



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1994

Ms. Barbara J. Childress
Chair

Texas Commission on Law Enforcement
Officer Standards and Education
1033 Posada, Suite 240
Austin, Texas 78752

Letter Opinion No. 94-015

Re: Propriety of Texas Commission on
Law Enforcement Standards and Education
by rule applying requirements regarding
licensure of peace officers to licensure of
public security officers, and related
questions (ID# 21326)

Dear Ms. Childress:

You ask whether the Texas Commission on Law Enforcement Officer Standards and Education (the "commission") may by rule apply certain requirements to both "peace officers" and "public security officers." We note at the outset that an administrative agency's rules must be in harmony with the objectives of the statute granting the agency rule making power. *Gerst v. Oak Cliff Sav. & Loan Ass'n*, 432 S.W.2d 702 (Tex. 1968). They may not impose additional burdens or conditions in excess of or inconsistent with statutory provisions. *Bexar County Bail Bond Bd. v. Deckard*, 604 S.W.2d 214 (Tex. Civ. App.--San Antonio 1980, no writ). While we are not able in the opinion process to review bodies of agency rules for their legal sufficiency generally--see, e.g., Attorney General Opinion JM-1076 (1989) at 6--we will attempt to address what we understand to be your particular concerns.

The commission oversees, under the provisions in chapter 415 of the Government Code, the licensing of peace officers and certain other public law enforcement personnel. Section 415.051 provides, with exceptions not relevant here, that a person appointed as "an officer, county jailer, or *public security officer*" must be licensed by the commission. Licensure must be sought by the appointing governmental agency. *Id.* Section 415.010(9) authorizes the commission to establish minimum standards for licensure as "an officer, county jailer, or *public security officer*." (Emphases added.)

The term "officer" in the provisions of chapter 415 refers to both "peace officers" and "reserve law enforcement officers"--*id.* § 415.001(4)--which latter terms are themselves defined, respectively, as "a person elected, employed or appointed as a peace officer under Article 2.12, Code of Criminal Procedure, or other law" and "a person designated as a reserve law enforcement officer under Section 85.004, 86.012 or 341.012, Local Government Code." *Id.* § 415.001(5), (7). See generally Attorney General Opinion JM-1028 (1989) (whether a judge or magistrate is a "peace officer" for purposes of, *inter*

alia, chapter 415). The legislature in 1987 added a new category of law enforcement officer to those subject to licensure by the commission: "public security officers." See Acts 1987, 70th Leg., ch. 758 (amending provisions of former V.T.C.S. art. 4413(29aa), now codified in chapter 415). See generally Attorney General Opinions JM-1139, JM-1271 (1990). Section 415.001(6) provides that "public security officer" means:

a person employed or appointed as an armed security officer by the state or a political subdivision of the state but does not include a security officer employed by a private security company that contracts with the state or a political subdivision of the state to provide security services for the entity.

We understand your concern to be whether the commission may by rule apply the same licensure requirements to public security officers as to "peace officers," the same "reporting" requirements on the agencies appointing such officers, and the same "bases" for license suspension and revocation.¹ We note that a provision added by the 1987 amendment, now in section 415.051(a), reads: "A provision of this chapter applying to the issuance or revocation of a peace officer license applies to issuance or revocation of a public security officer license."

Section 415.010(9) authorizes the commission to "establish minimum standards relating to competence and reliability, including educational, training, physical, mental, and moral standards, for licensing as an officer, county jailer, or public security officer." Other provisions of chapter 415 require that, as prerequisites to licensure as "an officer or county jailer," a person have been declared "in satisfactory psychological and emotional health" by a psychologist or psychiatrist, section 415.057(a)(1); declared by a physician to show no trace of drug dependency or illegal drug use, section 415.057(a)(2); and not have been convicted of a felony, section 415.058. Section 415.059 provides that for licensure as an "officer" a person must be at least 21 years old, or, if he meets specified requirements pertaining to education or armed service, at least 18.

We think it clear that in restating the statutory licensure requirements pertaining to "officers" in its rules, the commission is not only authorized, but is required to apply them equally to "peace officers" and "public security officers."² Again, see third sentence of

¹The commission rules in these areas are found at title 37 of the Texas Administrative Code section 211.15 *et seq.*

²As you indicate in your request, this office has in a prior opinion found the specific requirement by the commission in subsection (a)(1) of title 37 of the Texas Administrative Code, section 211.80, that all license applicants be United States citizens, unsupported by the governing statutory provisions and therefore invalid. Attorney General Opinion DM-105 (1992).

Also, although again we do not here attempt to review the body of commission rules for their legal sufficiency generally, we note that the current commission rule "Minimum Licensing Standards For Entry Level Age," 37 Texas Administrative Code section 211.97, does not in subsection (b) appear to

section 415.051(a), quoted above (provision of chapter applying to issuance or revocation of peace officer license to apply to public security officer license as well) and section 415.001(4) definition of "officer" as including "peace officer." Also, to the extent the details of the commission's licensure rules are not specifically provided for in chapter 415, we think the commission's broad authority under section 415.010(9) to adopt "minimum standards" for all of its licensing gives it considerable discretion by rule to apply the same requirements regarding "competence and reliability" to peace officers and public security officers, if the requirements are otherwise within their authority. Of course, where the specific statutory provisions contemplate different treatment, that should be afforded. *See, e.g., id.* § 415.056, which requires the commission to prescribe and conduct examinations "for each license it issues."

Section 451.051(b) requires agencies appointing "an officer or county jailer" to notify the commission, and, if the appointee previously served as an "officer or county jailer" but last so served more than 180 days prior to the new appointment, to "include with its report" an updated criminal history, "a new declaration of psychological and emotional health and lack of drug dependency or illegal drug use," and "two completed fingerprint cards." Again, we believe, for the same reasons given with respect to licensure requirements, that the commission may, if the rules are otherwise within their authority, by rule apply the section 451.051(b) "reporting" requirements in the same manner to peace officer and public security officer appointments.

Section 415.060 authorizes the commission to establish procedures for revoking "any license that it grants under" chapter 415, "except a license of an officer elected under the Texas Constitution,"³ and requires it to revoke or suspend a license, "place on probation a person whose license has been suspended," or "reprimand" a licensee, "for a violation of [chapter 415] or a rule of the commission." *See also* § 415.058 (commission shall immediately revoke license of licensee convicted of felony). We believe that the above-referenced sections, especially read in conjunction with the provision of general authority in section 410.010(9) to set "minimum standards," permit the commission in their rules to use the same bases for license revocations and suspensions for peace officers and public security officers if those rules are otherwise within their authority.

(footnote continued)

accurately reflect the provisions of the underlying statute, section 415.059, that a person not yet 21 years old may be licensed if he is at least 18 and meets *either* the education requirement *or* the military service requirement specified in the statute.

³*But see* Gov't Code § 415.053 ("commission shall establish requirements for licensing and for revocation, suspension, cancellation, or denial of a license" of an officer "elected under the Texas Constitution or a statute")

S U M M A R Y

Except as noted, the Texas Commission on Law Enforcement Officer Standards and Education may by rule apply the same licensure requirements, appointing agency reporting requirements, and bases for license revocations and suspensions, for peace officers and public security officers, if the rules are otherwise within their authority.

Yours very truly,

A handwritten signature in cursive script, appearing to read "William Walker".

William Walker
Assistant Attorney General
Opinion Committee