



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 12, 1996

The Honorable John Whitmire  
Chair  
Committee on Criminal Justice  
Texas State Senate  
P.O. Box 12068  
Austin, Texas 78711

Letter Opinion No. 96-070

Re: Whether the Texas Commission on Law Enforcement Officer Standards and Education is authorized to discipline the chief administrator of a law enforcement agency for failing to notify the commission that a peace officer employed by the agency has failed to comply with the statutory requirement for continuing education (ID# 37712)

Dear Senator Whitmire:

You ask whether the Texas Commission on Law Enforcement Standards and Education ("TCLEOSE") has the authority to promulgate a proposed rule to implement certain recent amendments to chapter 415 of the Government Code. As you describe the rule, it would authorize TCLEOSE to discipline the chief administrator of an agency by reprimand, suspension of his license, or other means if the administrator fails to report why a peace officer in his employ has not completed a mandated training course, or if the administrator fails to provide an adequate opportunity for such a peace officer to attend the required course.

Recent amendments to chapter 415 of the Government Code require peace officers to attend and complete a training program every 24 months. Gov't Code § 415.034(g). If the peace officer fails to complete the program, TCLEOSE may suspend his license. *Id.* TCLEOSE, however, is required to adopt rules to waive the training requirement "when mitigating circumstances exist." *Id.* Moreover, it is required to adopt procedures to provide for timely reporting by agencies and peace officers of information relating to training, to provide sufficient notice to agencies and officers so that they can avoid noncompliance, to require *agencies* to report in a timely manner why a peace officer is in noncompliance, and to provide a non-complying officer with a hearing when the officer claims that mitigating circumstances exist or that *his agency* did not provide him an adequate opportunity to attend the training course. *Id.* § 415.034(h)(4).

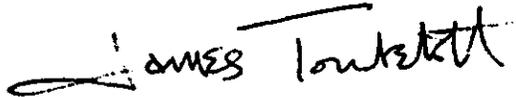
In addition to being required by section 415.034(h)(3) to report why a peace officer is in noncompliance, the agency is also required by section 415.034(b) to provide each officer with a training program every 24 months. No such explicit duties, however, are personally placed on the agency's chief administrator by the statute.

"[I]t is well settled that an agency rule may not impose additional burdens, conditions, or restrictions in excess of or inconsistent with the relevant statutory provisions." *Railroad Comm'n v. Arco Oil & Gas Co.*, 876 S.W.2d 473, 481 (Tex. App.-Austin 1994, writ denied). In this case, we believe that subjecting a chief administrator to disciplinary proceedings for the violation of a purported duty which does not appear in the statute is an impermissible additional burden, and that any rule of the sort you inform us is contemplated is not within TCLEOSE's authority and is therefore invalid.

**S U M M A R Y**

The Texas Commission on Law Enforcement Officer Standards and Education may not, pursuant to section 415.034 of the Government Code, implement a proposed rule to discipline chief administrators of agencies where the statute does not impose an affirmative duty on such administrators.

Yours very truly,

A handwritten signature in black ink that reads "James E. Tourtelott". The signature is written in a cursive style with a long horizontal line extending from the top of the "J".

James E. Tourtelott  
Assistant Attorney General  
Opinion Committee