



Id # 14612  
MJ

Fred Toler  
Executive Director

Texas Commission on  
Law Enforcement Officer Standards and Education

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December 31, 1991

RQ-297

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Opinion Committee

The Honorable Dan Morales  
Attorney General of Texas  
Price Daniels Building  
Austin, Texas 78701

RE: The public interest and concerning the official duty of the Texas Commission on Law Enforcement Officer Standards and Education

Dear Honorable Morales:

Pursuant to Section 402.042 of the Government Code, I hereby request an official Attorney General's Opinion regarding a matter affecting the public interest and concerning the official duty of the Texas Commission on Law Enforcement Officer Standards and Education, ( the "Commission").

Section 415.0345, Government Code was enacted during the 72nd Legislative session. Section 2 provides in part that "This Act takes effect September 1, 1991 and applies only to a constable elected or reelected [emphasis added] ... on or after that date. The Commission on Law Enforcement Officer Standards and Education may authorize a constable elected [emphasis added] ... before September 1, 1991 to attend courses in civil process, but failure to attend does not constitute incompetency." The Commission must interpret section 2 of this statute in conjunction with the provisions of sections 415.015 subsection c, 415.034, and 415.053, Government Code. For the Commission to determine otherwise would mean that the word reelect as used in section 2 of §415.0345 was surplus language. This reading is consistent with the intent expressed in the second sentence in section 2, that provides that constables elected prior to September 1, 1991 may take the course but failure to attend does not constitute incompetency. The constables elected before September 1, 1991 but after September 1, 1985 and who are reelected after September 1, 1991 are required to take the course. However, it should be noted that all law enforcement agencies are subject to the in-service training requirements of §415.034, Government Code. It does not appear that §415.0345 was intended to make those constables elected prior to September 1, 1985 subject to the in-service requirements of this section. If they do not take the course they are subject to removal for incompetence. In addition, since the requirement for in-service training, pursuant to §415.034 is a biannual requirement and since the Legislature meets a minimum of every two years, inference being that the applicable law may change every two years, either due to legislation and/or court cases, it would seem that the civil process course would have to be a biannual course, as opposed to being a course that was required only once.

Questions:

- (1) Is a constable elected after September 1, 1985 and reelected after September 1, 1991 subject to removal for not meeting the requirements of §415.0345?

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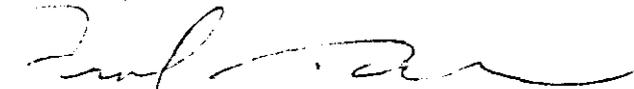
- (2) Does the reelection wording in §415.0345 extend the in-service training requirements to constables elected prior to September 1, 1985?
- (3) Is a constable who is appointed to an office prior to September 1, 1991, and who is then elected to that office after September 1, 1991 subject to the requirements of §415.0345, including the removal provisions?
- (4) Is one who is subject to the provisions of Section 415.0345 required to take the course on a biannual basis since the in-service training is required on a biannual basis as per §415.034?

The second issue is that the Attorney General issued JM-219, October 24, 1984 and issued a reconsideration of same as JM-239, December 5, 1984. One of the issues addressed was that the Commission had no authority to license individuals commissioned under section 21.483, Education Code, because the definition of Peace Officer under article 4413 (29aa) V.C.S., (codified as Chapter 415 Government Code) did not specifically reference section 21.483, while the definition did specifically reference article 2.12 of the Code of Criminal Procedure, Sections 51.212 and 51.214 of the Education Code. The definition of Peace Officer was amended effective May 17, 1989, the amendment eliminated the references to the specific sections in the Education Code, and added the words "or other law".

Are the persons who are commissioned as peace officers pursuant to the authority in the Education Code, including but not limited to section 21.483, required to be licensed by the Commission and maintain the in-service training if they were appointed on or after May 17, 1989?

If you have any questions or if we can provide you with additional information, please contact Johanna McCully-Bonner, General Counsel, at (512) 406-3618.

Sincerely,



Fred Toler,  
Executive Director

FT/JMB/eg

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