



SHERIFFS' ASSOCIATION OF TEXAS



Since 1874

1601 South IH-35, Austin, TX 78741 (512) 445-5888

Larry R. Smith, President
Sheriff, Smith County
Tyler, Texas



Skylor Hearn
Executive Director

April 22, 2024

Chief Kim LeMaux, Presiding Officer
Texas Commission on Law Enforcement
6330 East Highway 290, Ste 200
Austin, Texas 78723

Re: Commission action on Rule 211.16 related to Occupations Code 1701.163

Dear Chief LeMaux,

The Board of Directors for the Sheriffs' Association of Texas has received numerous calls from elected sheriffs across the state expressing concern with the Commission's proposed rule 211.16. While the association understands and appreciates the Commission's role in establishing and enforcing training standards and individual licensing standards, we believe the proposed rule improperly expands the statute requirements and the Legislative intent for that section of the code.

Members of our Board of Directors and staff were significantly engaged with the Legislative efforts behind SB 1445, as well as the TCOLE Sunset bill from the 87th Session that failed to pass. Minimum standards for agencies were a central topic in both efforts. From our engagement, every discussion and conversation surrounding the establishment of minimum standards to establish or continue a law enforcement agency was focused on those notorious, infamous, discretionary agencies – the Coffee City PDs, the two-person ISD police departments – the ones that small political subdivisions create to have control, to generate revenue, not to provide proper public safety. The discussion was not about constitutional agencies or agencies that existed long before the creation of TCOLE.

While not an exhaustive list, we respectfully request the Commission thoughtfully consider the points listed below as to why agencies with elected chief administrators are different than other agencies and why this rule cannot be applied to them equitably or statutorily in some instances.

- The Commission does not have the authority to “inactivate” the Office of Sheriff, the Office of Constable, the Office of County Attorney, or the Office of District Attorney. These offices are all established in Article 5 of the Texas Constitution and authorized to constitute peace officers under the Texas Code of Criminal Procedure. An administrative rule cannot override the Constitution.
- Unlike police departments or state agencies where leadership change creates minimal disruption to the agency's functions, a newly elected Sheriff, Constable, County Attorney, or District Attorney typically replaces the entire command staff. They take control of the agency at midnight on January 1st. They had no previous input in their agency's budget, policy formulation, or personnel decisions. This rule would only give them 60 days to reach full compliance or be in violation.
- The proposed rule creates an unfunded mandate on county government. The rule goes far beyond the statutory language and requires the Office of Sheriff, the Office of Constable, the Office of County Attorney, and the Office of District Attorney to buy equipment on a schedule set by the Commission, not set by the county or even the Legislature.
- Many sheriffs opposed the efforts of the Legislature to mandate accreditation for all law enforcement agencies. Governor Abbott vetoed that action. Yet, this rule attempts to mandate many of those same standards by rule which seems contrary to that Executive Action.

The statute directs the Commission to establish rules for minimum standards of agencies based on the agency's function, size, and

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Roy Boyd, Chaplain
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Lane Akin, Director
Sheriff, Wise County
Decatur, Texas

Christopher Forbis, Director
Sheriff, Randall County
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jurisdiction. That very language allows the Commission to formally recognize the inability to create a one-size-fits-all rule. The people of Texas want transparency from the government. They don't want wink-and-nod, behind-the-scenes policy exceptions. A citizen reading this rule would believe the Commission has ultimate power and authority over every law enforcement agency and that all Texas law enforcement agencies are constituted and function the same. We both know that both premises are false.

The Commission, Texas law enforcement, and the public are best served by the Commission being transparent and forthright in its governance authority. Instead of having informal exception policies because many aspects cannot be applied to elected offices, the Commission should formally exclude Constitutional offices from this rule – their function, size, and jurisdiction warrant it.

The work done by the advisory committee is much appreciated and will be beneficial for the Commission in addressing discretionary agencies. As to not take away from that effort and good work, we are suggesting a simple amendment to the rule as detailed below:

(f) Except as provided by subsection (g), all law enforcement agencies must complete and submit an annual report documenting their continued compliance with the requirements of this rule. An agency that does not complete a report by March 1st of any year will be placed in an inactive status until the report is completed.

An agency that is inactive for five continuous years may only resume operation after reapplying as a new agency.

(g) This section does not apply to agencies whose chief administrator is an elected official under Article 5 of the Texas Constitution.

(h) The effective date of this section is June 1, 2024[February 1, 2016]

While requesting a public hearing on this issue is not out of the question, we are hopeful this letter highlights why elected county offices cannot be regulated in the same manner as non-elected, non-constitutional law enforcement agencies.

Respectfully,

Larry R. Smith, President
Sheriff, Smith County

- cc. Assistant Chief Jason Hester, Commissioner - Assistant Presiding Officer
- Constable Justin West, Commissioner - Sectary
- Janna Atkins, Commissioner
- Justin Berry, Commissioner
- Patricia Burruss, Commissioner
- Sheriff Michael Griffis, Commissioner
- Conor Harvey, Commissioner
- Mario Lizcano, Jr, Commissioner
- Honorable Greg Abbott, Governor
- Honorable Dan Patrick, Lt. Governor
- Honorable Dade Phelan, Speaker
- Honorable Pete Flores, Senator
- Greg Stevens, Executive Director

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