting their investment as best they can.

Perry Johnson commented that the Council has given the staff the ability to create forms in the past. In regards to notary on that form, if he decides to reach out and ask for more information on a training does he have the ability to do that and put a notary on it? Tony Harbaugh said the Council could look at the form if Perry Johnson would like them to. Ryan Oster asked if several officers attend a training can one person create the syllabus and it will work for all of them. Perry Johnson doesn't think that it is fair for one person to do the work for everyone, especially if this signature has to be notarized on the application. He asked what the Council would like. Jim Cashell isn't comfortable with deviating from how things have been going. He would like to see a confidentiality agreement signed with a company who doesn't want to release their lesson plan.

Tony Harbaugh asked Perry Johnson what his standpoint is on the matter. Perry Johnson explained that the staff discussed putting an outline of what POST does every day on the agenda. He would like to show the Council what happens in the office everyday so they can understand the processes better. He knows that some people think that what they submit should be good enough and maybe it is for some people. He knows some people will share their information and others don't want to. It's a very litigious situation in his mind. Perry Johnson continued that he is very conservative and wants all the information so that the Council is never embarrassed by him not doing a complete job. He believes it's the Council's job to define what their pleasure is concerning the matter.

Bill Dial disagreed. He said the Council has empowered Perry Johnson to make those decisions and it is his job. He is the expert and if he doesn't think something is good enough then it should be sent back. He thinks things are going fine and to just keep doing what he is doing.

Probation and Parole Syllabus Approval

Kevin Olson reiterated the history as stated earlier in the Council meeting. Kevin Olson, his staff in conjunction with the Professional Development Bureau at the Department of Corrections worked diligently to create a longer basic for Probation and Parole. He explained that in the past they have let people from a county level attend basic but now they would sit through ten weeks of instruction in which six weeks mean nothing to them.

What Kevin Olson is asking for is to be credited for 407. The course itself is 10 weeks in length, 396 hours of instruction and 11 hours of additional web based pre-academy training.

Bill Dial made a motion and Jim Thomas and Jim Cashell seconded to approve the syllabus. Bill Dial commented that when Perry Johnson is looking at a syllabus, this is the kind of document that should be submitted. He commended Kevin Olson on a great job in creating it. Motion carried, all members voting in favor.

Kevin Olson asked the Council to refer to page 38 in their meeting materials. He explained that MCA code, 46.23.1003, states the training must be held at the MLEA unless the Council finds that the training in some other place is more appropriate. He explained that expanding to ten weeks has created a situation where the MLEA doesn't have the capacity to entertain the P & P Basic. Kevin Olson asked the Council to allow them to use Fort Harrison as the training venue for the basic course of instruction that will start in September.

Jim Cashell made a motion and Jesse Slaughter seconded to approve. Tony Harbaugh asked if Kevin Olson is asking for approval for just this basic or additional basics as well. Kevin Olson stated that he will come back to the Council on a course by course basis. They plan to have two courses a year, one that will start in September and one that will start in April.

Motion carried, all members voting in favor.

Request for Attorney General's Opinion

Perry Johnson directed the Council to page 40 in the meeting materials. He explained that POST has asked Chris Tweeten to author a letter to the Attorney General concerning an MOU that has been used by the Department of Justice, DCI, to appoint agents working in the Investigative Bureau of the Department of Corrections at the Montana State Prison. There has been discussion over the last year with DOJ and DOC by Perry Johnson and Chris Tweeten. They decided the best solution is to ask the Attorney General if one state agency can appoint a Peace Officer in another state agency. Perry Johnson stated that the issue for him is, can an agency make a Peace Officer out of somebody else. He continued that Peace Officers and Public Safety Officers are defined.

Tony Harbaugh added that the two main questions are listed in the first part of the letter. He isn't sure how often the Attorney General is asked for an opinion in regards to whether or not he has the authority to do something.

Kevin Olson added some historical comments concerning this issue.

Jesse Slaughter asked if there were any peace officers at DOC and it was stated that Mike Batista is. That was corrected. Mike Batista is not a Peace Officer in his current position. Perry Johnson commented that there are only Public Safety Officers at DOC. He stated the investigators aren't Peace Officers or Public Safety Officers. He explained that legislatively DOC appeared in front of the Judiciary Committee and asked for that during the last session and it didn't get out of committee. This was the historical remedy to the investigator positions.

Chris Tweeten added that it all turns on the statutes authorizing DCI the description of the word agent. Included in the phrase is, "within the Department of Justice". It describes the individual who is an agent as somebody who performs these duties within the Department of Justice. It seems to Chris Tweeten that the only meaning that language can have is that they have to be in the org chart for the Department of Justice and be subordinate to, supervised by and receive a paycheck from someone in that department. Chris Tweeten thinks it's a pretty straight forward question for the Attorney General to answer.

Bill Dial made a motion and Jim Cashell seconded the approval and sending of the letter. Motion carried, all members voting in favor.

Director's Report

Perry Johnson directed the Council to page 44 in their meeting materials. Leo Dutton sent a letter to the POST Council thanking them for their monetary donation for the Officer Involved Shooting training sponsored by Lewis & Clark Sheriff's Office. Perry Johnson confirmed the response and explained how important and appreciated the training is for officers who have been involved in a shooting during their career.

Coroner's Training

Perry Johnson shared that POST is once again hosting a sixteen hour Death Investigations class in Great Falls in December. Richard Sine will present for four hours, Craig Overby and Bob Burnison will present eight hours on the Sheri Arnold case and Jaime Oeberst from the Crime Lab in Missoula will instruct for four hours.

POST Performance Survey

Perry Johnson explained that he was looking at the old business plan for POST and one of the suggestions was to reach out to the stakeholders every year or two with a performance survey. Katrina Bolger reached out by email to two hundred fifty people with the survey. She commented that the feedback was very helpful. There were a few suggestions about what we could do better that were great ideas. One suggestion was a newsletter which had previously been discussed by the Council. So far, lack of man power has held that up. She thinks there is still room for improvement with communication, even though the survey indicated it has been greatly improved over the last two years. About 25% of the stakeholders returned the survey with overall positive comments. Tony Harbaugh asked if this should be pushed out every year or two. Perry Johnson thought annually would be a good idea.

CDOB Equivalency for Charles Leonard

Perry Johnson directed the Council to pages 56-59 in the meeting materials. This is an issue about an officer named Charles Leonard. His transcript doesn't show a basic academy was attended. POST reached out to Charles Leonard and asked him if and when he attended a basic. He stated he took EQ, knew he took the class with Armondo Oropeza and passed the final test. Armondo Oropeza remembers the situation but POST can't find any kind of document to support it. Perry Johnson said Steve Metzger, a training officer from Yellowstone County remembers it as well.

Kevin Olson commended the staff for going the extra yard in trying to figure out these situations as they arise. He also explained the process for the EQ in years gone by. The test for EQ would be shipped to the agency, proctored and sent back to the MLEA. Currently the student comes to the Academy and takes the final test with a basic class. Kevin Olson suggested confirming an academy attendance for Charles Leonard and if Steve Metzger is willing to provide affirmation that he administered the test and Charles Leonard passed it, then issue a certificate. The Council agreed with Kevin Olson.

Training Issues

Perry Johnson referred the Council members to page 61 of the meeting materials. He shared that part of the POST requirements for POST credit is an instructor bio be supplied with the application. Perry Johnson stated that he received a packet asking for credit for a covert training that took place in Indiana. The officer is asking for 100 hours of POST approved training and the instructors don't want to be identified. On page 64 there are two instructors named but the other four instructors are referred to by number. Perry Johnson has concerns when he can't point to the person and say they were the subject matter expert and that's why there is some value to the training.

Jesse Slaughter pointed out that in this sort of training there is no one to come take the stand and testify that the officer was trained properly. Jim Cashell stated that this kind of training bothers him. With other trainings it's clear who gave the instruction and with this there is no idea. He thinks the answer is no, we aren't playing this game. Chris Tweeten remarked that if a court were to compel they would have to identify the instructors. Tony Harbaugh agrees that it stands that POST should remain consistent as to how a training is vetted.

Perry Johnson views it as an incomplete training application and would normally deny the training for POST credit. He brought it to the Council because it was 100 hours, which was a big investment for the officer and agency. He thinks there is some value there but it doesn't meet all the requirements of the law for POST.

Perry Johnson talked about another training issue. It has to do with an Emergency Vehicle Training-MRAP Specific Training found on page 70 of the meeting materials. Only 2 agencies in Montana have this program, Great Falls Police Department and Flathead County Sheriff's Office. Perry Johnson explained he received an application for this training.

Rob Beall put the training together but didn't advertise it to all agencies. Perry Johnson asked the Council to consider using 44-4-403, which says the Council has

the ability to waive a training standard. He would like the “open and advertised” standard which is an ARM to be waived in this case.

Jim Cashell made a motion and Kevin Olson seconded to approve the open and advertised waiver. Motion carried, all members voting in favor with Jesse Slaughter recusing himself.

Committee Discussion

Perry Johnson reported that Kirsten Madsen suggested the Council form an Operations Committee like the Case Status Committee. The Operations Committee would look at any denials of Equivalency, Extension, Training or Certificates. At this point if there is a denial, Perry Johnson would bring it before the Council. If the officer who was denied made an appeal, the appeal would go before the same Council who made the denial. Perry Johnson really liked the idea of having a subcommittee to look at potential problems. It provides another layer of interaction between the Director and the Council.

Tony Harbaugh asked for a motion to form a three member committee. Kevin Olson asked how many times this is an issue for Perry Johnson. Perry Johnson’s response was, quite a bit. He doesn’t get much push back from the denials because he takes the time to explain why the application doesn’t meet the standard Tony Harbaugh asked if the committee would only be involved if a denial had a question or was contested. Perry Johnson agreed. He explained to the Council how the Case Status Committee works and how important it is in the event of a contested case.

Bill Dial asked Perry Johnson to repeat what the purpose of the committee would be. There was discussion regarding the purpose with Katrina Bolger and Chris Tweeten and Sarah Clerget commenting.

Chris Tweeten stated that the Council has the authority to delegate its responsibility to makes these two kinds of decisions to the Executive Director. The Executive Director’s initial decision which would be in the nature of an informal agency action could be the subject of a request for a contested case hearing in front of the whole Council. He added that those are fundamental principles of Administrative Law. Bill Dial stated that he didn’t see why POST would add another layer of bureaucracy when Perry has the authority.

Sarah Clerget commented that in the case of the Status Subcommittee the statute says the Council shall provide for revocation, etc. In the case of equivalency and extensions the statute says the Council would make the decision. Chris Tweeten says the wording doesn’t make a difference. He said any administrative function that’s given to the POST Council by statute can be sub-delegated to the Executive Director or anybody else on the staff. He said it becomes problematic if the delegating is made to someone outside of the POST agency.

He further explained that if the Council decides to pass a motion that in these 2 categories of issues the Council delegates its initial decision making responsibility to the Executive Director and if the Executive Director’s opinion is not appealed to the POST Council or a contested case hearing then the Executive Director’s decision becomes final and becomes the decision of the Council.

Bill Dial made a motion for the language Chris Tweeten used. Tony Harbaugh clarified that rather than form a committee to review Bill Dial's motion would be the Council grant authority to Perry Johnson. Perry Johnson reiterated that the reason for the Case Status Committee was to be aware of what the Director was doing. Bill Dial said this is totally different.

Tony Harbaugh asked for a second. Kevin Olson seconded. Kevin Olson asked Perry Johnson what his desire is. Perry Johnson said it would make it easier for him not to have a committee. He makes the decisions anyway and present them to the Council and they either affirm or have a different idea. The other part to Perry Johnson is he doesn't want anyone on the Council to think he is hiding the ball. Bill Dial said he knows Perry Johnson doesn't hide the balls.

Tony Harbaugh stated there is a motion and a second and a question had been called for by Kevin Olson. Ryan Oster made the point that he has no problem trusting Perry Johnson but has concerns with other Executive Directors coming along and no one knowing what's going on and no one is contesting the decision. All of a sudden the Council has a big problem again. Kevin Olson said the Council can rescind it by the same motion.

Katrina Bolger commented that the four items that are in front of them are what the staff does on a daily basis. The contested cases are a small part of the work that goes on and there is a committee for those. She explained having a committee that is involved in the day to day business would be nice. Bill Dial remarked that the Council is advisory and policy setters to the staff and doesn't think the Council needs to be involved in the day to day operations. Tony Harbaugh said he thinks the request can still be made for the equivalency and extensions. It may be that there doesn't have to be a motion to approve them anymore. Perry Johnson added that the Council will still see the extensions and equivalency requests to approve but they won't see the denials unless they are appealed to the Council.

Chris Tweeten restated the motion for the Council. The POST Council delegates to the Executive Director authority to determine requests for equivalency and request for extension, both under MCA 7-32-303. Anyone adversely affected by the Executive Directors' decision may request a contested case hearing before the Council by submitting a written request in substantial compliance with the requirements of ARM 23.13.704(3)(4), pursuant to Title 2, Ch. 4, Pt. 6, MCA. If no appeal to the full Council is taken, the Executive Director's decision becomes the final decision of the Council for purposes of MAPA, Title 2, Ch 4 Pt. 7, MCA.

Perry Johnson asked if there needs to be a time line added to the motion. Chris Tweeten and Sarah Clerget conversed about the MAPA and ARM timelines. It was determined to add a 30 day time limit.

The new motion reads; The POST Council delegates to the Executive Director authority to determine requests for equivalency and request for extension, both under MCA 7-32-303. Anyone adversely affected by the Executive Directors decision may request a contested case hearing before the Council by submitting a written request within 30 days of the Executive Directors' decision in substantial compliance

with the requirements of ARM 23.13.704(3)(4), pursuant to Title 2, Ch. 4, Pt. 6, MCA. If no appeal to the full Council is taken, the Executive Director's decision becomes the final decision of the Council for purposes of MAPA, Title 2, Ch 4 Pt. 7, MCA.

Motion carried, all members voting in favor.

Perry Johnson directed the Council to page 82 in the meeting materials. He wanted to address the fact that some of the committees in place have a large number of people on them. The goal is to reconfigure the committees to even out the numbers to maintain a quorum and make sure everyone is on a committee who would like to be. Tony Harbaugh will be eliminated from the Business Plan Committee, John Strandell and Laurel Bulson will be removed from all other committees since they are on the Case Status Committee which meets often.

The Business Plan/Policy Committee members are Jesse Slaughter, Tia Robin, Ryan Oster, and Kimberly Burdick. **The Curriculum Review Committee** members are Jim Thomas, Kimberly Burdick, Kevin Olson and Lewis Matthews. **The Case Status Committee** members are Tony Harbaugh, John Strandell, Lauel Bulson and Jesse Slaughter as a standby member. **The Coroner Committee** members are Jim Cashell-Chairman, Bill Dial, and Lewis Matthews. **The ARM Committee** members are Jim Cashell, Bill Dial, Gina Dahl, and Jesse Slaughter.

Budget Report:

Perry Johnson referred the group to pages 85- 86 for the budget reports. Page 85 showed the end numbers of fiscal year 2015 with the exception of the restricted \$50,000.00 legal fund of which POST spent \$19,000.00. Thirty-two thousand dollars were reverted back to the state. Perry Johnson did ask to have 15% of the remaining budget dollars carried forward. The Attorney General's opinion confirmed that even though it was a restricted fund, 15% could be carried forward.

Page 86 shows the budget for fiscal year 2016. The Legislature added \$100,000.00 unrestricted to POST's budget for fiscal year 2016. The total budget for 2016 is \$450,262.00

Legislative Updates:

Katrina Bolger explained the four bullet points on the agenda asking for discussion as to what are the goals of the Council for the next legislature.

1. What is POST's role going to be for the Pretrial/Misdemeanor Legislation?
2. Fixing references in the statutes concerning the Attorney General and the Board of Crime Control.
3. Add to the 44 code so an officer who is revoked can no longer be an officer of any discipline. Right now certain types of officers can be revoked and become another type of officer. POST is looking for consistency in the statutes.
4. There is a provision that any of POST's decisions go before the Board of Crime Control for appeal which is an additional level of appeal that other agencies don't have. Should that be removed?

Perry Johnson asked Steve Ette, from the audience, if he had anything to discuss with the Council at this time. Steve Ette pointed out that a Pretrial Officer is not a

Misdemeanor Probation Officer and vice versa and should be treated as such legislatively. Kevin Olson pointed out that once again it would be drawing a distinction between a government employed officer versus a private. For Pretrial services there is no difference under current statute. Kevin Olson shared that personally he has a huge philosophical problem with advocating the power of arrest to private enterprise. He believes that is a government function. He said that it doesn't pertain to those employed by Gallatin County because they are a government entity. Steve Ette agreed with Kevin Olson.

Chris Tweeten suggested the Council ask the Attorney General for an opinion concerning a waiver for the basic requirements for Pretrial Probation Officers. It could be added to the letter POST will be sending to the Attorney General as discussed earlier in the meeting. He also asked about a letter sent to POST from Kirsten Pabst.

Perry Johnson stated the letter arrived too late to include on the agenda but explained to the Council the letter raises some issues by Kirsten Pabst, County Attorney for Missoula County, in regards to the interpretation POST is using of what a Public Safety Officer is and how that is applied to a Misdemeanor Probation Officer. Chris Tweeten doesn't think her arguments are well taken. Perry Johnson explained that it will be an agenda item next meeting but since there wasn't time to add it to this agenda he didn't think it could be discussed.

Chris Tweeten said Kevin Olson and him were speaking and thought an Attorney General's opinion would indicate if the Council has the power to waive a statutory standard to fix the issue created by the prior POST Director and Council.

Bill Dial made the motion and Laurel Bulson seconded to authorize the amendment of the letter sent to the Attorney General. Tony Harbaugh asked if it would be appropriate to push the letter out to the Council for review before it is sent out. Kevin Olson said he is perfectly comfortable with whatever verbiage Chris Tweeten uses in the letter and Perry Johnson and Tony Harbaugh approves.

Motion carried, all members voting in favor.

Perry Johnson continued that the staff is looking for some direction in regards to what the Council's role is in regards to the question about legislation. Does POST want to draft legislation or do we want to support whatever legislation is brought forward? Sarah Clerget shared that in the past a committee would work on the legislation and bring it before the Council to consider. Kevin Olson stated that there will be legislation coming out of Billings on this issue. He recommends the Council be very familiar with that legislation. He suggests when the Council is looking at private enterprise, the Department of Labor is the appropriate venue for regulating those industries, much like they regulate private security. The POST Council regulates public and the Department of Labor regulates private. He stated that the Council should work hard to separate the two entities and their functions with any legislation that comes down. Perry Johnson asked the Council if they would like Chris Tweeten and himself to stay involved with the group out of Billings, headed by Rich Friedel, and offer whatever input they can on behalf of the Council or carry it back to the Council so they are aware of what's going on. Kevin Olson and Tony

Harbaugh both agreed that the input would be critical to the situation and would like the feedback.

Perry Johnson talked to Deb Mateucci at the Interim Law and Justice Committee meeting about some of the issues that were discussed at the last Council meeting. It seems to Perry Johnson that the Business Plan Committee could clear up the language in regards to the appeal of the Board of Crime Control in a legislative package and bring it back to the whole Council. Kevin Olson and Tony Harbaugh agreed and think it would be good to hear the thoughts of the Board of Crime Control concerning the appeal. Bill Dial and Jim Cashell are both members of the Board of Crime Control and Bill Dial would like to see POST go before the whole Board of Crime Control and discuss the matter. Jim Cashell stated that he thinks some of the members would like to maintain that association since the statute requires two members be placed on the POST Council. Tony Harbaugh thought the BOCC's input is important.

The Council adjourned until one o'clock to look at the MLEA simulator and eat lunch.

Approval/Denial Of Certificate Requests:

Perry Johnson directed the Council to pages 93~102 in the meeting materials. He reported around 370 certificates were processed and issued. He also explained that the Council has empowered the Director to process and approve the certificates so there no longer needs to be a motion for approval.

Case Files:

Perry Johnson referred the Council to page 104 in the meeting materials to the Case File Report. He commented that while Katrina Bolger was on maternity leave POST accepted and processed some additional allegations. There are several that haven't been in front of the Case Status Committee yet so he couldn't tell how many will be added to the 2015 case load. The Case Status Committee is hoping to meet September 29, 2015.

Bill Dial acknowledged the work that Perry Johnson and Katrina Bolger and the whole staff have done at POST. He said things are going so much smoother and cases are being closed. Sarah Clerget shared that the work Perry Johnson and Katrina Bolger do up front shows with the lack of appeals by the officers with allegations.

Office Updates:

Perry Johnson shared that Sugar CRM, the database POST purchased a year ago has never been turned on. Justin Stolp is a new point of contact with IT and we hear from him weekly. At this point POST is waiting on DOJ IT to install some software.

Perry Johnson also reported that Katrina Bolger is back in the office. Shan Johnson's last day was September 2. She worked for POST for six months.

The staff continues to collect and prepare fixes for some of the operational things that are dealt with on a daily basis with the ARMs. He will call a meeting with the ARM Committee down the road to look at the issues the staff has developed.

Perry Johnson asked Chris Tweeten several months ago to take a look at some of the policies that are necessary for the operation of the office. He has edited a few policies that Katrina Bolger drafted and will continue to work on some others. When the drafts are ready they will be brought before the Business/Policy Committee for review and a recommendation brought to the whole Council.

Extension Requests:

Perry Johnson directed the members to pages 106-107 in the meeting materials. Kevin Olson made a motion and Ryan Oster seconded to approve the extension requests for officers 1-8 on the list. Motion carried, all members voting in favor.

Perry Johnson brought the Council's attention to number 9 on the list, John Moore. He shared that he was hired as the Chief of Police in Ennis, December 29, 2014. His initial appointment as a Reserve Officer was November, 2011. The reason there is a question about granting an extension is the Attorney General's opinion states that the initial hire date is the significant date. The question raised by the staff and therefore brought before the Council is, does that mean the initial hire date as a reserve officer as well. The Attorney General doesn't distinguish in his opinion.

Kevin Olson commented that lawfully you can't be a paid Reserve Officer. If he was being paid on a payroll he can't be called a Reserve but he is actually a part-time officer.

Sarah Clerget said that Chris Tweeten and she were talking about the issue and they think because the way the statutes are and because of the things that they exempt out of each other, if John Moore had truly been operating as a volunteer then the first day of an appointment as an Chief of Police would be his date of hire per the Attorney General's opinion and 7-32-303(5)(a). However, if he had been paid at all it doesn't matter what the agency is calling a person, they are not a Reserve Officer. She thinks there is a factual question as to whether or not he was paid. If he was paid, then the date of hire was the first day he was paid as a Reserve Officer. If he wasn't paid then his initial hire date under 7-32-303(5)(a) would be as the Chief of Police.

Perry Johnson asked if he was paid a stipend would that be paid. Sarah Clerget commented that if he was paid in relation to the hours that he worked, then he was paid. If he was paid an hourly wage then he is not a Reserve Officer. She wondered if it would be a good idea to look at the pay record to ensure how he was paid.

Chris Tweeten asked Kevin Olson to explain what he means by stipend. Kevin Olson explained under the Reserve statute it permits a person to receive a stipend to offset associated expenses, not for the work that is actually being done. He thinks there are agencies out there who say they aren't really paying them, they are giving them a stipend but they are taking payroll taxes off the pay.

Chris Tweeten remarked that according to the statute there are three things that have to be satisfied in order to be a Reserve Officer. A person has to be sworn, be part time and be a volunteer. Sarah Clerget added if John Moore satisfies these three requirements then his first initial date would be the date he became Police Chief.

Bill Dial asked what happens if he was paid?. Kevin Olson stated that he has to cease and desist all law enforcement activities until he graduates the Academy.

Kevin Olson shared that this kind of situation has gone on in the past. An agency would put the officer on desk duty until he was done with the Academy then they would return to regular work.

Perry Johnson asked the Council if this is the time to put every administrator on notice that if they paid their Reserve Officers they have forfeited their office. Sarah Clerget shared that it has been done with the Ronan situation concerning Reserve Officers. Perry Johnson said Ronan knows that and it's been talked about but this Council has not drawn a bright line for everybody in Montana who has a Reserve program. Jim Cashell doesn't think we have a choice. Ryan Oster is concerned about the administrators hiring someone that they find out was a paid Reserve Officer and now they are making invalid arrests. He thinks the Council needs to put everyone on notice. Tony Harbaugh thought we have to be careful with the definitions because he has a County Attorney who says that the county can't pay them but they may work a basketball game and the school district pays them. Katina Bolger shared that there is an old Attorney General's opinion that says a Reserve officer can do that.

Jesse Slaughter wondered if a Reserve Officer loses their power the moment they get paid. It was determined that the clock starts for the one year to get to a Basic Academy. He agrees that a notice needs to go out to the administrators but POST needs to be very careful in the wording. Bill Dial thinks a notice should go out stating that POST has had this issue and the administrators should be aware that if they have a Reserve program if at any time a Reserve has been paid where they have been taxed as a police officer then that is the start date.

Perry Johnson said he would be most comfortable working with Chris Tweeten to draft a memo to send to the agencies. Sarah Clerget brought up if a Reserve Officer has been certified and we find out they were paid she doesn't think the certificate is valid. Chris Tweeten suggested there be a line added to the Reserve Basic Certificate asking if the person has been paid for services by the agency. Jim Cashell thought we might need to ask for payroll records but Perry Johnson thought we could just start out with asking then take it from there if they had been paid.

Tia Robin asked if those three criteria are listed on the basic certificate application and Perry Johnson said no. She said it seems like an educational item that people don't know they can't be paid. Perry Johnson remarked that he and Chris Tweeten would work on a document that would site the Attorney General's opinion and define stipend and productivity so that the interpretation would belong to the POST Council but refer right back to the statutes and the Attorney General's opinion.

Perry Johnson stated that the problem is span of control when a supervisor is home with a phone next to his bed. Do you have span of control? Tony Harbaugh stated that it is an agency administrator's argument as far as he is concerned.

Kevin Olson made a motion and Jim Thomas seconded to direct Perry Johnson to find out more about the status for John Moore and either grant or not grant the extension accordingly. Motion carried, all members voting in favor.

Sarah Clerget explained the employment history of David Weidner. He is a Public Safety Communicator Officer but was a Correction Officer. What is his initial hire date since he switched disciplines? She states that 7-32-303(5)(a) says an officer has one year from the date of initial appointment to attend a basic academy. The Attorney General's opinion from 2012 states the initial appointment means the first date by any agency. The point being you can't work for 11 months for one agency and then work for 11 months for another agency and so on. An officer only gets one year at any agency. In 23.13.216, POST applied these standards to all Public Safety Officers, not just Peace Officers.

Chris Tweeten pointed out that 7-32-303(5)(a) reads the officer is to attend an appropriate basic. David Weidner was hired as a Corrections Officer first so the Public Safety Communicator basic academy wouldn't have been an appropriate basic during his employment as a Corrections Officer. He questioned how the clock for taking the Public Safety Communicator's basic could start running during a period of time when it wasn't appropriate for the officer to attend that course anyway. The officer wouldn't be allowed to attend a basic in a discipline he wasn't employed in.

Jim Thomas asked what POST is going to do to anyone who doesn't apply for an extension and keeps on working. There really isn't any sort of sanction that can be applied to them. Sarah Clerget stated that with the Public Safety Communicator (PSC) specifically, their section says date of hire as opposed to date of initial hire. The Attorney General's interpretation is based on 7-32-303(5)(a), the date of initial appointment. In terms of date of hire for PSC, 44-4-404 specifically gives the Council the authority to provide for Public Safety Officer certificates within one year of their date of hire. The PSC date of hire is the 44-4-404 date of hire language where the Council gets authority in the ARM that says all Public Safety Officers must have a Public Safety certificate. Chris Tweeten stated the answer is in 7-31-203(5) which says failure by any person appointed as a Public Safety Communicator Officer after July 1, 2001 to meet the minimum requirements in 7-31-202 or satisfy to certification requirements provided in (2), is cause to terminate that person's employment as a Public Safety Communications Officer. Jim Thomas shared that the agency is who would be terminating the officer, but they are the ones not sending the officer to basic.

Kevin Olson shared that there has never been a Public Safety Communicator from Billings come to a basic in twelve years. Sarah Clerget said in the statutes the qualifications for Public Safety Communicators 7-32-203(7) are; must meet any additional qualifications established by the Council. The Council, through ARMs said all Public Safety Officers have to have certificates or the language in 7-32-303(5)(a) says you forfeit your authority. The question was raised, is POST going to go out and fire the dispatchers in Billings Police Department. Sarah Clerget said the Council can't fire them but the officers could have to forfeit their office.

Kevin Olson shared the training for PSC in Billings is four times as robust as the training received at the MLEA. Chris Tweeten said there is a liability at stake because failure to train is a federal constitutional violation. Katrina Bolger commented that POST can take the certification from the person who hired them and continues to let them work without a basic academy.

Jim Thomas asked what the difference is between forfeiting a person's office or being fired. Chris Tweeten responded that forfeiting an office happens as a matter of law at a specific time when a condition occurs. A forfeit means a person has lost something whether any action is taken or not. Kevin Olson points out the Dispatch in Billings works for the Fire Department so there are no certificates to take from the people who hired them and didn't send them to a basic academy.

Sarah Clerget shared that the precedent POST is setting is a person can go from a Public Safety Officer to a Public Safety Officer position and the council is interpreting the date of initial employment under 7-32-303(5)(a) for a Public Safety Officer to be the most recent date of hire in the agency for the current position and the appropriate basic being applied for.

Kevin Olson made a motion and Jim Thomas seconded to approve the 180 day extension request for David Weidner. Motion carried, all members voting in favor.

Basic Equivalency Requests:

Perry Johnson directed the members to pages 109-110 in the meeting materials. All the officers had been vetted through the National Decertification Index. The POST staff reaches out to the POST agency in the state the officer came from. If they attended a basic such as FLETC then the staff reaches out to those types of agencies as well. The agencies are asked to fill out a questionnaire concerning the officer asking for the equivalency.

Jim Cashell made a motion and Jesse Slaughter seconded to grant a basic equivalency request for the officer on the list. Motion carried, all members voting in favor.

COMMITTEE REPORTS:

ARM Committee: Nothing new

Coroner Committee: Nothing new

Integrity and Professional Standard Committee: Nothing new

Curriculum Committee: Nothing new

Business Plan Committee: Combined with Policy Committee

Policy Committee:

Individual Council Member Reports and Comments:

Kimberly Burdick: No comment.

Bill Dial: Referred to Jesse Slaughter

Ryan Oster: No comment.

Laurel Bulson: No comment

John Strandell: Not present.

Tony Harbaugh: No comment.

Lewis Matthews: No comment.

Jesse Slaughter:

Jesse Slaughter asked why a training has to be open and advertised to be granted POST credit. Perry Johnson didn't know the history of it but it is defined as in-service in the ARMs. He added that tracking every agencies trainings would require additional staff at POST. Kevin Olson talked about the history of the larger agencies hosting trainings and opening it up to all agencies so the smaller agencies could partake in it. Perry Johnson said the Council can make the POST agency as large as they would like it. Bill Dial thought the Business Plan Committee should take a look at it.

Kevin Olson: No comment.

Jim Thomas: No comment.

Jim Cashell: No comment.

Tia Robin: No comment.

Gina Dahl: Not present.

Perry Johnson made the comment that Katrina Bolger and Scott Sterland are going to be joining forces to push out a curriculum on ethics for the agencies to participate in if they so wish to satisfy the POST ARM.

Next meeting will be December 2, 2015.

2016 Council schedule is:

March 2 ~ Phone Conference

June 1 ~ Face to Face

September 7 ~ Face to Face

December 7 ~ Phone Conference

Session adjourned and the Council went into Executive Session.

Perry Johnson asked personnel questions from 0:00:00 to 0:31:43.

Submitted by

Mary Ann Keune

MAK

11/17/15