



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

January 26, 1988

Mr. Fred Toler
Executive Director
Texas Commission on Law Enforcement
Standards and Education
1606 Headway Circle, Suite 100
Austin, Texas 78754

Dear Mr. Toler:

The questions you ask relate to the commission's role in requiring peace officers to demonstrate firearms proficiency. You inquire whether Senate Bill No. 619 authorizes the commission to suspend or revoke a peace officers license for failure to qualify. Senate Bill No. 619, Acts 1987, 70th Leg., ch. 1062, at 7222, eff. Sept. 1, 1987, amends article 4413 (29aa) V.T.C.S. to read as follows:

(d) An entity that employs three or more peace officers shall designate a firearms proficiency control officer and require each peace officer that it employs to demonstrate to the firearms proficiency control officer weapons proficiency at lease once each year. The record of this proficiency shall be maintained by the entity that employs peace officers.

(e) The commission may adopt rules that define weapons proficiency for the purpose of this section.

Senate Bill 619 mandates that the entity employing the peace officers require that its peace officers demonstrate weapons proficiency at least once each year. The only authority given the commission under Senate Bill 619 is to adopt rules which define weapons proficiency.

Section 415.052 of the Government Code, expressly grants the commission authority to require that a person

demonstrate weapons proficiency before initial licensing. Section 415.052 provides, as follows:

(a) The commission shall grant an appropriate license to a person who, as required by this chapter, has:

- (1) submitted a proper application;
- (2) completed the required training;
- (3) passes the required examination;

(4) been declared to be in satisfactory psychological and emotional health and free from drug dependency or illegal drug use; and

(5) demonstrated weapons proficiency.

(b) The commission may issue a permanent license to be an officer and may issue a temporary or permanent license to be a county jailer.

(c) The commission shall adopt rules relating to requirements for reactivation of a peace officer's license after a break in employment. (Emphasis added.)

Subsection (c) authorizes the commission to adopt rules relating to reactivation of an officer's license. It would be a reasonable exercise of the commission's authority to promulgate a rule requiring a demonstration of weapons proficiency for reactivating a peace officer's license after a break in employment.

The more difficult question you ask is whether the commission may require an annual demonstration of weapons proficiency as a condition of a peace officer's license retention.

Section 415.010 of the Government Code provides the commission may:

(10) establish minimum standards relating to competence and reliability, including educational, training, physical, mental, and moral standards, for licensing as an officer or county jailer.

Section 415.060 of the Government Code provides:

(a) The commission may establish procedures for the revocation of any license that it grants under this chapter, except a license of an officer elected under the Texas Constitution.

In State Board of Insurance v. Deffebach, 631 S.W.2d 794 (Austin Ct. of App. - 1982, ref. n.r.e.) in determining whether an agency had exceeded its rulemaking power, the court stated the rule as follows.

In determining whether an agency has exceeded its rulemaking authority, the critical factor to be considered is whether the rule harmonizes with the general objectives of the state. Gerst v. Oak Cliff Savings & Loan Association, 432 S.W.2d 702 (Tex. 1968); Jefco, Inc. v. Lewis, 520 S.W.2d 915 (Tex. Civ. App. 1975, writ ref'd n.r.e.).

Subsection 10 of section 415.010 authorizes the commission to establish standards for licensing relating to competence and reliability including educational, training, physical, mental and moral standards. There can be no question but what the commission has authority to establish standards for granting a license, revoking a license and reactivating an officer's license after a break in employment. There is not, however, an express grant of authority by the Legislature to the commission to establish standards which must be demonstrated annually for an officer to retain his license.

The question then arises whether the commission's authority to promulgate a rule requiring peace officers to demonstrate weapons proficiency at least once a year is necessarily implied from the authority granted.

In Attorney General Opinion JM-93 (1983) the question of whether an agency was granted implied statutory authority was discussed as follows:

Administrative agencies have "only such powers as are expressly granted to [them] by statute together with those necessarily implied from the authority conferred or duties imposed." Stauffer v. City of San Antonio, 344 S.W.2d 158, 160 (Tex. 1961).

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Because the authority to adopt the proposed policies has not been expressly conferred upon the AISAC, we may conclude that this authority exists only if it is among the 'powers . . . necessarily implied from the authority conferred or duties imposed' upon this agency. Id.

The AISAC is authorized to 'employ persons necessary for it to perform its functions' V.T.C.S. art. 4413(32h), §8. In our opinion, a necessary concomitant of the authority to employ persons needed by an agency to perform its duties is the power to adopt reasonable employment policies calculated to insure the achievement of this objective.

Senate Bill 619 is the only legislative expression relative to the requirement that an officer must demonstrate firearms proficiency annually. It clearly provides that the officer must demonstrate such proficiency to the firearms proficiency officer designated by the entity which employed the officer. The act further provides that the employing entity maintain the record. An annual requirement of a demonstration of firearms proficiency for an officer to retain his license is not a necessary concomitant of the authority vested in the commission to establish standards for licensing, revoking or reinstating a license.

Yours very truly,



Rick Gilpin
Chairman
Opinion Committee

RG/TGD/bc

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