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TO: Senator Robert D. Robbins, Chairman
Local Government Commission

FROM: Honorable A. Anthony Sarcione

SUBJECT: Powers and Responsibilities of Detectives Working Under
the Jurisdiction of the District Attorney's Office

The appointment, responsibilities and authority of detectives working under the jurisdiction of the District Attorney's Office is governed by statute. The statutes are classified according to the class of the county. An addendum is attached which lists the classification of all the counties in Pennsylvania.

RELEVANT STATUTES

FIRST CLASS COUNTIES

In counties of the first class, the following statutes govern the appointment of county detectives:

16 Pa.C.S.A. § 7741 Appointment; powers and duties

In each and every county of the first class of this Commonwealth, the district attorney may appoint a chief county detective, an assistant chief county detective, and special county detectives not exceeding twenty in number, whose duties it shall be to investigate and make report to the district attorney as to the conduct in the office of magistrates, constables, deputy constables, and other officers connected with the administration of criminal justice; to make such investigation and endeavor to obtain such evidence as may be required by the district attorney in any criminal case; and perform such other duties as the district attorney may direct. Said detectives shall be general police officers, and shall have all powers now conferred on constables by existing laws of this Commonwealth so far as they relate to crimes or criminal procedure.



***Please note that Philadelphia does not follow all of the procedures set forth in the above statute. The Chief County Detective of Philadelphia is appointed by the District Attorney. The other detectives hired within this county are hired pursuant to the Civil Service Act.

SECOND CLASS COUNTIES

16 Pa.C.S.A. § 4440 Appointment; duties and compensation of county detectives

(a) The district attorney may appoint one chief county detective, an assistant chief county detective, and as many county detectives, sergeant, special county detectives and junior county detectives as the salary board shall fix.

(b) County detectives shall at all times be subject to the orders of the district attorney, and shall investigate and make report to the district attorney as to the conduct in the office of magistrates, constables, deputy constables and other officers connected with the administration of criminal justice, to make investigations, and endeavor to obtain such evidence as may be required by the district attorney in any criminal case, and perform such other duties as the district attorney may direct. Said detectives shall be general police officers and shall have all powers now conferred on constables by existing laws of this Commonwealth, so far as they relate to crime or criminal procedure, and they shall serve subpoenas in cases in which the Commonwealth is a party in a court of record.

(c) Said chief county detective, assistant chief county detective, county detectives, sergeant, special county detectives and junior county detectives shall not be entitled to receive any fees whatsoever, but shall each receive such a salary as shall be fixed by the salary board, together with necessary traveling expenses, which said salary and expenses, having been verified by affidavit of the chief county detective, assistant chief county detective, county detective, sergeant, special county detective or junior county detective incurring the same, and approved by the district attorney, shall be paid out of the treasury of the county, on a certificate issued by the district attorney directed to the controller of the county, who shall order warrants for said amounts according to law.



16 Pa.C.S.A. § 4441 Appointment of special detective with approval of court

The district attorney of the county may, with the approval of the salary board, whenever the court of quarter sessions and district attorney may deem it necessary for a particular and temporary assignment, appoint a special detective, whose duty it shall be to assist in obtaining such evidence as shall be directed by the district attorney for the Commonwealth, and perform such other duties as the court may direct. He shall be allowed expenses necessarily and actually incurred in the performance of his duties.

Such special detective officer shall be a general police officer and shall have all the powers that are conferred on constables by the existing laws of this Commonwealth, so far as they relate to crimes or criminal procedure.

COUNTY CLASSES THREE-EIGHT

16 Pa.C.S.A. § 1440 Appointment; Duties and Compensation of County Detectives

(a) In counties of the third and fourth classes, the district attorney may appoint one chief county detective, one assistant county detective and such other county detectives as the salary board may authorize.

(b) In counties of the fifth, sixth, seventh and eighth classes, the district attorney may appoint one chief county detective and such other county detectives as the salary board may authorize.

(c) County detectives shall, at all times, be subject to the orders of the district attorney, and shall investigate and make reports to him as to the conduct in office of magistrates, constables, deputy constables and other officers connected with the administration of criminal law, shall make investigations and endeavor to obtain evidence required by the district attorney in criminal cases, and shall perform such other duties as the district attorney may direct.

(d) County detectives shall be general police officers and shall have the powers conferred on constables by the laws of this Commonwealth, so far as they relate to criminal law and procedure.



(e) County detectives of every grade and rank, in addition to their annual salary, shall be allowed their expenses actually and necessarily incurred in the performance of their duties. Such salaries and expenses shall be paid by the county as provided by law. No county detective shall be entitled to any fee whatsoever.

16 Pa.C.S.A. § 1441 Appointment of Special Detective with Approval of Court

The district attorney of any county may, with the approval of the salary board, whenever the court of quarter sessions and district attorney may deem it necessary for a particular and temporary assignment, appoint a special detective, whose duty it shall be to assist in obtaining such evidence as shall be directed by the district attorney for the Commonwealth, and perform such other duties as the court may direct. He shall be allowed expenses necessary and actually incurred in the performance of his duties.

Such special detective officer shall be a general police officer and shall have all the powers that are conferred on constables by the existing laws of this Commonwealth, so far as they relate to crimes or criminal procedure.

TRAINING REQUIREMENTS

Detectives working under the jurisdiction of the District Attorney's Office must comply with the training requirements as set forth in **53 Pa.C.S.A. §§ 2161-2171**.

53 Pa.C.S.A. § 2161 establishes the Municipal Police Officers' Education and Training program which is administered by the Pennsylvania State Police. **53 Pa.C.S.A. § 2164** establishes the Municipal Police Officers Education Training Commission which manages the educational program and provides certifications to those officers who fulfill the requirements. **53 Pa.C.S.A. § 2167** dictates which individuals must obtain the certification.

53 Pa.C.S.A. § 2167 Police Training

(a) General rule.---All municipalities of this Commonwealth or groups of municipalities acting in concert and all colleges and universities shall be required to train all members of their police departments pursuant to this subchapter prior to their enforcing



criminal laws, enforcing moving violations under Title 75 (relating to vehicles) or being authorized to carry a firearm.

(b) Ineligibility for compensation.---Any person hired as a police officer by any municipality or group of municipalities acting in concert or by any college or university shall be ineligible to receive any salary, compensation or other consideration for the performance of duties as a police officer unless the person has met all of the requirements as established by the commission and has been duly certified as having met those requirements by the commission.

(c) Penalty.---Any official of any municipality or of any college or university who orders, authorizes or pays as salary to a person in violation of the provisions of this subchapter commits a summary offense and shall, upon conviction, be sentenced to pay a fine of \$100 or be imprisoned for a term not to exceed a period of 30 days. The commission may stop payment of all funds paid or payable to municipalities under this subchapter for any violation of this subchapter. It shall notify the State Treasurer to discontinue disbursement of any State funds until a municipality is in compliance with this subchapter.

*****Note:** The Municipal Police Officers Education and Training Commission may be contacted at:

75 East Derry Road
Hershey, PA 17033
(717) 533-5987

The Municipal Police Officers Education and Training Commission mandates that the detectives attend a 520-hour course which covers the essential topics required for police training. A list of the facilities which provide this certified program is attached.

A law enforcement officer who relocates to Pennsylvania from another state, who has been certified as a officer in the other state may have a portion of the training requirement waived. However, the individual still must attend a course on Pennsylvania Law. The Commission is currently in the process of drafting a full waiver exam. The waiver exam will be able to be utilized to fully certify those who pass the exam without requiring the individual (whether they are from out-of-state or from Pennsylvania) to attend the recruit training.



CASE LAW DISCUSSION

The Authority and Powers of County Detectives

Throughout the years, the authority and powers of arrest of county detectives have been challenged in the court system. The Supreme Court and Superior Court of Pennsylvania have examined the issue and determined that the legislative provisions and relevant case law express a clear intent to classify county detectives as police officers who possess general police power to enforce the laws of the Commonwealth. *Commonwealth v. Frombach*, 420 Pa. Super. 498, 617 A.2d 15 (1992). Furthermore, county detectives are not restricted to the powers bestowed upon constables, but possess the powers of both general police officers and constables. *Commonwealth v. Dieterick*, 429 Pa. Super. 180, 631 A.2d 1347, appeal denied 645 A.2d 1312 (1993).

*****Note** these cases have been attached as an addendum.

Conclusion

Thus, a review of the applicable statutory authority and case law indicates that county detectives possess the same powers of arrest as police officers and are subject to the training requirements imposed on police officers. County detectives must comply with the training requirements and receive the proper certification credentials from the Municipal Police Education and Training Commission.

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[10] Finally, we address the defendant's argument that the evidence was insufficient to sustain his convictions of homicide by vehicle and involuntary manslaughter in that "the Commonwealth failed to prove that [the defendant] caused the death of Mrs. Henry while violating a motor vehicle law or while doing either a lawful or unlawful act in a reckless or grossly negligent manner." In so doing, we note that our standard in determining whether evidence is sufficient to sustain a verdict is, as follows:

Wh[en] accepting as true all the evidence viewed in the light most favorable to the Commonwealth, together with all reasonable inferences therefrom, the trier of fact could have found that each element of the offenses charged was supported by evidence and inferences sufficient in law to prove guilt beyond a reasonable doubt.

Commonwealth v. Gamber, 352 Pa.Super. 36, 44, 506 A.2d 1324, 1329 (1986).

This Court has previously held that evidence that a defendant allowed his vehicle to cross the center line and enter the lane of traffic for oncoming vehicles and that his blood alcohol was .09 percent was sufficient to support a conviction for homicide by vehicle. *Commonwealth v. Eichelberger*, 364 Pa.Super. 425, 528 A.2d 230 (1987). Likewise, in *Commonwealth v. Otis*, 364 Pa.Super. 464, 528 A.2d 249 (1987), *alloc. granted*, 518 Pa. 625, 541 A.2d 1136 (1988), this Court held that it was error for the trial court to summarily dismiss criminal charges against a defendant where there was evidence that he crossed the center line while driving and killed two people in an oncoming vehicle; it was determined that the evidence was sufficient for a factfinder to infer the defendant's criminal negligence.

In the present case, the trier of fact found that the elements of homicide by vehicle and involuntary manslaughter were sufficiently proven. In that regard, the trial court opined, as follows:

The testimony of an eyewitness to the accident, Michael Selerud, as well as the testimony of James A. Sims, Plum Bor-

ough Police Officer and [the] Commonwealth's reconstruction expert, demonstrated that the [d]efendant's vehicle crossed the center line of the road before impacting the victim's vehicle. The [c]ourt was satisfied that the Commonwealth proved to the degree necessary that [the d]efendant's vehicle crossed the center line and impacted the victim's vehicle in the victim's lane of travel... the [c]ourt ... was satisfied that the Commonwealth had shown sufficient evidence to support a conviction for Involuntary Manslaughter and Homicide by Vehicle.

(Trial Court Opinion, 3/19/92, pages 7-8). Accepting as true all of the evidence presented by the Commonwealth and the uncontradicted defense evidence, we conclude that the factfinder's verdict was adequately supported by the record.

Accordingly, we affirm the trial court's conclusions regarding defendant's assignments of error but we vacate the judgment of sentence and remand for resentencing based on our determination that the trial court did not properly analyze and weigh all factors relevant to the fashioning of the defendant's sentence.

Judgment of sentence vacated and case remanded for resentencing. Jurisdiction is relinquished.



COMMONWEALTH of Pennsylvania,
Appellant,

v.

John F. FROMBACH, Appellee.

Superior Court of Pennsylvania.

Argued June 16, 1992.

Filed Nov. 18, 1992.

Evidence was suppressed in prosecution for driving while under influence of

alcohol and disorderly conduct, in the Court of Common Pleas, Erie County, Criminal Division, No. 959 of 1991, Connelly, J., and Commonwealth appealed. The Superior Court, No. 1748 Pittsburgh 1991, Wieand, J., held that county detective was "police officer" with authority to investigate possible Vehicle Code violations and otherwise enforce provisions of Code.

Reversed and remanded.

1. Criminal Law \S 1158(4)

When factual findings of suppression court are supported by record, Superior Court may reverse only if legal conclusions drawn therefrom are erroneous.

2. Automobiles \S 349(11)

County detective is "police officer" with authority to investigate possible Vehicle Code violations and otherwise enforce provisions of Code. 75 Pa.C.S.A. \S 6308(b); 13 P.S. \S 45; 16 P.S. \S 1440(d).

See publication Words and Phrases for other judicial constructions and definitions.

3. Automobiles \S 349(9)

County detective possessed reasonable suspicion that defendant was violating Vehicle Code, and therefore was authorized to make stop of vehicle for further investigation, where detective observed defendant attempt to avoid sobriety checkpoint by abruptly making turn and fleeing at high rate of speed. 75 Pa.C.S.A. \S 6308.

Anthony R. Himes, Asst. Dist. Atty., Erie, for Com., appellant.

David G. Ridge, Erie, for appellee.

Before WIEAND, DEL SOLE and HESTER, JJ.

WIEAND, Judge:

John F. Frombach was arrested and charged with driving while under the influence of alcohol and disorderly conduct after he attempted to avoid a sobriety checkpoint

set up by police in Erie County. The trial court suppressed evidence obtained following the stop of Frombach's vehicle by a County Detective on grounds that the County Detective lacked authority to enforce the provisions of the Vehicle Code. The Commonwealth, certifying that the suppression order substantially handicapped its prosecution of Frombach, filed the instant appeal.¹

[1] The Pennsylvania Supreme Court has recently discussed the standard of review to be applied in deciding an appeal taken by the Commonwealth from an order suppressing evidence in the following manner:

We begin by noting that where a motion to suppress has been filed, the burden is on the Commonwealth to establish by a preponderance of the evidence that the challenged evidence is admissible. Pa.R.Crim.P. 323(h). See *Commonwealth v. Iannaccio*, 505 Pa. 414, 480 A.2d 966 (1984), cert. denied, 474 U.S. 830, 106 S.Ct. 96, 88 L.Ed.2d 78 (1985). In reviewing the ruling of a suppression court, our task is to determine whether the factual findings are supported by the record. *Commonwealth v. Monarch*, 510 Pa. 138, 147, 507 A.2d 74, 78 (1986). If so, we are bound by those findings. *Commonwealth v. James*, 506 Pa. 526, 533, 486 A.2d 376, 379 (1985). Where, as here, it is the Commonwealth who is appealing the decision of the suppression court, we must consider only the evidence of the defendant's witnesses and so much of the evidence for the prosecution as read in the context of the record as a whole remains uncontradicted. *Commonwealth v. James*, 506 Pa. at 532-33, 486 A.2d at 379; *Commonwealth v. Hamlin*, 503 Pa. 210, 216, 469 A.2d 137, 139 (1983).

Commonwealth v. DeWitt, 530 Pa. 299, —, 608 A.2d 1030, 1031 (1992) (footnote omitted). See also: *Commonwealth v. Lagana*, 517 Pa. 371, 375-376, 537 A.2d 1351, 1353-1354 (1988); *Commonwealth v. Bag-*
(1985).

1. The appeal is proper pursuant to *Commonwealth v. Dugger*, 506 Pa. 537, 486 A.2d 382

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ley, 408 Pa.Super. 188, 193, 596 A.2d 811, 813 (1991). Where the factual findings of the suppression court are supported by the record, we may reverse only if the legal conclusions drawn therefrom are erroneous. See: *Commonwealth v. Whitney*, 511 Pa. 232, 239-240, 512 A.2d 1152, 1156 (1986); *Commonwealth v. Agnew*, 411 Pa.Super. 63, 71, 600 A.2d 1265, 1269 (1991).

The suppression court found the facts to be as follows:

Larry Dombrowski is a County Detective in the Erie County District Attorney's Office and the DUI Coordinator therein. The District Attorney's Office has instituted written guidelines and policy for the establishment and operation of sobriety checkpoints (DUI roadblocks) in Erie County, which are in accordance with state and federal law.

On March 23, 1991, a DUI roadblock, requested by Chief Belden of the Albion Police Department, was approved and instituted at the intersection of East State Street and Orchard Street in Albion. Mr. Dombrowski, Erie County Sheriff's Deputy Robert Merski and Chief Belden were among those manning the roadblock. Approximately 600 to 700 feet prior to the roadblock was a well lit sign (at East Second and Orchard) announcing the roadblock ahead.

Testimony at the hearing, which this Court accepts as truthful, revealed that the defendant approached the sign announcing the checkpoint at a high rate of speed, stopped in the middle of the intersection and abruptly made a right turn without a proper signal upon observing the roadblock and sign. The vehicle immediately thereafter accelerated at a high rate of speed. County Detective Larry Dombrowski and Deputy Sheriff Robert Merski immediately activated the lights on the marked enforcement vehicle, pursued and pulled the defendant over.

senger (a Betty Jo Chapman) were attempting to switch seats, observing that the defendant, although now in the passenger seat, still had his legs in the driver's well and vice versa [as to] Ms. Chapman.

When the defendant was asked to get out of the car he became uncooperative, loud and obnoxious. He refused to take a field sobriety test and threatened Deputy Merski with violence. When the deputy attempted to frisk the defendant for his own safety [the defendant] fled. County Detective Dombrowski testified he had to assist the deputy (who upon attempting capture had been put in a headlock by the defendant). Dombrowski then placed the defendant under arrest for disorderly conduct. Dombrowski further related that the defendant had the strong odor of alcohol about his person and that he had observed empty beer bottles in the passenger compartment of the vehicle.

Chief Belden testified he originally observed the actions of the vehicle as it approached and then attempted to evade the DUI roadblock. A short time later when the defendant was arrested for disorderly conduct and brought to him at the roadblock he noted that the defendant had a strong odor of alcohol on his breath, bloodshot eyes, that he alternated yelling obscenities with crying (and other mood swings), that he once again refused to take any field sobriety tests and that he (Chief Belden) placed him under arrest for DUI.

Based upon these findings of fact, which are fully supported by competent evidence, the suppression court concluded that there had been reasonable suspicion to support a *Terry* stop of appellee's vehicle after he had attempted to avoid the sobriety checkpoint. The court also concluded that appellee's subsequent actions gave County Detective Dombrowski probable cause to arrest him, and that the county detective had legal authority to make an arrest for disorderly conduct. Additionally, the suppression court found that appellee's subsequent arrest for drunk driving, made by Police Chief Belden, was also supported by proba-

....
Upon stopping the vehicle Dombrowski testified it appeared the driver and pas-

ble cause and in all other respects was legally proper. Nevertheless, the suppression court determined that County Detective Dombrowski lacked legal authority to enforce the provisions of the Vehicle Code. Therefore, the court held, his initial stopping of appellee's vehicle was unlawful. Based upon this conclusion, the court ordered the suppression of all evidence relevant to the charge of drunk driving which had been obtained between the time of the stop of appellee's vehicle and the time of his subsequent arrest for disorderly conduct.²

[2] The issue which is squarely before this Court, therefore, is whether a county detective has the authority to investigate possible Vehicle Code violations and otherwise enforce the provisions of the Vehicle Code. Recently, in *Commonwealth v. Leet*, 401 Pa.Super. 490, 585 A.2d 1033 (1991), *allocatur granted*, 529 Pa. 647, 602 A.2d 857 (1992), the Superior Court, sitting en banc, considered whether a deputy sheriff had the authority to make a warrantless arrest for a Vehicle Code violation which had occurred in his presence. A majority of the Court held that only police officers had been vested with authority to enforce the provisions of the Vehicle Code. In support of this holding, the Court reasoned as follows:

The language of the statute in this case is explicit. Enforcement of the Vehicle Code has been vested by the legislature in police officers. Sheriffs and deputy sheriffs are not police officers. Cf. *Venneri v. County of Allegheny*, 12 Pa. Commw. 517, 316 A.2d 120 (1974). A deputy sheriff has not been authorized to stop a motorist and make an arrest for a Vehicle Code violation, whether or not the violation has been committed in the deputy sheriff's presence.

.....
The Commonwealth would nevertheless have us revert to the common law to

2. All evidence obtained after appellee's arrest for disorderly conduct was deemed by the suppression court to be admissible because County Detective Dombrowski had the legal authority to make an arrest for disorderly conduct, and his

find general peacekeeping duties in the sheriff. Based on authority vested in sheriffs and deputy sheriffs by the common law, the Commonwealth argues that sheriffs and deputy sheriffs have inherent power and authority to arrest without a warrant for all crimes, however defined, committed in their presence, including Vehicle Code violations. We are unable to accept this reasoning. In the first place, an attempt to imply power where the same has not been granted by statute would be in direct violation of the legislature's mandate that sheriffs and deputy sheriffs shall perform the duties imposed by statute.

Moreover, although "the sheriff's power at early common law was indeed formidable, [] it is not tenable to carry over such a broad base of authority in the present [day]." *Venneri v. County of Allegheny*, *supra* at 523 n. 2, 316 A.2d at 124 n. 2. The encroachment of other institutions, including the expertise and technology of modern law enforcement agencies, has greatly diminished the authority of the office of sheriff. Today, the sheriff's principal function is as an arm of the court, which is the duty specifically assigned to the office of sheriff by the legislature.

Commonwealth v. Leet, *supra* 401 Pa.Super. at 496-498, 585 A.2d at 1037.

The suppression court, in the instant case, determined that a county detective is not a police officer, but a law enforcement officer and, as such, is not empowered to enforce the Vehicle Code. In reaching this conclusion, the suppression court relied upon the decision of the Supreme Court in *Commonwealth v. Galloway*, 525 Pa. 12, 574 A.2d 1045 (1990), where the Court determined that a special agent of the State Attorney General's office was not authorized to make arrests for violations of the Vehicle Code. The Court held that the sole powers of the Attorney General are set

actions in doing so were supported by probable cause. Moreover, Police Chief Belden had both legal authority and probable cause to arrest appellee for drunk driving.

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forth in the Commonwealth Attorney's Act,³ which permits the Attorney General to investigate and prosecute only certain enumerated offenses. These enumerated offenses do not include Vehicle Code violations. *Commonwealth v. Galloway, supra* at 15-19, 574 A.2d at 1046-1048.

Galloway, however, is not controlling of the instant case. We cannot look for the authority of county detectives in the Commonwealth Attorney's Act. The question before this Court, rather, is whether a county detective has been designated by the legislature as a police officer so as to be authorized to enforce provisions of the Vehicle Code.⁴

"It is well settled that '[w]hen vesting a group with police powers and duties, the Legislature does so with specificity.'" *Allegheny County Deputy Sheriff's Association v. Pennsylvania Labor Relations Board*, 95 Pa.Cmwlth. 132, 135, 504 A.2d 437, 439 (1986), quoting *Commonwealth v. Pennsylvania Labor Relations Board*, 64 Pa.Cmwlth. 525, 532, 441 A.2d 470, 475 (1982), *affirmed in part and reversed in part*, 502 Pa. 7, 463 A.2d 409 (1983). See also: *Commonwealth v. Leet, supra* 401 Pa.Super. at 493, 585 A.2d at 1035. With respect to county detectives, the legislature has provided that they "shall be general police officers and shall have the powers conferred on constables by the laws of this Commonwealth, so far as they relate to criminal law and procedure." Act of August 9, 1955, P.L. 323, § 1440, 16 P.S. § 1440(d) (governing counties of the third through eighth class).⁵ By the Act of June 4, 1897, P.L. 121, § 1, 13 P.S. § 45, the legislature has conferred upon constables the power to, "without warrant and upon

view, arrest and commit for hearing any and all persons guilty of a breach of the peace, vagrancy, riotous or disorderly conduct or drunkenness, or may be engaged in the commission of any unlawful act tending to imperil the personal security or endanger the property of the citizens, or violating any ordinances of said borough, for the violation of which a fine or penalty is imposed."

The Supreme Court has concluded that county detectives, having been classified by the legislature as policemen, possess the same collective bargaining rights as other policemen throughout the Commonwealth. See: *Hartshorn v. County of Allegheny*, 460 Pa. 560, 333 A.2d 914 (1975). See also: *Commonwealth v. Gaudette*, 1 Pa. D & C. 4th 292, 293 (Northumberland County 1987), *aff'd*, 381 Pa.Super. 654, 548 A.2d 639 (1988) ("[A]s a general police officer, a county detective would have the right to execute a lawful arrest warrant."); Comment, Arrest And Search Powers Of Special Police In Pennsylvania: Do Your Constitutional Rights Change Depending On The Officer's Uniform?, 59 Temp.L.Q. 497, 498 and 507-508 (1986) ("Traditional police are government employees empowered by statute to enforce all commonwealth laws.... Today, traditional police in Pennsylvania include state police, municipal police, township police, borough police, and county district attorneys' detectives.") (emphasis added and footnotes omitted).

[3] After careful review of the relevant legislative provisions and applicable case law, it appears that the legislature has expressed a clear intent to classify county detectives as police officers who possess

driver's license, or to secure such other information as the officer may reasonably believe to be necessary to enforce the provisions of this title.

5. Erie County is a county of the third class. The same powers have been conferred upon county detectives in counties of the first and second class by the Act of July 28, 1953, P.L. 723, art. XIV, § 1440, 16 P.S. § 4440(b) (2nd class counties) and by the Act of June 3, 1919, P.L. 369, § 1, as amended, 16 P.S. § 7741 (1st class counties).

3. Act of October 15, 1980, P.L. 950, No. 164, § 101 et seq., 71 P.S. § 732.101 et seq.

4. The Vehicle Code, at 75 Pa.C.S. § 6308(b), provides as follows:

(b) Authority of police officer.—Whenever a police officer is engaged in a systematic program of checking vehicles or drivers or has articulable and reasonable grounds to suspect a violation of this title, he may stop a vehicle, upon request or signal, for the purpose of checking the vehicle's registration, proof of financial responsibility, vehicle identification number or engine number or the

general police power to enforce the laws of this Commonwealth. Therefore, we hold that county detectives are authorized to enforce the provisions of the Vehicle Code. It follows that the suppression court was in error when it held that County Detective Dombrowski lacked authority to stop appellee's vehicle after observing appellee attempt to avoid the sobriety checkpoint by abruptly making a right turn and fleeing at a high rate of speed. Dombrowski possessed reasonable suspicion that appellee was violating the Vehicle Code; and, therefore, pursuant to 75 Pa.C.S. § 6308, he was authorized to make a *Terry* stop of the vehicle for further investigation. See: *Commonwealth v. Metz*, 412 Pa.Super. 100, 602 A.2d 1328 (1992).

Order reversed. Case remanded for further proceedings consistent with this opinion. Jurisdiction is not retained.



Catharyn A. TURNER, II, Appellant,

v.

E. James KOHL, M.D. and Bryn
Mawr Hospital, Appellees.

Superior Court of Pennsylvania.

Argued May 12, 1992.

Filed Dec. 1, 1992.

Medical malpractice action was brought against hospital, orthopedic surgeon, and nurses, and the Court of Common Pleas, Civil Division, Philadelphia County, No. 5308 March, 1988, Gordon, J., granted hospital's motion for change of venue based on convenience of parties and witnesses, and plaintiff appealed. The Superior Court, No. 2554 Philadelphia, 1991, Wieand, J., held that petition for change of venue should not have been granted after

prior petition was denied by judge of same court.

Reversed.

Kelly, J., concurred and filed opinion.

1. Judges ⇄24

As general rule, it is improper for trial judge, absent new evidence, to overrule interlocutory order by judge of same court in same case.

2. Judges ⇄24

General rule providing that trial judge should not overrule interlocutory order by judge of same court in same case is not matter of jurisdiction per se, but rule of sound jurisprudence based on policy of fostering finality of pretrial applications so that judicial economy and efficiency can be maintained.

3. Venue ⇄52(1)

Successive petition for change of venue based on convenience of parties and witnesses should not have been granted, absent any change in circumstances, after prior petition filed by petitioner's codefendant had been denied by judge of same court. Rules Civ.Proc., Rule 1006(d), 42 Pa.C.S.A.

4. Venue ⇄52(1)

Absent change in circumstances, second petition for change of venue for convenience of parties and witnesses should not be presented, even by codefendant who did not participate in prior petition, after prior petition has been considered and denied. Rules Civ.Proc., Rule 1006(d), 42 Pa.C.S.A.

Shanin Specter, Philadelphia, for appellant.

J. Michael Doyle, Philadelphia, for Bryn Mawr Hosp., appellee.

Before WIEAND, OLSZEWSKI and KELLY, JJ.

WIEAND, Judge:

This is an appeal from an order transferring venue in a civil action from Philadelphia County to Montgomery County for the convenience of parties and witnesses pursuant to Pa.R.C.P. 1006(d).

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were actually two episodes. Relying on the testimony of one witness concerning minimal property damage outside the bar, the Commonwealth contends that there was one episode in the bar and one outside. We reject that metaphysical division, because the record discloses that any damage outside the bar was done during appellants' quick flight from the brawl. Because the record establishes but a single criminal episode it is clear that all charges brought against appellant should have been consolidated in a single proceeding.

shield in an effort to stop the car. Appellant's actions of jumping off the car and promptly attempting to engage the driver and other occupant in a physical fight belie appellant's claim that he perceived danger and only acted in self-defense. See Stark, 526 A.2d at 391 (videotape of defendant shortly after crime relevant to refute defendant's claim that he was too intoxicated to form intent to kill).

Appellant's claims of error fail and the judgment of sentence is affirmed.

CAVANAUGH, J., concurs in the result.

Id. at 255, 304 A.2d at 442-43 (emphasis in original).

[6] We believe appellant is attempting to make the same argument here that the Commonwealth made, unsuccessfully, in *Campana*. Under the test in *Flenory*, there was but a single criminal episode in the instant matter. Further, the record reveals that upon the trial court's ruling of guilt on the summary offense, appellant made no objection and did not articulate his alleged surprise at the judge's action. It is clear that throughout the trial, appellant was aware that he was being tried for both charges as is reflected by his direct and cross examinations of witnesses. Appellant's counsel questioned the Commonwealth witnesses about what occurred after the car was stopped and also questioned appellant about those same events. We therefore reject appellant's claim of surprise as well as his claim that he had no opportunity to defend on the disorderly conduct charge.

[7] With respect to the evidence offered by the Commonwealth, we believe it was admissible and properly before the jury for a number of reasons. First, it was part of the entire criminal episode. *Campana, supra*. It not only showed appellant taunting the driver of the car, it also showed the driver pursuing appellant, tackling him and assaulting him. Second, it was relevant to rebut appellant's claims that he was in fear for his life and only kicked in the wind-



COMMONWEALTH of Pennsylvania

v.

G. Scott DIETTERICK, III, Appellant.

Superior Court of Pennsylvania.

Argued June 24, 1993.

Filed Oct. 14, 1993.

Defendant was convicted in the Court of Common Pleas, Luzerne County, Criminal Division, No. 2191 & 3161 of 1989, O'Malley, J., of tampering with public records or information, unsworn falsification to authority, and forgery. Defendant appealed. The Superior Court, No. 2971 Philadelphia 1992, Cercone, J., held that: (1) Commonwealth was not required to disclose identity of witnesses, who were not eyewitnesses, to defense during informal

discovery or to prospective jurors during voir dire, and (2) trial court adequately charged jury as to elements of forgery.

Judgment of sentence affirmed.

1. Criminal Law §65

County detectives had authority, pursuant to warrants issued by magistrate, to arrest and prosecute defendant. 16 P.S. § 1440(d).

2. Counties §81.1

County detectives possess general police power to enforce laws of Commonwealth and are not limited to only those powers conferred upon constables. 16 P.S. § 1440(d).

3. Criminal Law §629(3.1)

Jury §131(6)

Commonwealth was not required to disclose identity of witnesses, who were not eyewitnesses, to defense during informal discovery or to prospective jurors during voir dire. Rules Crim.Proc., Rule 305, 42 Pa.C.S.A.

4. Criminal Law §1153(1)

Admissibility of evidence is matter left to sound discretion of trial court, and appellate court may reverse only upon showing that trial court abused its discretion.

5. Criminal Law §338(1)

Evidence is admissible if, and only if, it is "relevant": evidence must logically or reasonably tend to prove or disprove material fact in issue, to make such fact more or less probable, or afford basis or support for reasonable inference or presumption regarding existence of material fact.

See publication Words and Phrases for other judicial constructions and definitions.

6. Criminal Law §629(3.1)

Commonwealth is under no obligation to disclose names of all its witnesses to

defendant. Rules Crim.Proc., Rule 305, 42 Pa.C.S.A.

7. Criminal Law §1088.11

Superior Court would not consider on appeal defendant's contentions that trial court erred in failing to give defendant's requested points of charge, which were not part of certified record on appeal, although requested points of charge were included in reproduced record.

8. Criminal Law §1114.1(1)

Superior Court is limited to considering only facts which have been duly certified in record on appeal.

9. Criminal Law §1114.1(1)

For purposes of appellate review, what is not of record does not exist.

10. Criminal Law §822(1)

In reviewing jury instructions for prejudicial and reversible error, charge must be read and considered as a whole.

11. Criminal Law §822(1)

Prejudicial and reversible error in jury instructions cannot be based upon isolated excerpts; it is general effect of charge that controls.

12. Criminal Law §1172.1(1)

If Superior Court concludes that jury charge is erroneous, Court will grant new trial unless error is deemed harmless.

13. Criminal Law §1172.1(1)

Error in jury charge is deemed harmless only if appellate court is convinced beyond a reasonable doubt that error is harmless.

14. Criminal Law §769

Jury instruction will be upheld if it adequately and accurately reflects law and is sufficient to guide jury through its deliberations.

15. Forgery §4

Elements of forgery are that there must be false writing, instrument must be

COM. v. DIETTERICK

Pa. 1349

Cite as 631 A.2d 1347 (Pa.Super. 1993)

capable of defrauding, and it must have been intended to defraud. 18 Pa.C.S.A. §§ 4101, 4101(a)(2).

16. Criminal Law §1130(1)

Although issue may be contained in written posttrial motions, unless it is briefed or argued during posttrial proceedings, issue is waived for purposes of appellate review.

Stephen K. Urbanski, Kingston, for appellant.

Scott Gartley, Asst. Dist. Atty., Wilkes-Barre, for Com., appellee.

Before CAVANAUGH, HUDOCK and CERCONE, JJ.

CERCONE, Judge.

This is an appeal from the judgment of sentence entered by the trial court on July 17, 1992. For the reasons set forth below, we affirm.

Appellant was arrested and charged with thirteen counts of tampering with public records or information, five counts of unsworn falsification to authority, and one count of forgery. The trial court concisely summarized the history of this case as follows:

In October 1990, a jury found the defendant guilty of each and every charge filed against him, which totaled 19 in all.

The prosecution charged that from 1984-1987 the defendant fraudulently presented bogus certificates of insurance to several school districts. The school districts involved were Nanticoke Area School District, Wyoming Valley West School District and Wilkes-Barre Area School District. The essence of the charges was that the defendant falsely represented to the school districts that they were covered by One Million Dollars (\$1,000,000.00) worth of liability insurance when in fact they were grossly underinsured. The following chart displays the various representations of the defendant:

	1984-85	1985-86	1986-87
At School District	Nanticoke \$1,000,000.00	Nanticoke \$1,000,000.00	Nanticoke Wilkes-Barre Wyoming Valley West \$1,000,000.00
At Insurance Company	\$500,000.00	0	\$350,000.00

In addition, the defendant told the Auditor General's Office that he had no idea where one certificate bearing the signature of Mary Sumption came from. The FBI determined that, in fact, the defendant had forged Mary Sumption's name.

In addition to the above, the defendant was charged with forgery in Count 1 of Criminal Action 3161 of 1989 for issuing a certificate of insurance with the forged name of Mary Sumption.

Trial Court Opinion dated 5/29/92 at 1-2. After a jury trial, appellant was convicted on all counts. Appellant timely filed post-

verdict motions which the trial court denied. This appeal followed.

Appellant raises the following issues for our review:

[I.] Was the arrest and all subsequent proceedings illegal and in violation of [appellant's] rights due to the fact that the affiants, arresting officers, and prosecutors were Luzerne County Detectives?

[II.] Did the trial court err in failing to dismiss the charges against [appellant or in not granting] a mistrial in the case due

to prosecutorial misconduct involving a subpoenaed defense witness, Harvey Nielsen?

[III.] Did the trial court err in failing to grant a mistrial due to the irrelevant and prejudicial testimony of Vincent Lapinski and his mother, Darlene Mitchell relating to a bus accident and Vincent Lapinski's injuries?

[IV.] Did the trial court err in allowing Vincent Lapinski, Darlene Mitchell, Donald Bailey (the former Auditor General) and Richard Angstadt to testify as Commonwealth's witnesses where their identity was not disclosed to the defense during informal discovery nor to the prospective jurors during voir dire?

[V.] Did the trial court err in failing to sustain [appellant's] demurrer?

[VI.] Did the trial court err in failing to properly instruct the jury on the law and in failing to properly instruct the jury on the numerous points for charge as requested by [appellant]?

[VII.] Were the verdicts contrary to the law and against the weight of the evidence?

We have reviewed the parties' briefs and certified record and find that the trial court's resolution of Issues II, III, V and VII is correct. We therefore, affirm on the basis of the trial court opinion filed June 2, 1992 with regard to these issues. We will address appellant's remaining issues in the order raised above.

[1] In his first issue, appellant argues that his arrest and prosecution were illegal "due to the fact that the affiants in the Criminal Complaints, the arresting officers and the Prosecutors in the Informations are Luzerne County Detectives." Appellant's Brief at 9. In this regard, appellant contends that by statute, county detectives have no right to arrest and prosecute. Appellant maintains that 16 P.S. § 1440(d) restricts the powers of county detectives to the same powers vested in constables. After reviewing the plain language of section

1440(d) as well as our holding in *Commonwealth v. Frombach*, 420 Pa.Super. 498, 617 A.2d 15 (1992), we disagree.

"It is well settled that '[w]hen vesting a group with police powers and duties, the Legislature does so with specificity.'" *Id.* at 505, 617 A.2d at 19 (quoting *Allegheny County Deputy Sheriff's Assoc. v. Pennsylvania Labor Relations Board*, 95 Pa. Cmwlth. 132, 135, 504 A.2d 437, 439 (1986); in turn quoting *Commonwealth v. Pennsylvania Labor Relations Board*, 64 Pa. Cmwlth. 525, 532, 441 A.2d 470, 475 (1982), *affirmed in part and reversed in part*, 502 Pa. 7, 463 A.2d 409 (1983)). Section 1440 of title 16 provides that county detectives:

shall be general police officers and shall have the powers conferred on Constables by the laws of this Commonwealth, so far as they relate to criminal law and procedure.

16 P.S. § 1440(d) (emphasis added). The rules of statutory construction mandate that where the words of a statute are clear and unambiguous, the letter of the statute is not to be disregarded in order to pursue its spirit. 1 Pa.C.S.A. § 1921. Moreover, every statute is to be construed, if possible, so as to give effect to all its provisions. *Id.* § 1921(a).

Under the plain language of the statute, county detectives are specifically granted the powers of both general police officers and constables. To interpret this statute as granting county detectives only those powers conferred upon constables would totally negate the preceding phrase which grants county detectives "general police powers." Clearly, this interpretation would not give effect to all provisions of 16 P.S. § 1440(d) and would constitute a strained interpretation of the plain language of the statute. This interpretation is supported by our decision in *Commonwealth v. Frombach*, *supra*.

[2] In *Frombach*, this court was asked to determine whether county detectives had

Cite as 631 A.2d 1347 (Pa.Super. 1993)

the authority to enforce the Vehicle Code. In addressing this issue, we stated:

After careful review of the relevant legislative provisions and applicable case law, it appears that the legislature has expressed a clear intent to classify county detectives as police officers who possess general police power to enforce the laws of this Commonwealth.

Commonwealth v. Frombach, 420 Pa.Super. at 506, 617 A.2d at 20. Guided by our reasoning in *Frombach*, we find that county detectives possess general police power to enforce the laws of the Commonwealth, and are not limited to only those powers conferred upon constables. Accordingly, we find that the county detectives in this case had the authority, pursuant to the warrants issued by a magistrate, to arrest and prosecute appellant.

[3-6] Next, appellant argues that the trial court improperly permitted Vincent Lapinski, Darlene Mitchell, Donald Bailey (the former Auditor General) and Richard Angstadt to testify as Commonwealth's witnesses where their identity was not disclosed to the defense during informal discovery nor to the prospective jurors during voir dire. It is well-settled that the admissibility of evidence is a matter left to the sound discretion of the trial court, and an appellate court may reverse only upon a showing that the trial court abused its discretion. *Commonwealth v. Wallace*, 522 Pa. 297, 309 n. 15, 561 A.2d 719, 725 n. 15 (1989). Evidence is admissible if, and only if, it is relevant: the evidence must logically or reasonably tend to prove or disprove a material fact in issue, to make such a fact more or less probable, or afford a basis or support for a reasonable inference or presumption regarding the existence of a material fact. *Commonwealth v. Ingram*, 404 Pa.Super. 560, 576, 591 A.2d 734, 742 (1991), *allocatur denied*, 530 Pa. 631, 606 A.2d 901 (1992). *Accord Commonwealth v. Stewart*, 461 Pa. 274, 336 A.2d 282 (1975). Here, appellant does not contend that the evidence was irrelevant. Instead, appellant argues that the trial court should

not have admitted the testimony from these witnesses because the Commonwealth failed to identify them prior to trial. We disagree. The Rules of Criminal Procedure require only that the Commonwealth disclose the identity of eyewitnesses. Pa. R.Crim.P., Rule 305, 42 Pa.C.S.A. None of the witnesses listed by appellant was an eyewitness to the alleged criminal activity. The Commonwealth is under no obligation to disclose the names of all its witnesses to the defendant. *Commonwealth v. Colson*, 507 Pa. 440, 463, 490 A.2d 811, 823 (1985), *cert. denied*, 476 U.S. 1140, 106 S.Ct. 2245, 90 L.Ed.2d 692 (1986); *Commonwealth v. Bey*, 294 Pa.Super. 229, 237, 439 A.2d 1175, 1179 (1982). Because none of the witnesses named by appellant were eyewitnesses, even the discretionary provision was inapplicable. Accordingly, we find no error on the part of the trial court in denying appellant relief on this basis.

[7-9] Finally, appellant argues that the trial court did not fully and adequately charge the jury. In his brief, appellant contends that the trial court did not instruct the jury on his requested points for charge Nos. 19 through 34. However, appellant's requested points of charge, while included in the Reproduced Record, are not part of the certified record on appeal. We are limited to considering only those facts which have been duly certified in the record on appeal. *Commonwealth v. Osellanie*, 408 Pa.Super. 472, 476, 597 A.2d 130, 131 (1991). For purposes of appellate review, what is not of record does not exist. *Frank v. Frank*, 402 Pa.Super. 458, 463 n. 5, 587 A.2d 340, 342-43 n. 5 (1991).

We note that appellant's post-trial motions raise only a general allegation that the trial court:

erred in failing to inform the jury in the Court's charge of the exact charges involved in the informations and in failing to explain the exact charges involved in the informations. The Court should have read the informations to the jury and should have explained the elements of the charges set forth in the informations.

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Appellant's Post-trial Motions filed October 12, 1990. The trial court, in its opinion filed June 2, 1992, stated that the appellant's requested points for charge referred to the standard instructions and that it covered these points. Trial Court Opinion at 7. However, the trial court opinion vaguely addressed appellant's concerns regarding its explanation of the elements of forgery. Accordingly, we will address appellant's allegation of error in this regard.

[10-14] In reviewing jury instructions for prejudicial and reversible error, the charge must be read and considered as a whole. *Commonwealth v. Woodward*, 483 Pa. 1, 4, 394 A.2d 508, 510 (1978). *Accord Commonwealth v. Rivera*, 409 Pa.Super. 120, 127, 597 A.2d 690, 694 (1991). Error cannot be based upon isolated excerpts; it is the general effect of the charge that controls. *Id.* If we conclude that a charge is erroneous, we will grant a new trial unless the error is deemed harmless. *Commonwealth v. Rivera*, 409 Pa.Super. at 128, 597 A.2d at 694. An error is deemed harmless only if the appellate court is convinced beyond a reasonable doubt that the error is harmless. *Commonwealth v. Story*, 476 Pa. 391, 405-06, 383 A.2d 155, 164 (1978). Moreover, a jury instruction will be upheld if it "adequately and accurately reflects the law and is sufficient to guide the jury through its deliberations." *Commonwealth v. Rivera*, 409 Pa.Super. at 128, 597 A.2d at 694 (citing *Commonwealth v. Early*, 377 Pa.Super. 219, 227, 546 A.2d 1236, 1240 (1988)).

Appellant contends that the trial court inadequately instructed the jury on the elements of forgery by failing to advise the jury that the writing must be capable of "working an injury" to another. Appellant cites this court's decisions in *Commonwealth v. DiPiero*, 205 Pa.Super. 312, 208 A.2d 912 (1965), *cert. denied*, 382 U.S. 992, 86 S.Ct. 574, 15 L.Ed.2d 479 (1965), and *Commonwealth v. Bollinger* 274 Pa.Super. 112, 418 A.2d 320 (1979) in support. However, we find that these cases summarized the law regarding forgery, as defined in 18

P.S. 5014 (repealed). The essential elements of the crime of forgery, as defined in 18 P.S. § 5014 (repealed), consist of: "(1) the false making of some instrument in writing, (2) the instrument must be apparently capable of effecting a fraud and working an injury to another, and (3) there must be a fraudulent intent." *Commonwealth v. DiPiero*, 205 Pa.Super. at 317, 208 A.2d at 914. Here, however, appellant was arrested and charged with forgery under section 4101 of the Crimes Code.

[15] Section 4101 of the Crimes Code, effective June 6, 1973, sets forth a broader definition of forgery:

A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:

(2) makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize the act[.]

18 Pa.C.S.A. § 4101(a)(2). At trial, the trial court instructed the jury as follows:

Now, this one is the first count of criminal action No. 3161 of 1989, and this charges[.]

The District Attorney of Luzerne County charges that between June, 1985 and June of 1986, this defendant, in said County did, with the intent to defraud the Greater Nanticoke Area School District with knowledge that he was facilitating a fraud to be perpetrated, by anyone, did make, complete, execute, authenticate, issue or transfer a writing, to wit, a certificate of insurance for Harvey and Jacqueline Nielsen regarding a National Indemnity policy number BP180953 issued between June of 1985 and June of 1986, and did sign the forged signature of Mary Sumption to the said certificate of insurance so that it purported to be the act of Mary Sumption, who did not authorize the said act.

Now, members of the jury, that charges the crime of forgery.

I am now going to touch on each one of those various crimes.

Now, I have already discussed briefly with you the crime of forgery.

One, there must be a false writing;

Two, the instrument must be capable of defrauding; and,

Three, it was intended to defraud.

N.T. 9/24/90 through 10/5/90 at 12771, 1273 (emphasis added).

We find that this instruction adequately summarizes the elements of forgery as set forth in 18 Pa.C.S.A. § 4101.

[16] It is unclear whether appellant detailed his remaining allegations of error before the trial court. Although an issue may be contained in written post-trial motions, unless it is briefed or argued during post-trial proceedings, the issue is waived for purposes of appellate review. Commonwealth v. Holzer, 480 Pa. 93, 389 A.2d 101 (1978). See also Commonwealth v. Manigault, 501 Pa. 506, 462 A.2d 239 (1983) (where issues stated in post-trial motions are not briefed or argued in the lower court, issues are waived on appeal). Moreover, because appellant has not included his requested points for charge in the certified record, we are unable to determine whether appellant preserved these issues at trial, or whether the requested points for charge, if issued, would have cured the alleged error. We find, however, that the trial court adequately reviewed the elements of the offenses charged and that its charge as a whole, "adequately and accurately reflects the law and [was] sufficient to guide the jury through its deliberations." Commonwealth v. Rivera, supra.

Judgment of sentence affirmed.



JOSEPH PAOLINO & SONS INC., Appellant,

v.

CITY OF PHILADELPHIA, Appellee.

Superior Court of Pennsylvania.

Argued Aug. 31, 1993.

Filed Oct. 14, 1993.

Waste hauling contractor sued city for breach of contract for disposal of city's incinerator residue. The Court of Common Pleas, Philadelphia County, Civil Division, No. 5762 May T., 1989, Gafni, J., entered summary judgment for city. Contractor appealed. The Superior Court, No. 3747 Philadelphia 1992, Olszewski, J., held that contract terms providing for manner of disposal were conditions precedent to city's duty to pay, and thus contractor had no claim for payment in light of evidence that incinerator ash was improperly ejected into ocean.

Affirmed.

1. Appeal and Error ⇨863, 949

On appellate review, order granting motion for summary judgment will not be reversed unless court below has committed error of law or clearly abused its discretion. Rules Civ.Proc., Rule 1035, 42 Pa. C.S.A.

2. Contracts ⇨221(1)

No particular language is required to create condition precedent.

3. Contracts ⇨218

Purpose of condition contained in contract is determined according to general rules of contract interpretation.

4. Municipal Corporations ⇨253

Payment under contract between waste hauling contractor and city for dis-

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OCTOBER 8, 1997

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RULES AND REGULATIONS

Title 37—LAW

MUNICIPAL POLICE OFFICERS' EDUCATION AND TRAINING COMMISSION

[37 PA. CODE CHS. 201 AND 203]

Administration of the Training Program

The Municipal Police Officers' Education and Training Commission (Commission), by this order reserves Chapter 201 (relating to administration of the program) and adopts Chapter 203 (relating to administration of the program) under the authority of section 5(15) of the act of June 18, 1974 (act) (P. L. 359, No. 120) (53 P. S. § 744 (15)), to read as set forth in Annex A. Notice of proposed rulemaking was published at 26 Pa.B. 2793 (June 15, 1996), with an invitation to submit written comments within 30 days of publication. The Commission received three comments.

Comments Received

The Commission received comments from the Independent Regulatory Review Commission (IRRC), the East Fallowfield Township Police Department and the Criminal Justice Training Center at Indiana University of Pennsylvania. The following is a summary of the comments received and the Commission's response:

(1) The East Fallowfield Township Police Department suggested the Commission consider amending § 203.11(4)(v) (relating to visual acuity) to read that applicants have visual acuity correctable to 20/20 in the stronger eye and 20/40 in the weaker eye, with normal depth and color perception and free of any significant visual abnormalities. This amendment was suggested because of perceived Americans With Disabilities Act conflicts. After discussion and research, the Commission declined to act on this suggestion. Under a number of circumstances, police officers may not have vision correction available, have it dislodged or not functioning properly but will still be expected to perform their duties. The uncorrected 20/200 standard is the point at which a person is legally blind. Without these requirements there would be little to prevent applicants with dangerously poor vision from being employed as police officers, and it would be impossible for them to safely and effectively perform various duties without vision correction.

(2) The Criminal Justice Training Center at Indiana University of Pennsylvania wrote the Commission with concerns regarding geographic locations of schools, school policies on school absences and due process for decertified schools. Many of the enumerated concerns were specifically addressed in the proposed rulemaking. As noted in § 203.1 (relating to definitions), language regarding each geographic location was included to more accurately represent the network of basic training facilities throughout this Commonwealth. School directors were provided flexibility in permitting excused absences for valid reasons under § 203.11 (relating to absences) which also requires 100% attendance by applicants. The Commission does not have the authority under § 203.31 (relating to eligibility for school certification) to decertify a school without due process. The due process procedure in § 203.102 (relating to adverse determination) and affords a hearing if the Commission revokes a previously issued school certification. The proposed rulemaking requires the Commission to take the amount of necessary police training into consideration when making decisions on

school certification, rather than permitting schools to conduct training programs in any location desired and makes the Commission responsible to establish and administer the basic training course.

(3) IRRC suggested many amendments to the proposed regulations. IRRC believes the Commission has the authority to revoke police officers' certifications before the expiration of the 2-year certification. The Commission agrees with the IRRC comment and stated that the legal issue is not authority, but the fact that during the 2-year certification period the Commission will not have knowledge of police officers not completing requirements until the period ends. If the Commission is advised, revocation may be instituted. The Commission has added the ability for municipalities to request additional time for police officers to complete in-service training requirements under § 203.14 (relating to revocation of certification).

IRRC advised that the Department of Conservation and Natural Resources, Bureau of State Parks, requested a provision be included that would permit the Commission to provide instructor training to law enforcement officers employed by the Bureau of State Parks. The Commission declines this amendment because of the large number of other agencies also requesting instructor training. Commission resources are not sufficient to be able to train a larger number of instructors each year for mandatory in-service training. As a matter of policy, the Commission is not able to make exceptions for one request and not another. Rank and file officers from these agencies are able to receive training under § 203.82(b) (relating to law enforcement agency not eligible for reimbursement).

IRRC proposed amending § 203.51(a) (relating to basic police training course curriculum) to include the specific number of hours required in the basic police training course because it believes that the number of hours (or minimum number of hours) is essential information that should be established in the regulations. The Commission declined to act on this suggestion based on the fact that it is the Commission which provides schools with the entire curriculum which may not be modified in any way by the school. Additionally, the curriculum is periodically revised. The revisions may be due to court decisions which required immediate dissemination, or by the periodic updating and validation through an outside consultant hired under contract. The Commission has agreed to amend the section by adding language requiring it to publish a notice in the *Pennsylvania Bulletin* and in the Commission newsletter whenever the number of hours required in the basic police training course changes as a means of ensuring public dissemination of this essential information.

IRRC proposed various amendments to various portions of §§ 203.1, 203.11, 203.12(2)(ii), 203.14(a), 203.31, 203.33, 203.35, 203.36, 203.51, 203.52, 203.54, 203.72, 203.73, 203.83 and Subchapter G which the Commission adopted.

Purpose

The purpose of these final-form regulations is to implement mandatory recruit training for all police officers subject to the act, to provide for certification of those individuals who successfully complete the training, pass a State certification test and are employed by a political subdivision or certain colleges or are deputy sheriffs employed by the Allegheny County Sheriff's Office. The final-form regulations also provide that certifications must be renewed every 2 years and mandate that an

E. INSTRUCTOR CERTIFICATIONS
 F. REIMBURSEMENT OF EXPENSES
 G. NOTICE AND HEARINGS

Subchapter A. GENERAL

Sec.
 203.1. Definitions.

§ 203.1. Definitions.

In addition to the definitions contained in the act, the following words and terms, when used in this chapter, have the following meanings:

Act—The act of June 18, 1974 (P. L. 359, No. 120) (53 P. S. §§ 740—749).

Certification—The assignment of a certification number to a police officer evidencing successful completion of a mandatory basic training course or receipt of a waiver of basic training from the Commission and successful completion of mandatory in-service training.

Certified police officer—A police officer who is authorized to enforce 18 Pa.C.S. (relating to the Crimes Code), moving violations of 75 Pa.C.S. (relating to the Vehicle Code), and carry a firearm.

Chairperson of the Commission—The Commissioner of the State Police.

Commission—The Municipal Police Officers Education and Training Commission.

Conviction—An adjudication of guilt including the imposition of a sentence.

Disqualifying criminal offense—A criminal offense for which more than 1 year in prison can be imposed as punishment.

Executive Director—The Commission elected head of staff responsible for administration. See section 5(10) of the act (53 P. S. § 744(10)).

Program—The Municipal Police Officers' Education and Training Program.

School—A training school or academy which provides a basic police training course. The term includes an organization which provides such a course within the functional organization of a police department or any educational entity within this Commonwealth which provides such a course at its base facility and at other locations approved by the Commission. Each separate geographical location shall be considered a school.

Subchapter B. POLICE OFFICER CERTIFICATION REQUIREMENTS

Sec.
 203.11. Qualifications.
 203.12. Waiver of training.
 203.13. Certification as a municipal police officer.
 203.14. Revocation of certification.
 203.15. Application of packet submission.

§ 203.11. Qualifications.

Persons who are to be employed as police officers by police departments within this Commonwealth from December 21, 1996, shall:

- (1) Be 18 years of age or older.
- (2) Possess a high school diploma or GED Equivalency.
- (3) Be citizens of the United States.
- (4) Be free from convictions of disqualifying criminal offenses.
- (5) Be personally examined by a Pennsylvania licensed physician. The examination shall include the following:

(i) Applicants shall be free from the addictive or excessive use of either alcohol or drugs which shall be determined using current laboratory testing procedures.

(ii) Applicants shall be free from the use of illegal controlled substances which shall be determined using current laboratory testing procedures.

(iii) Applicants physical condition shall be such that applicants could reasonably be expected to withstand significant cardiovascular stress.

(iv) Applicants shall be free from any debilitating conditions such as tremor, incoordination, convulsion, fainting episodes or other neurological conditions which may affect the applicants' ability to perform as police officers.

(v) Applicants shall have visual acuity of at least 20/70, uncorrected in the stronger eye, correctable to at least 20/20; and at least 20/200, uncorrected in the weaker eye, correctable to at least 20/40. In addition, the applicant shall have normal depth and color perception and be free of any other significant visual abnormality.

(vi) Applicants shall have audio acuity sufficient to distinguish a normal whisper at a distance of 15 feet. The test shall be independently conducted for each ear while the tested ear is facing away from the speaker and the other ear is firmly covered with the palm of the hand. The applicant may not use a hearing aid or other aid to perform the test. If the applicant fails this test, the applicant shall be required to take and pass a decibel audio test.

(vii) Applicants may not be missing any extremities, including digits, which would prevent performance of required police duties or meeting minimum training requirements.

(viii) Applicants shall be free from any other significant physical limitations or disabilities which would, in the physician's opinion, impair the applicant's ability to perform the duties of a police officer or complete the required minimum training requirements.

(6) Be personally examined by a Pennsylvania licensed psychologist and found to be psychologically capable to exercise appropriate judgment or restraint in performing the duties of a police officer. The examination shall include the following elements:

(i) *Interview and history.* The psychologist shall personally interview the applicant. The interview shall include a summary of the applicant's personal, educational, employment and criminal history.

(ii) *Required psychological test.* Applicants shall be administered a current standard form of the Minnesota Multiphasic Personality Inventory (MMPI).

(iii) *Other testing methods.* If the licensed psychologist is unable to certify the applicant's psychological capability to exercise appropriate judgment and restraint to perform the duties of a police officer including the handling of a lethal weapon, the psychologist shall employ whatever other appropriate techniques to form a professional opinion of the applicant's ability. The use of these additional techniques requires a full and complete written explanation to the Commission on a form submitted by the psychologist to the Commission indicating what additional testing has been performed and the results of the tests.

(7) Certify whether they have taken a physical examination or psychological evaluation conducted in conjunc-

(iii) Examination results shall be valid for 2 years. For applicants obtaining a passing score, no further examinations will be administered within this period.

§ 203.13. Certification as a municipal police officer.

(a) *General.*

(1) The Commission will supply written verification to the applicant's employing police department upon the applicant's completion of the Commission's requirements for certification as a police officer.

(2) Verification shall be valid only in the department identified on the document provided by the applicant. Upon termination of employment in a department, certification for that department shall be void and shall be returned to the Commission by the department.

(3) If the certification document has been lost or destroyed, a notarized statement shall be provided to the Commission concerning the certification.

(b) *Initial certification.*

(1) Initial certification is valid for 2 years from the date of issuance. The document provided by the Commission shall contain the dates of issuance and expiration in addition to a certification number for identification purposes.

(2) Upon receipt of certification a police officer is authorized to enforce 18 Pa.C.S. (relating to the Crimes Code) and moving violations of 75 Pa.C.S. (relating to the Vehicle Code), and to carry a firearm.

(c) *Renewal of certification.*

(1) The Commission will issue a renewal certificate only to police officers who have satisfied the mandatory in-service training requirements set forth under § 203.52. (relating to mandatory in-service training courses). Mandatory in-service training schools shall provide written notice to the Commission of all police officers who have successfully completed the mandatory in-service training course.

(2) Certification shall be renewed every 2 years.

§ 203.14. Revocation of certification.

(a) The Commission maintains the right to revoke certification after notice and an opportunity to be heard under Subchapter G (relating to notice and hearings) for one or more of the following:

(1) Failure to maintain employment as a police officer under the act.

(2) Failure to maintain first aid or CPR certification.

(3) Failure to qualify with firearms as specified in the Commission newsletter.

(4) Failure to successfully complete annual mandatory in-service training as specified in the Commission newsletter.

(5) Physical or psychological impairment which renders the officer permanently unable to perform his duties.

(6) Conviction for a disqualifying criminal offense.

(7) Submission to the Commission of a document that the police officer knows contains false information including fraudulent application.

(8) A certification issued in error.

(9) Cheating.

(b) Under subsection (a)(1), (5) and (6), it shall be the responsibility of the head of the applicant's employing police department to provide written notice to the Commission of the following:

(1) An officer's termination of employment.

(2) An officer who has been determined to have a permanent physical or psychological condition which renders the officer unable to perform his duties.

(3) An officer's arrest for a disqualifying offense within 15 days from the date of arrest.

(c) Municipalities may request additional time for police officers to complete in-service training requirements by filing a show cause document with the Commission requesting additional time. These requests shall be filed on a form supplied by the Commission and considered by the Commission on a case-by-case basis.

§ 203.15. Application packet submission.

(a) *General.*

(1) Forms shall be original.

(2) Forms shall be typewritten.

(3) Signatures shall be original.

(b) *Application packets.* Application packets may be obtained by contacting the Commission at the Commission office. Each application packet shall include:

(1) One application form for certification. All questions shall be answered and the appropriate sections completed.

(2) Two fingerprint cards—one State Police Applicant Fingerprint Card and one FBI Applicant Fingerprint Card.

(i) Only fingerprint cards obtained from the Commission may be submitted with the application for certification.

(ii) The fingerprints of the applicant shall be affixed on the fingerprint cards.

(iii) Both fingerprint cards shall contain the contributor number PAPSP0100. Criminal fingerprint cards or fingerprint cards not containing the contributor number will not be accepted.

(3) One physical examination form.

(i) Physical examinations shall be performed by a licensed physician or osteopath as described in § 203.11(4) (relating to qualifications).

(ii) The physical examination form shall be submitted regardless of the results of the examination.

(iii) At the discretion of the hiring authority, a physical examination conducted in conjunction with police employment may be valid for 6 months and may be used in support of any police employment application during that period. If a change in the applicant's physical condition invalidates the prior physical examination, a reexamination shall be necessary.

(4) One psychological evaluation form.

(i) Psychological evaluations shall be performed by a licensed psychologist as described in § 203.11(5).

(ii) The psychological evaluation form shall be submitted regardless of the results of the evaluation.

(iii) At the discretion of the hiring authority, a psychological evaluation specifically conducted in conjunction with police employment may be valid for 6 months and

- (v) A stopwatch or chronograph.
 - (vi) A sit and reach flexibility evaluation station.
 - (vii) Skinfold calipers or cloth tape to determine body fat.
 - (viii) Additional exercise equipment related to physical conditioning training which may include free weights, an exercycle, a rowing machine and boxing equipment.
 - (ix) Other equipment required by the curriculum.
- (14) An approved type of outdoor firing range shall be available to the school and used for firearms training. The range does not have to be a part of the school facilities; however, it shall have at least ten firing points with a minimum firing distance of 50 yards. The range shall be within a reasonable traveling distance from the school. The range shall present no apparent danger to the public as determined by the Commission inspector.
- (i) The school shall ensure that weapons utilized in this portion of training are safe. A minimum of .38 caliber or .380 auto caliber with a capacity of at least 6 rounds of ammunition shall be required for firing.
 - (ii) A weapon may not be utilized during the training program that is not normally carried by police officers while on duty. At the discretion of the firearms instructor, students working for departments that utilize "exotic" or "unusual" weapons shall utilize a more conventional weapon for training purposes. Upon the student's successful completion of the training program, the student's employing police department shall also qualify the student with the weapon prior to assuming duties as a police officer.
 - (iii) The school can refuse to allow the use of a weapon that the firearms instructor determines to be unsafe, inadequate or not appropriate for police training.
 - (iv) The school shall maintain adequate supplies of common ammunition utilized in law enforcement handguns, shotguns and rifles for training programs.
 - (v) Schools may not permit participation in firearms training that violates 18 Pa.C.S. Chapter 61, Subchapter A (relating to Pennsylvania Uniform Firearms Act).
 - (vi) The school may not utilize students in a training program to reclaim lead from impact areas at any police firearms course, nor may students be involved in any range construction projects whereby they may be exposed to lead or other toxic substances.
- (15) A sufficient number of parking spaces shall be available to accommodate the students, staff and visitors of the school whether at the firing range, classroom facilities or physical fitness facilities.
- (16) Audio/visual equipment shall be available to present the curriculum prepared by the Commission. The equipment shall include:
- (i) A 16 mm movie projector.
 - (ii) A 35 mm slide projector.
 - (iii) Overhead transparency projector or Opaque overhead projector.
 - (iv) Projection screens or another appropriate projection surface.
 - (v) A video cassette player.
 - (vi) Nineteen inch or larger color television monitors.
 - (vii) A chalk board or equivalent.

(17) Equipment, facilities, supplies, books, and the like, shall be maintained in a safe and proper working condition.

(b) In addition to subsection (a), schools shall comply with the following requirements:

- (1) Conduct at least one basic police training course every year the school is certified.
- (2) Submit a training calendar to the Commission containing dates and class size for each basic training course to be conducted during the fiscal year. The calendar shall be received by the Commission by June 1st of each year.
- (3) Develop course outlines and update as changes occur.
- (4) Prepare and update class schedules.
- (5) Establish a records management system as needed for the Commission records which shall consist of class rosters, attendance, academic grades, firearms scores, student critiques of course content and a list of instructors.
- (6) Develop rules, including discipline, for student conduct, school operation and instructor standards.
- (7) Develop and update detailed written standards for application procedures, including a statement about the maximum enrollment the school can accommodate within the standards established by the Commission.
- (8) Prepare a current list of tuition charges for all students attending the basic training program.
- (9) Utilize only certified instructors as described in Subchapter E (relating to instructor certifications).
- (10) Prepare and update the roster of certified instructors and the areas of their certification.
- (11) Prohibit instructors from teaching more than 180 hours of any one Basic Police Training Course.
- (12) Prepare lesson plans and course outlines for each area of the curriculum using the basic training manuals provided by the Commission as source material. Lesson plans and course outlines shall be accessible in the classrooms to Commission inspectors and official visitors.
- (13) Provide to the Commission a copy of tentative weekly class schedules, including dates, times, locations, instructors, subjects, and the like, by the first day of a basic training program. Changes to the schedule provided shall be submitted to the Commission as necessary.
- (14) Comply with testing procedures prescribed by the Commission. The Commission will publish a notice in the *Pennsylvania Bulletin* and in the Commission newsletter of the testing procedures and whenever they change.
- (15) Obtain the required textbooks, supplemental textbooks, movies, videos, overhead transparencies, and the like, that are listed as necessary in the curriculum prepared by the Commission.
- (16) Have instructors inform students taking the examination of the Commission cheating policy, prior to administering a written examination. See § 203.54 (relating to Commission cheating policy).
- (c) Upon completion of the basic police training course, the school shall submit a roster of all students, including grades and Social Security numbers, to the Commission within 5 working days of the date of course completion. Under 20 U.S.C.A. § 1232(g) (The Buckley Amendment), personally identifiable information of a student may not

(ii) Maintenance of a first aid and CPR certification issued by the American Red Cross, the American Heart Association, the Department of Health or other agency approved by the Department of Health.

(2) Academic in-service requirements shall consist of at least 12 hours of annual training as determined yearly by the Commission. The Commission will publish a notice in the *Pennsylvania Bulletin* and in the Commission newsletter regarding the course content and specific hours.

(c) Mandatory in-service administration shall consist of the following:

(1) An applicant for instructor in the mandatory in-service training program shall meet the requirements of § 203.72(b) (relating to certification requirements).

(2) Each school shall submit a training calendar to the Commission prior to the beginning of each quarter of the calendar year. Included in the calendar shall be: course title, dates of training, time of classes and location.

(3) Maximum class size for mandatory in-service courses shall be established by the Commission and based on course content.

(4) Mandatory in-service training courses are subject to inspection by a Commission inspector.

(i) Certification of instructors may be withdrawn after notice and an opportunity to be heard under Subchapter G (relating to notice and hearings), for one or more of the following reasons:

(A) Failing to present the full program.

(B) Teaching improper or incorrect material or not presenting the Commission program.

(C) Cheating.

(D) Inadequate preparation for class.

(E) Being intoxicated in class.

(F) Using inappropriate language.

(ii) Withdrawal of mandatory in-service instructor certification by a Commission inspector shall be reviewed by the Commission and the instructor's certification may be subject to revocation by the Commission under § 203.73 (relating to revocation of instructor certification).

(iii) Classes may be suspended immediately during an inspection by a Commission inspector for cause. Costs for classes suspended during an inspection for cause will not be paid by the Commission.

(5) Acceptance into classes for which reimbursement is to be requested from the Commission shall be limited to currently employed police officers and county detectives. A fee may not be charged to these individuals for any program paid for by the Commission.

(6) Only examinations provided by the Commission shall be used to determine successful completion of academic requirements for these courses. Minimum passing scores shall be determined by the Commission for each examination. The Commission will publish a notice in the *Pennsylvania Bulletin* and in the Commission newsletter whenever the minimum passing scores required in the basic training course changes.

(7) An individual failing to pass the examination to be administered at the end of a course shall be given the opportunity for reexamination by the course instructor. The reexamination process shall consist of a review of course objectives, content and course summary, prior to an orally administered reexamination utilizing a different

examination from the failed examination. If an individual fails the reexamination, a written notice of failure shall immediately be sent by certified mail, return receipt requested, to the employing municipality. An individual failing both the examination, and the reexamination for a course, shall be permitted to participate in another offering of the course, if the individual continues to be a currently employed police officer.

(8) The certified school, and the course instructors, will be held responsible by the Commission for proper administration of in-service training courses, including maintenance of proper examination security.

(9) Newly certified police officers may not be required to participate in the mandatory in-service training courses in the year they were certified.

(10) Municipalities may request extensions of time from the Commission for officers unable to complete in-service training enumerated within the time frame. The request shall be filed with the Commission and include justification for the extension.

§ 203.53. Nonmandatory in-service training courses.

(a) A political subdivision of the Commonwealth may apply for in-service training grants for the actual expenses of providing nonmandatory in-service training programs to police officers. A political subdivision may apply for a nonmandatory in-service training grant by filing an application and resolution with the Commission.

(1) A copy of the application and resolution may be obtained from the Commission.

(2) The Commission will only consider requests for nonmandatory in-service training grants that comply with the following:

(i) All sections of the application shall be completed.

(ii) The application shall be accompanied by a certified copy of the resolution. The resolution shall be adopted by the governing body and shall provide that the political subdivision will adhere to the standards for training established by the Commission while receiving any Commonwealth funds under the act and this subchapter.

(3) Applications and resolutions shall be filed with the Commission and received at least 45 days prior to the commencement of the proposed training program. The Commission, or its Executive Director, has the discretion to waive the 45-day filing limitation for good cause, but only if the grant request was submitted prior to the commencement of the proposed training program.

(b) Limitations for funding of nonmandatory in-service training programs are as follows:

(1) Only courses approved by the Commission will be eligible for nonmandatory in-service training grants.

(i) The Commission has the discretion to approve or disapprove any proposed course, based upon law enforcement requirements.

(ii) Approved courses will be published in the Commission newsletter.

(2) Courses with less than 12 or more than 40 police officers enrolled will not be approved for nonmandatory in-service training grants. However, at the discretion of the Executive Director or by a majority vote of the In-Service Training Committee (Committee), a different minimum or maximum enrollment may be established for a specific course.

American Heart Association, the Department of Health or other agency approved by the Department of Health. (40 hour curriculum)

(B) *Firearms.* Possess a current Police Firearms Instructor rating from the National Rifle Association, the State Police, the Federal Bureau of Investigation, Smith and Wesson Academy, the Philadelphia Police Academy, United States Secret Service or other certification approved by the Commission.

(C) *Physical conditioning.* Provide documentation of successful completion of an instructor development course and training or education which evidences expertise as a physical conditioning instructor.

(D) *Application of force.* Provide documentation of successful completion of an instructor development course and training or education which evidences expertise as a defensive tactics instructor.

(E) *Patrol vehicle operation.* Provide documentation of successful completion of an instructor development course and an instructor's course in emergency vehicle operation or police driver proficiency.

(3) *Renewal and lapse of basic police training instructor certification.*

(i) Basic police training instructor certification shall be valid for 2 years and each certificate shall contain an expiration date. An instructor may not be permitted to teach without a current certificate.

(ii) Renewal of basic police training instructor certification shall be effected automatically by the Commission if the certified instructor has satisfied the following requirements:

(A) Has taught in either a basic training course or a mandatory in-service training course certified by the Commission at least one time during the 2-year period they are certified, as evidenced by the records of a certified school which shall be submitted to the Commission on an annual basis.

(B) Maintained current qualifications in the main subject areas for which certification has been granted, and provides documentation of these qualifications to the Commission.

(iii) Failure to satisfy subparagraph (ii) shall prevent renewal of the instructor certification and cause the certification to expire. A lapsed certification may not be renewed and to regain certification, the school shall submit an application on behalf of the individual as a new instructor.

(b) *Mandatory in-service training instructor qualifications.* To obtain certification as a mandatory in-service training instructor, an applicant shall:

(1) Be employed by a certified basic training school.

(2) Be certified as a basic police training instructor in the area of instruction they will present, or satisfy one of the following:

(i) If not currently a basic police training certified instructor but eligible for certification, an application for certification shall be submitted to the Commission and a temporary certificate obtained. At the discretion of the Executive Director, a temporary certification may be issued which is valid for 6 months. Temporary certificates are not renewable.

(ii) When courses are offered in mandatory in-service training that are not available in the basic police training

course, the Commission will determine requirements for selections as an instructor in the program.

(3) Have attended Commission instructor training programs for the courses in which certification is sought. Application for certification as a basic police training instructor shall be submitted to the Commission prior to attending any instructor training programs.

§ 203.73. Revocation of instructor certification.

The Commission may revoke an instructor certification for one or more of the following reasons after notice and opportunity to be heard under Subchapter G (relating to notice and hearings):

(1) Conviction of a disqualifying criminal offense.

(2) Conduct which reflects unfavorably upon a certified school or the Commission.

(3) Evidence of inability to instruct, including the conditions enumerated in § 203.52(c)(4)(i) (relating to mandatory in-service training courses).

(4) Knowing falsification of a document submitted to the Commission or submission to the Commission of a document knowing it to be false. False documents include: scores on examinations, grades for a course, classroom hours presented, attendance of participants, or other information received directly from the instructor or through a certified school or police department.

(5) Assisting a student to cheat in a Commission training course.

(6) Use of instructor certification for an unauthorized purpose.

(7) Termination for any reason of the instructor by a certified school.

Subchapter F. REIMBURSEMENT OF EXPENSES

Sec.
203.81. Basic training.
203.82. Mandatory in-service training.
203.83. Grants for nonmandatory in-service training programs.

§ 203.81. Basic training.

(a) The Commission will reimburse each political subdivision for allowable tuition and expenses incurred by their police officers while attending certified basic police training, if the political subdivision adheres to the training standards established by the Commission. Application for reimbursement shall be made in the following manner:

(1) A political subdivision shall file an application with the Commission on a form supplied by the Commission within 120 days of the completion of the training.

(i) Requests submitted after 120 days shall be accompanied by a justification for late submission. The Commission will not consider requests for reimbursement received more than 1 year after the completion of the training.

(ii) A separate form shall be submitted for each police officer requesting reimbursement in accordance with this chapter.

(2) Following the political subdivision's annual audit, the head of the political subdivision and the individual performing the audit shall verify the proper expenditure of Commission funds.

(i) Verification shall be provided on a form supplied by the Commission.

(ii) The verification shall be filed with the Commission.

penditure will not exceed 5% of the total grant amount unless otherwise approved by the Commission or In-Service Training Committee. This expenditure may not exceed 10% of the total grant amount.

(2) The Commission has the discretion to approve additional expenditures not explicitly provided for in this chapter. Expenses which are not approved by the Commission shall be borne by the political subdivision providing the training program.

(b) The Commission has the authority to establish the maximum amount of funds which may be granted to each county for providing nonmandatory in-service training to police officers. The allocation will be based on the number of police officers employed in the county.

(c) The Commission will disburse moneys approved for nonmandatory in-service training grants in the following manner:

(1) The Commission will disburse one half of the grant to the political subdivision within 45 days of the Commission's approval, except for good cause

(2) To receive the remaining grant moneys, the political subdivision shall submit a final audit and course roster to the Commission within 120 days following the conclusion of the training course. Requests for reimbursement will not be considered after 120 days following the conclusion of the training course.

(3) The Commission has the discretion to request an independent audit of the political subdivision to verify its actual nonmandatory training expenditures prior to disbursing the remaining grant amount.

(d) Nonmandatory in-service training grant funds that have been disbursed to a political subdivision in error or as a result of an unauthorized or improper request for reimbursement shall immediately be returned to the Commission. A political subdivision which fails to comply with the Commission's demand for the return of funds in accordance with this section shall be ineligible for further funding from the Commission until the funds are returned.

(e) The allocation of grants for nonmandatory in-service training programs shall be contingent upon the availability of funds appropriated for the programs.

Subchapter G. NOTICE AND HEARINGS

Sec.
203.101. Scope.
203.102. Notice.
203.103. Hearing procedures.

§ 203.101. Scope.

Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) is applicable to the proceedings of the Commission unless it is inconsistent with this subchapter.

§ 203.102. Notice.

(a) The Commission will forward in writing by certified mail, return receipt requested, the individual or school adversely affected by an action of the Commission, a notice specifying the reasons for the Commission action.

(b) An individual or school given notice of an adverse action by the Commission may file a written request for a hearing within 15 days after receipt of the notice. The date of receipt of the request by the Commission and not the date of deposit in the mails is determinative of a timely request for a hearing.

§ 203.103. Hearing procedures.

(a) The Commission will schedule a hearing and send notice of the hearing to all parties to the proceedings. Unless another location is designated by the Commission, the Commission will hold hearings at its offices in Hershey, Pennsylvania.

(b) A hearing examiner will be appointed by a majority vote of the Commission to preside at the hearing.

(c) The Commission will review the hearing examiner's recommendation, findings of fact and conclusions of law, and by a majority vote issue a final order. The Commission will specify in writing and forward to all relevant parties by certified mail, return receipt requested, the final order of the Commission.

(d) Subsections (b) and (c) supplement 1 Pa. Code §§ 35.185—35.190 (relating to presiding officers) and 1 Pa. Code § 35.226 (relating to final orders).

(e) A proposed report will not be deemed a final order if a brief on exceptions is not filed. This subchapter supersedes 1 Pa. Code § 35.213 (relating to effect of failure to except to proposed report) and any references thereto.

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