

LAW ENFORCEMENT OFFICERS
STANDARDS AND TRAINING COMMISSION
MICKELSON CRIMINAL JUSTICE CENTER
Commission Conference Room/Amphitheater
Pierre, SD
September 5, 2019

The South Dakota Law Enforcement Officers Standards and Training Commission meeting was called to order by Chairman Natvig on September 5, 2019, at the hour of 8:30 a.m. in the Commission Conference Room of the George Mickelson Criminal Justice Center in Pierre, South Dakota.

Roll call was taken with the following members responding: Matt Burns, Sioux Falls Chief of Police; Tom Wollman, Lincoln County State's Attorney; Andy Howe, Clay County Sheriff; Jason Ravnsborg, Attorney General; Robert Perry, Special Agent, FBI; Jo Vitek, Lake Area Technical Institute; Randall Rosenau, Lawrence County Commissioner; Rick Miller, SD Highway Patrol; Gary Gaikowski, Sisseton-Wahpeton Chief of Police; and Steve Allender, Rapid City Mayor. Others present included David Natvig, Chairman; Chad Mosteller, Executive Secretary; Kim Knecht, Assistant Training Administrator; and Law Enforcement Training Staff.

In accordance with SDCL1-25(1), official meetings open to the public, time was allowed by Chairman Natvig for public comments. The floor was open for public comments of which there were none.

Chairman Natvig declared a quorum present and started the order of business with the review of the previous meeting's minutes.

- June 27, 2019 minutes of the South Dakota Law Enforcement Officers Standards and Training Commission were approved as reviewed on a **motion** by Commission Member Vitek, **second** by Commission Member Howe.

The following canine teams have met the requirements of certification or recertification:

- Canine Team **Michael Dale and K9 Sadie**, SD Highway Patrol, have met the requirements for Patrol Dog certification on June 14, 2019.
- Canine Team **Shannon Irish and K9 Bram**, Sioux Falls Police Department, have met the requirements for Patrol Dog certification on July 17, 2019.

Motion by Commission Member Perry to approve the canine certification listing as presented, **second** by Commission Member Rosenau, motion **approved**.

Executive Secretary Mosteller presented the following reciprocity request:

Louis Plunkett, SD Highway Patrol, completed the 880-hour Basic Academy at Yuba College, Marysville, CA. Plunkett received his POST Basic Certification on November 23, 2003,

following an attestation from the Monterey County Sheriff's Office that he had completed the Basic Course training, completed a POST certified field training program, and successfully completed the agency specific probationary period. Since Plunkett was certified as a peace officer with the State of California, he met the qualifications to participate in the AZ POST waiver process and successfully completed the process in October 2012. Plunkett is a certified, full-authority peace officer in the State of AZ. Background check revealed no adverse information. Plunkett successfully completed the reciprocity exam in July 2019 and is scheduled to attend the September 2019 reciprocity training week. **Motion** by Commission Member Vitek to approve the reciprocity request, **second** by Commission Member Burns, motion **approved**.

The following item of business was for information only and did not require commission action:

Executive Secretary Mosteller reviewed the March meeting discussion regarding sexual harassment training presented by Attorney General Ravensborg. The training is required every other year (every odd year) and to be completed by December 31st. Just a reminder for members to report their completion of the training to Law Enforcement Training by December 31, 2019. The next training completion date would be December 31, 2021. A link will be sent to all members.

The business portion of the meeting was adjourned on a **motion** by Commission Member Rosenau, **second** by Commission Member Burns, motion **carried**.

The meeting continued in the amphitheater of the George Mickelson Criminal Justice Center and was called to order by Chairman Natvig at 9:00 a.m. with a quorum present.

The commission proceeded with the scheduled hearing of **Dale Elsen**. Chairman Natvig turned the proceedings over to Hearing Officer Paul Bachand. Hearing Officer Bachand reviewed the December 13, 2018 hearing held to determine whether Elsen engaged in conduct unbecoming of a law enforcement officer. Based upon the Findings of Fact and Conclusions of Law, the commission found that Elsen's conduct warrants decertification as a SD Law Enforcement Officer. An Order was entered revoking Elsen's certification as a SD Law Enforcement Officer. Elsen appealed to the Circuit Court and an order was entered remanding the case back to the commission. A hearing is to be conducted with the understanding that Sheriff Elsen has admitted the factual allegations. The commission was asked by Judge Portra to consider reasonable alternatives.

It was stated for the record, this is the time and place for the hearing at the direction of Honorable Tony Portra's Order of May 23, 2019. The hearing is to determine appropriate sanctions, not to retry the case. All commission members have reviewed the copy of the December 13, 2018 transcript.

Elsen is present with counsel David Geyer. Brent Kempema, Assistant Attorney General, is acting legal counsel for the State. Hearing Officer Bachand advised counsel of the hearing procedure and due process. The record will reflect a stenographic transcription of the hearing will be made and copies of the transcription will be available upon request and tender of the cost

thereof. See file for exhibits.

The hearing commenced with opening statements by counsel, presentation of exhibits, witness testimony, and questions by commission members and the hearing officer.

Members recessed for a short break and returned to session with a quorum present. The hearing continued with testimony, cross-examination, and questions by commission members and the hearing officer.

A short break was taken and returned to session with all present. Upon conclusion of testimony, arguments by both parties, review of records, questions and discussion, the evidentiary portion of the hearing concluded.

Members entered executive session on a **motion** by Commission Member Ravensborg, **second** by Commission Member Rosenau to further discuss their consideration, motion **approved**.

Members moved out of executive session on a **motion** simultaneously by Commission Members Rosenau and Ravensborg, **second** by Commission Member Perry. Proceedings resumed before the commission.

Members of the Law Enforcement Officers Standards and Training Commission discussed the consideration of lesser sanctions in the matter of Dale Elsen:

- Mentorship - Mentorships are involving young people entering a profession, and it would not be appropriate for an elected official. This would not be a viable option;
- Probationary status - There would be no way to monitor such a process. LET does not have a person or an FTE assigned to this sort of role. It is impractical for the LET staff to enter into that kind of a role. It would be difficult for another sheriff to mentor/supervise a fellow sheriff with their own county responsibilities;
- Education - Through testimony it was understood there was education but then re-offended after that education, even with that education, an awareness of the problem, it was not corrected. He minimized or misrepresented the truth in a Facebook post. Not sure education is a viable option;
- Suspension - Suspending a working sheriff would only punish the support staff, deputies, and others who would carry the load, would push duties onto someone else. Do not see it being impactful or reasonable.

Ideas were discussed and nothing new was found. Since the first hearing, there's been nothing that's changed. There has been additional testimony, but nothing changed to alter the Findings of Fact and Conclusions of Law.

Motion by Commission Member Ravensborg based on the testimony we heard today and the exhibits that were presented, the lesser sanctions that the court asked us to consider, and I would say that we did consider them. All members of the commission received a copy of the Court's transcript and the lesser sanctions that we discussed here today, I move to revoke the certification

of Dale Elsen, **second** by Commission Member Allender. Commission Ravensborg moved to amend his **motion** accordingly to authorize the Chair to sign and incorporate the other Findings of Fact, Conclusions of Law, **second** by Commission Allender, Motion **approved** by verbal response in the affirmative by all members. **Action 10-0 Aye** [Burns, Wollman, Howe, Perry, Gaikowski, Vitek, Ravensborg, Rosenau, Allender, and Miller].

Assistant Attorney General Kempema will prepare the Findings of Fact, Conclusions of Law and Order. The hearing proceedings were concluded.

There being no further business to come before the meeting body, the meeting was adjourned on a **motion** by Commission Member Perry, **second** by Commission Member Burns, motion **approved**. The next meeting is scheduled for November 13, 2019, in conjunction with LECC at the Sioux Falls Ramkota.