BEFORE THE OHIO PEACE OFFICER TRAINING COMMISSION

IN THE MATTER OF:

CHIEF JAMES CRAIG'S PRIOR EQUIVALENT TRAINING DETERMINATION

ORDER

This matter is before the Ohio Peace Officer Training Commission ("Commission") on Applicant Chief James Craig's request for a hearing to dispute the determination of Robert Fiatal, Executive Director of the Ohio Peace Officer Training Academy ("OPOTA") that Applicant Craig must successfully pass the Ohio peace officer written examination required by O.A.C. 109:2-1-11 as a precondition to Director Fiatal certifying him as a peace officer in the State of Ohio. Applicant argues: 1) that O.A.C. 109:2-1-11 does not establish a mandatory requirement for successful completion of the written examination as a precondition for certification as an Ohio peace officer, or, in the alternative, 2) that Director Fiatal may and should waive the examination requirement set forth in O.A.C. 109:2-1-11 and certify him as a peace officer without requiring him to take the test.

Ohio Administrative Code Section 109:2-1-12(B)(4) gives this Commission the authority to conduct a hearing pursuant to R.C. Sections 119.01 to 119.13 if an applicant for peace officer certification disputes any of the training assigned by the OPOTA Executive Director. A hearing on Applicant Craig's prior equivalency determination was held in front of the Commission on July 19, 2012.

The following Commission members were present for the hearing: Sheriff Vernon P. Stanforth, Sheriff Thomas G. Maurer, Sergeant Troy Mineard, Ms. Linda O'Connor, SAC Stephen Anthony, Chief Ronald G. Ferrell, Mr. Stephen Schumaker, and Chief Paul Denton.

Colonel John Born was represented at the hearing by Lieutenant Mike Crispen of the Ohio State Highway Patrol. During deliberations Colonel John Born abstained from voting on any matter that was before the Commission during the July 19, 2012 hearing.

The facts of this matter are not in dispute. Applicant Craig is the City of Cincinnati Police Chief. Before serving in this capacity Applicant Craig was the Police Chief in Portland Maine, a Commanding Officer with the Los Angeles Police Department, and a police officer in Detroit, Michigan. Applicant Craig took and passed a certification exam in conjunction with each of his peace officer positions in Maine, California and Michigan.

Applicant Craig has over thirty years of law enforcement experience, but he is not a peace officer in the State of Ohio as defined in O.R.C. Sections 109.71 and 2935.01(B). It is this certification that he seeks from the Executive Director and the Commission. The parties do not dispute that in order to gain peace officer certification Applicant Craig must complete the OPOTA basic training course. O.A.C. 109:2-1-12(A)(1). This Commission recommends rules to the Ohio Attorney General with respect to the minimum course of study for peace officer training schools. O.R.C. 109.73(A)(2). The minimum course of study for peace officer training schools is set forth in O.A.C. 109:2-1-16, and each person completing the basic course must pass a final written examination prepared and conducted by the Commission. O.A.C. 109:2-1-11.

A peace officer applicant who has successfully completed training or education from an entity that was not OPOTA approved (such as an out-of-state police department) can request credit for that portion of the basic training course which is equivalent to the training previously completed. O.A.C. 109:2-1-12(B)(1). Credit may also be given to an applicant based on his or her prior experience when the applicant can demonstrate proficiency in a particular area that is equivalent to the proficiency required to complete that portion of the basic course. O.A.C.

109:2-1-12(B)(3). The burden is on the applicant to provide to the Executive Director documented evidence of prior training and/or experience in order for the Executive Director to make the prior equivalency determination. O.A.C. 109:2-1-12(B)(2) and (3). An applicant who disputes the amount of training assigned by the Executive Director may request that a hearing be held before this Commission as provided in R.C. Sections 119.06 and 119.07. O.A.C. 109:2-1-12(B)(4).

The parties do not dispute that Applicant Craig requested a prior equivalency determination under O.A.C. 109:2-1-12(B)(1). It is further undisputed that upon reviewing the documentation provided by Chief Craig the Executive Director gave him credit for five hundred fifty-two (552) of the five hundred and eighty-two (582) hours of training required to complete the basic course. Given that he had never been a peace officer in the State of Ohio, the thirty (30) hours of training that Chief Craig was required to complete consisted of training in the Ohio Revised Code (ORC) portion of legal instruction, successful passage of the handgun requalification standards test with an OPOTC certified firearms instructor, and passing the state certification examination. There is no evidence before the Commission that Chief Craig disputed the amount of training or other conditions he was assigned, and in fact he completed the thirty hours of required training in Ohio law.

Based on the fact that Chief Craig completed the thirty hours of training and was given credit for the remaining five hundred and fifty-two hours this Commission finds that Chief Craig completed the OPOTA basic training course. But this was only one part of the clearly assigned requirements for peace officer certification. At the heart of this appeal, and the matter on which the parties differ, is whether upon completion of the basic training course either the Executive Director or this Commission has the authority to certify Chief Craig as a peace officer in the

State of Ohio without requiring him to take the examination required by O.A.C. 109:2-1-11. As more fully explained below, Ohio law does not give the Executive Director or the Commission this authority.

As a threshold matter, as the applicant for certification Chief Craig has the burden of producing facts sufficient to demonstrate that he has satisfied the minimum requirements for certification. See, *St. Augustine Catholic Church v. Attorney General,* 67 Ohio St. 2d 133, 138 (1981) (construing the Ohio Attorney General's authority relating to charitable bingo licenses). "Each student recommended for certification *must* pass the final written examination with a minimum score determined by the Commission." O.A.C. 109:2-1-11(A), *emphasis added.* Plainly, the exam is mandatory for certification. Given the conditions communicated to Chief Craig, his position establishes that he has not met his burden of producing evidence that he meets the minimum requirements for peace officer certification in the State of Ohio. This Commission voted unanimously that Chief Craig did not meet this burden and that his request for certification must therefore be denied.

It is the Chief's position that although he has not taken the exam the Executive Director and the Commission have the authority to waive it and to certify him as a peace officer. He argues that O.R.C. 109.75 gives the Executive Director broad discretion to do that which is "necessary or appropriate" to carry out the duties prescribed in that statute. Chief Craig correctly points out that O.R.C. 109.75 sets forth the Executive Director's powers and duties and gives him the authority to "perform any other acts that may be necessary or appropriate" to carry out his powers and duties. O.R.C. 109.75(I). However, this discretion is limited to matters not specifically prescribed by the General Assembly in the statutes and code governing the powers and duties of the Commission. R.C. 109.71 to 109.803; O.A.C. 109:2.

While the executive director has the powers and duties set forth in O.R.C. 109.75, he may only exercise those powers and duties "with the general advice of the commission *and only in accordance with section 109.751 and the rules adopted thereunder, and with the rules adopted by the attorney general pursuant to O.R.C. sections 109.74, 109.741, 109.742, and 109.743.*". O.R.C. 109.75, *emphasis added.* This Commission, including its Executive Director, is a creature of statute and its powers are limited to those that are statutorily conferred to it. *State ex rel. Ashcraft v. Industrial Commission of Ohio, et al.,* 15 Ohio St. 3d 126 (1984). They can only do what O.R.C. 109.75 specifically allows them to do. When construing O.R.C. 109.75, or any other statute, effect must be given to every word and clause in it. *Boley v. Goodyear Tire & Rubber Co.,* 125 Ohio St.3d 510 (2010).

Giving effect to all of O.R.C. 109.75, the Executive Director has the authority to exercise discretion only insofar as that discretion does not conflict with the rules and statutes listed therein. This language cannot be read out of the statute or treated as superfluous. *State ex rel. Myers v. Spencer Twp. Rural School Dist. Bd. Of* Education, 95 Ohio St. 367 (1917). One such rule is O.A.C. Section 109:2-1-11, promulgated pursuant to R.C. 109.74, which requires the Commission to prepare, conduct and score an examination for each person completing the basic course. An administrative rule that is issued pursuant to statutory authority has the force of law unless it is unreasonable or conflicts with a statute covering the same subject manner. *Youngstown Sheet & Tube v. Lindley*, 38 Ohio St. 3d 232, 234 (1988). The State of Ohio treats the importance of the examination so seriously that any student who fails to pass the examination, and then fails to pass the single permitted retest, "shall not be permitted to take the final written examination again until they successfully complete another peace officer basic training course." O.A.C. 109:2-1-11(B).

Thus, the law in the State of Ohio is that each person completing the basic course, including Chief Craig, is required to take and pass the exam in order to be a certified peace officer. O.A.C. 109:2-1-11. O.R.C. 109.75 does not give the Commission or the Executive Director any discretion to waive the examination requirement. The Commission cannot therefore grant Chief Craig the relief that he requests.

Chief Craig's extensive career in law enforcement cannot be disputed. It will undoubtedly benefit the citizens of Cincinnati as well as the men and women of the Cincinnati Police Department to have an individual with Chief Craig's experience in a leadership position. This was evidenced at the hearing by Chief Craig's own testimony as to some of the achievements that he has made during the short time that he has been the Chief. The fact remains that Chief Craig is asking the Executive Director and the Commission to certify him as a peace officer, not as a police chief. Ohio law clearly sets forth the procedure for certifying a person as a peace officer, and that procedure requires taking and passing the exam.

A minority of Commission members believes that this body has the authority to waive the examination requirement. But the Commission agreed unanimously that even if such authority existed the exam should not be waived. Thus even if the Commission believed that it possessed the authority to waive the exam, Chief Craig's request for a waiver would be denied.

A peace officer in the State of Ohio has a tremendous amount of authority, including the authority to take away a person's liberty, to carry a firearm, and when necessary, to use that firearm to take someone's life. The Commission adopted a basic course curriculum designed using an objective job training analysis with broad input to ensure that all who complete it possess the minimum amount of knowledge and skills needed to serve as an Ohio peace officer. The curriculum and exam are nationally accredited by the Commission for the Accreditation of

Law Enforcement Agencies ("CALEA"). It is in Ohio's best interest to require anyone who wishes to have peace officer authority demonstrate that he or she possesses a minimum amount of knowledge by taking and passing the exam. Requiring successful completion of the exam is Ohio's insurance policy that all peace officers in Ohio meet the same minimum standards.

For the reasons set forth herein, this Commission holds that as an applicant for peace officer certification Chief Craig has not met his burden of producing evidence that he meets the minimum requirements for certification. Specifically, he has not demonstrated that he took and passed the exam required by O.A.C. 109:2-1-11. Moreover, O.R.C. 109.75 explicitly states that any discretion that the Executive Director or the Commission may exercise can only be done in accordance with the rules adopted pursuant to O.R.C. 109.74 and other statutes. O.A.C. 109:2-1-11 was adopted pursuant to O.R.C. 109.74 and it unequivocally requires that anyone who wants to be a peace officer in the State of Ohio must take and pass the exam. This Commission does not have the authority to grant the relief requested by the applicant and waive the testing requirement and as noted herein, such a waiver would not have been granted had that authority existed. Therefore, Chief Craig's application for certification as a peace officer in the State of Ohio is hereby denied.

Any party desiring to appeal shall file a Notice of Appeal with the Ohio Peace Officer's Training Commission, P.O. Box 309, London, Ohio 43140, setting forth the order appealed from and stating that the Commission's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice of appeal may, but need not, set forth the specific grounds of the party's appeal beyond the statement that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The Notice of Appeal shall also be filed by the Appellant with the appropriate court of common pleas

as set forth in R.C. 119.12. Such notices of appeal shall be filed within fifteen (15) days after the mailing of the notice of the Ohio Peace Officer Training Commission's Order as provided in Section 119.12 of the Ohio Revised Code.

IT IS SO ORDERED.

SHERIFF VERNON STANFORTH
Chair, Ohio Peace Officer Training Commission

09-06-2012
DATE

CERTIFICATION

I, the undersigned Executive Director of the Ohio Peace Officer Training Commission, hereby certify that the foregoing is a true and exact reproduction of the original Order of the Ohio Peace Officer Training Commission entered on its journal on the 6th day of Sept., 2012.

Robert Fiatal
Executive Director
Ohio Peace Officer Training Commission

09/06/2012
DATE