

Date Issued: January 6, 1984 (AGO 84-3)

Requested by: Sheriff Ken Halvorson, Chairman
Peace Officers Standards and Training Board

- QUESTIONS PRESENTED -

I.

Whether nonexempt part-time peace officers are required by state law to attend the certified basic training course offered at the law enforcement training center.

II.

Whether the superintendent of the highway patrol has the authority to adopt rules establishing acceptance and preentrance requirements for any person who is required to attend a course at the law enforcement training center.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that all nonexempt part-time peace officers are required by section 12-62-08 of the North Dakota Century Code to attend the certified basic training course offered at the law enforcement training center within one year of their appointment.

II.

It is my further opinion that the superintendent of the highway patrol has the authority to adopt rules establishing acceptance and preentrance requirements for any person who is required to attend a course at the law enforcement training center.

- ANALYSES -

I.

Section 12-62-08, N.D.C.C., states as follows:

12-62-08. PEACE OFFICERS - TRAINING. Every newly elected or appointed peace officer, except prosecutors, shall within the first year of employment attend a course of training which is certified by the division as meeting the basic law enforcement training requirements. A peace officer who has met the basic training requirements shall be exempt from the provisions of this section.

Section 1-02-05, N.D.C.C., provides that when the wording of a statute is clear, the letter of it is not to be disregarded under the pretext of pursuing its spirit.

The wording of section 12-62-08, N.D.C.C., makes it clear that all newly employed nonexempt peace officers must attend basic training within the first year of employment with no distinction made between full or part time. The only officers exempted from attending the basic course are those who have already met the basic requirements as established by the Criminal Justice Training and Statistics Division as set forth in the rules adopted by the Attorney General which are found in chapter 10-06-02 of the North Dakota Administrative Code.

II.

Section 39-03-13.1, N.D.C.C., states in part that ". . . the superintendent of the highway patrol shall be responsible for the operation, maintenance, and administration of the law enforcement training center."

Section 28-32-02, N.D.C.C., authorizes an administrative agency to establish reasonable rules in conformity with the statutes administered by the agency. The Highway Patrol, as the agency of state government responsible for the administration of the law enforcement training center, is not excluded from the provisions of section 28-32-02, N.D.C.C.

Agencies that employ peace officers have a duty to properly select and train them. *Languirand v. Hayden*, 717 F.2d. 220 (5th C.A. 1983); *Cook v. City of Detroit*, 337 N.W.2d. 277 (Mich. 1983). The duty to properly select individuals includes, among other responsibilities, the need to conduct background investigations, determine the ability to adequately read and write, and to determine that the individual is physically fit to perform the job tasks. *Means v. City of Chicago*, 535 F. Supp. 455 (N.D. Ill. 1982). The Federal District Court of Colorado, for example, has extended the liability for improper selection and training of peace officers from the employing agency to a third party training agency. *Sager v. City of Woodland Park*, 543 F. Supp. 389 (D. Colo. 1982). Accordingly, rules which promote the proper training of peace officers are appropriate. The superintendent of the Highway Patrol clearly has the authority to establish such rules in connection with the administration of the law enforcement training center.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the questions presented are decided by the courts.

ROBERT O. WEFALD
Attorney General

Prepared by: Richard R. Tessier
Assistant Attorney General