



Timothy A. Braaten
Executive Director

TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

RECEIVED

April 2, 2007

APR 04 2007

FILE # ML-45186-07

OPINION COMMITTEE D. # 45186

EXECUTIVE ADMINISTRATION
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APR 03 2007

ACTION BY Nancy Fuller
COPY TO Ellen Witt

Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0578-GA

Re: Request for Attorney General Opinion

Attention: Ms. Nancy Fuller, Chair, Opinion Committee

The Texas Commission of Law Enforcement Officers Standards and Education (TCLEOSE) requests a formal opinion on an application of case law that is currently pending before the Commission.

Factual Background:

As you are aware, Texas Occupations Code, chapter 1701, Subchapter H, mandates the continuing education requirements for peace officers of the State of Texas. See Tex. Occ. Code Ann. §§ 1701.351-1701.357. Pursuant to the Occupations Code, every peace officer, in order to meet the state minimum requirements, must attend forty (40) hours of training every two years (24 months) and must attend statutorily mandated courses (e.g. civil rights, racial sensitivity, cultural diversity, child abuse and family violence) once every four years (48 months). Tex. Occ. Code Ann. §§ 1701.351(a), 1701.352(b) and (e). There are many academies and training opportunities throughout the state and all of the mandated courses, with the exception of Crisis Intervention training, are available free on the TCLEOSE-operated Peace Officer Standards Education Internet Training (POSEIT) website. All state-mandated training is available from multiple law enforcement academies and contract-training providers.

TCLEOSE, under Title 37 Texas Administrative Code, Section 215.1(a) has established three types of training or education providers: (1) licensed law enforcement academies; (2) contractual



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training providers; or (3) a licensed academic alternative providers. 37 Tex. Admin. Code § 215.5(a) provides that “[t]he commission may, at the discretion of the executive director, enter into a contract with a law enforcement agency, a law enforcement association, or alternative delivery trainer to conduct training for licensees.” In accordance with these provisions, TCLEOSE has credentialed over 260 such providers, including the Texas Municipal Police Association (TMPA).

The Combined Law Enforcement Association of Texas (CLEAT) has recently complained to TCLEOSE that TMPA has previously and continues to this day to practice pricing discrimination based upon union/labor membership. CLEAT asserts that TMPA offers a “graduated fee scale for TCLEOSE training, permitting TMPA members to pay an enrollment fee lower than all other participants.” (Please see the attached written complaint by CLEAT.) CLEAT complains that “[s]uch a discriminatory fee schedule contravenes the Equal Protection Clause of the United States and Texas Constitutions. Further, by sanctioning such a scheme, TCLEOSE has unconstitutionally participated in the recruitment of members by a union/labor organization to the exclusion of any other union/labor organization.”

TCLEOSE is aware that TMPA charges different fees for members as opposed to non-members. TCLEOSE is also aware that many other academies and contract providers charge different fees for the same training based upon memberships in Councils of Government or status as a member of the police agency vs. that of a non-member of the police agency that is sponsoring the training. Differing fee schedules based upon membership are not uncommon; however, CLEAT believes that membership in a union/labor organizations is a quasi-protected class.

Questions:

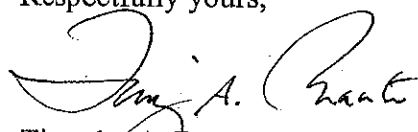
The questions simply stated are: “Does the TMPA practice of charging its own members a reduced fee for enrolling in TMPA offered (and TCLEOSE approved) courses violate the Equal Protection Clause of the United States and Texas Constitutions?” and “Does TCLEOSE have any obligation under state or federal law to ensure that all commission approved training providers offer TCLEOSE courses at the same across the board enrollment fees?”

All Parties, including TCLEOSE, desire a definitive statement from the Office of the Attorney General regarding the charging of different fees based upon union/labor memberships and/or memberships in a Council of Governments.

Thank you for your attention to this request. If you or your staff requires any additional information, please do not hesitate to contact me.

I direct your attention to the attached written complaint file by CLEAT reference this subject.

Respectfully yours,



Timothy A. Braaten
Executive Director

TAB/aem

Enclosure

Cc: Raymond Winter, OAG
Ron DeLord, CLEAT
Chris Heaton, TMPA



COMBINED LAW ENFORCEMENT ASSOCIATIONS OF TEXAS

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866/992-5328 WATS

Arlington Office

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Arlington, TX 76013
817/792-3534

January 18, 2007

Mr. Timothy Braaten, Executive Director
Texas Commission on Law Enforcement Standards and Education
6330 U.S. 290 East
Suite 200
Austin, TX. 78723

Dear Mr. Braaten:

On behalf of our members, the Combined Law Enforcement Associations of Texas (CLEAT) files this complaint in accordance with TEX. OCC. CODE, Section 1701.203. This complaint relates to the discriminatory practices of the Texas Municipal Police Association (TMPA) in providing TCLEOSE certified continuing education for officers and county jailers.

BACKGROUND INFORMATION

A person may not serve as an officer or county jailer unless the person holds an appropriate license issued by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). TEX. OCC. CODE, Section 1701.301. Individuals licensed as officers and county jailers are legislatively required to complete prescribed continuing education in order to maintain their license. TEX. OCC. CODE, Section 1701.301. An officer or county jailer who does not remain licensed is subject to removal from office. TEX. OCC. CODE, Section 1701.302.

To implement its educational requirements, the legislature has mandated that TCLEOSE establish and maintain training programs for officers and county jailers, and that the training be conducted by "TCLEOSE staff or other agencies and institutions the commission considers appropriate." TEX. OCC. CODE, Section 1701.251; *see also* TEX. OCC. CODE, Section 1701.352(a) ("The commission shall recognize, prepare or administer continuing education programs for officers and county jailers.")

TCLEOSE Rules set forth the guidelines by which TCLEOSE recognizes other agencies and institutions to conduct training. TEX. ADM. CODE, Section 215.1(a) provides that "[t]he commission may issue credentials to three types of training or education providers: (1) licensed law enforcement academy; (2) con-

tractual training provider; or (3) a licensed academic alternative provider." TEX. ADM. CODE, Section 215.5(a) further provides that "[t]he commission may, at the discretion of the executive director, enter into a contract with a law enforcement agency, a law enforcement association, or alternative delivery trainer to conduct training for licensees." In accordance with these provisions, TCLEOSE has credentialed TMPA as a contractual training provider.¹

THE COMPLAINT

In providing TCLEOSE certified training, TMPA has, and continues to discriminate based upon union/labor organization membership. TMPA has, and continues to offer graduated fee scales for TCLEOSE training, permitting TMPA members to pay an enrollment fee lower than all other participants. See the attached course registration announcements printed from the TMPA web site as examples. Such a discriminatory fee schedule contravenes the Equal Protection Clause of the United States and Texas Constitutions. Further, by sanctioning such a scheme, TCLEOSE has unconstitutionally participated in the recruitment of members by a union/labor organization to the exclusion of any other union/labor organization.

ANALYSIS

As noted above, the legislature requires officers and county jailers to hold an appropriate license issued by TCLEOSE. The completion of mandated continuing education/training conducted by TCLEOSE, or such other education/training providers credentialed by TCLEOSE, is essential to retaining such license. TMPA, by voluntarily applying to be a TCLEOSE contractual training provider, has agreed to become one of the relatively few organizations in this state allowed to conduct the required training. To be credentialed by TCLEOSE as a contractual training provider is to perform a quasi-public service to the extent that officers and county jailers may obtain training only from TCLEOSE credentialed providers. To that end, although TMPA is a private organization, it has acquired a quasi-public status whenever engaged in providing TCLEOSE certified training. Accordingly, TMPA is prohibited from discrimination in providing this public service. "A private individual may have private rights of speech and association at home, but when that individual enters the public marketplace or even the public work place, her status is transformed; she functions in part as a publicly regulated entity in society." *Elks Lodges v. Department of Alcoholic Beverage Control*, 905 P.2d 1189, 1200 (Utah 1995); See *Katzenbach v. McClung*, 379 U.S. 294, 299-300, 13 L. Ed. 2d 290, 85 S. Ct. 377 (1964); *Jones v. Mayer*, 392 U.S. 409, 20 L. Ed. 2d 1189, 88 S. Ct. 2186 (1968); *United States v. Guest*, 383 U.S. 745, 16 L. Ed. 2d 239, 86 S. Ct. 1170 (1966); *Heart of Atlanta Motel v. United States*, 379 U.S. 241, 13 L. Ed. 2d 258, 85 S. Ct. 348 (1964).

TMPA, by offering TCLEOSE training at a reduced fee to its members, has discriminated against individuals based upon membership in a single union/labor organization. The standard to be applied in determining whether a classification scheme imposed in connection with the

¹ TEX. ADM. CODE, Section 211.1(a)(18) defines a "contractual training provider" as "a law enforcement agency, a law enforcement association or alternative delivery trainer that conducts specific education and training under a contract with the commission."

issuance of a state required license is as follows: "There is no unlawful discrimination in licensing when the issuer makes classifications or exemptions based upon real and substantial differences that have a relationship to the objectives and purposes of the pertinent statute, and applies the exemptions equally to all within the same class." *Public Utility Commission Of Texas v. Texland Electric Co.*, 701 S.W.2d 261, 274 (Tex.App.—Austin 1985, writ ref'd.).

The objective and purpose of legislatively mandated continuing education for licensed officers and county jailers is encapsulated in the following portion of the TCLEOSE Mission Statement: "To ensure a Texas where people are served by highly trained and ethical law enforcement and corrections personnel . . ." The class at issue is the officers and county jailers licensed by TCLEOSE. To subcategorize that class into those who do and those who do not belong to a single union/labor organization has no relationship to the objective and purpose of continuing education for officers and county jailers. As such, allowing discounts to members of TMPA when obtaining state mandated training contravenes the Equal Protection Clause of the United States and Texas Constitutions.

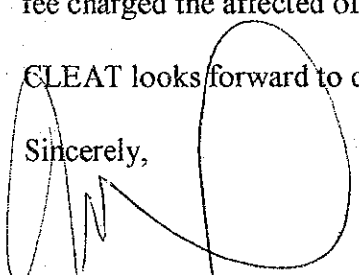
Clearly, the scheme of providing discounts based on TMPA membership is a substantial benefit to TMPA itself. Such discounts serve as a major recruiting tool. By sanctioning such a scheme, TCLEOSE has unconstitutionally participated in the recruitment of members by a union/labor organization to the exclusion of all other union/labor organizations. "The State, it is to be presumed, has no favors to bestow, and designs to inflict no arbitrary deprivations of rights. Special privileges are always obnoxious, and discrimination against persons or classes is still more so." *Gustafson v. State*, 48 S.W. 518, 519 (Tex.Crim.App 1898).

RELIEF REQUESTED

CLEAT, on behalf of its members, requests that TCLEOSE immediately require TMPA, and all other credentialed training providers, cease discriminating in the manner in which it offers TCLEOSE certified training at a discount to TMPA members. CLEAT further requests that TMPA be required to reimburse all officers and county jailers who attended TMPA training in the past, an amount equal to the difference between the TMPA member fee and the non-member fee charged the affected officer or county jailer.

CLEAT looks forward to discussing this issue with you at your earliest convenience.

Sincerely,



H.L. O'Neal
Corporate Counsel



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Members Login

Event Detail

Register 

Register for this Event

Date: Monday, March 26, 2007 - Friday, March 30, 2007.

Time: 08:00 - 17:00

Location: San Marcos Police Department Headquarters

Registration: If you must cancel after you have registered, please give us at least seven days notice prior to the start of the class or we will invoice your department.

Reg Deadline: Monday, March 19, 2007

Fee:
\$595 TMPA Members
\$695 Non-Members

This state-of-the-art training program equips officers with physical and verbal skills to control an arrest. The program will increase officer confidence and safety, and it encourages strong relationships between officers and the community.

Additional Comments:

Please note new dates for this class. This program will be led by Mr. Lew Hicks, a noted authority and trainer in the area of arrest control. This program has been used by numerous peace officers throughout the United States and was used by the Department of Justice Police Corps Program. Students should bring note taking supplies to class. Pre-registration and pre-payment is required, unless other arrangements are made with the TMPA training department prior to the course date. There will be a \$10 service charge for anyone who pays at the door on the day of the course. Please contact Audrey Tinsley for any questions at 1-800-848-2088.



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Event Detail

[Register](#)

Register for this Event

Date: Monday, July 09, 2007 - Tuesday, July 10, 2007

Time: 09:00 - 17:00

Location: TMPA Training Facility (State Offices)

Registration: If you must cancel after you have registered, please give us at least seven days notice prior to the start of the class or we will invoice your department.

Reg Deadline: Sunday, July 08, 2007

Fee:
\$49 TMPA Members
\$79 Non-Members

This is one of the prerequisite courses for TCLEOSE intermediate certification. Course includes use of a FATS machine.

Additional Comments:

Pre-registration and pre-payment is required, unless other arrangements are made with the TMPA training department prior to the course date. There will be a \$10 service charge for anyone who pays at the door on the day of the course. Please contact Audrey Tinsley for any questions at 1-800-848-2088.