

September 29, 1993
ILR 93-Q

Senator Wilford R. Black, Jr.
826 North 1300 West
Salt Lake City, Utah 84116

Subject: Department of Public Safety Personnel Matters

Senator Black:

This letter is in response to your request that we determine if allegations regarding the Department of Public Safety's (DPS) personnel manager can be substantiated. These allegations include claiming peace officer status while not complying with certain "Peace Officer Standards and Training" (POST) and DPS policies, and as a result receiving unwarranted pay raises. In addition, DPS' personnel manager was also alleged to have tampered with Department of Human Resources personnel records.

We found that the personnel manager received the same salary increase given other sworn officers in the department. However, to qualify as a sworn officer, DPS' Director of Administrative Services granted the personnel manager an exemption from the firearms training required by DPS policy. We question whether the Director of Administrative Services had the authority to grant the exemption. In addition, we found no evidence that permanent Department of Human Resource Management records were inappropriately changed by the personnel manager.

During the 1992 General Legislative Session, \$1.3 million was appropriated to fund "salary increases for sworn officers in the Department of Public Safety." On July 1, 1992, sworn peace officers of the Department of Public Safety received a pay increase based on years of service in their present rank. All sworn officers in the department received the increase.

In the Department of Public Safety, an individual must be POST certified and comply with DPS policies in order to be designated as a sworn peace officer. POST certification requires basic training to achieve the peace officer status, and 40 hours of yearly in-service training to maintain that status. In addition, DPS policy requires semi-annual firearms qualification and the maintenance of a standard uniform.

Personnel Manager's Sworn Officer Status in Question

Following an appropriation by the Legislature during the 1992 General Session, DPS was given over \$1.3 million for salary increases for all its sworn officers. DPS allocated the increase by granting a one step (2.75%) increase in pay to each sworn officer for each year the officer had held his/her current rank. In accordance with this policy, and because of his claim of peace officer status, Lin D. Miller Jr., DPS' Personnel Manager, received a three-step increase in salary on July 4, 1992. According to Herb Katz, DPS' Director of Administrative Services, while 20 to 30 other administrative personnel received the sworn officer increase, these individuals were all uniformed officers who were issued firearms and drove marked DPS cars. In addition to the sworn officer increase, Lin Miller was also given a special salary adjustment in 1992.

It was alleged that Mr. Miller could not have held peace officer status because he had not qualified with department approved firearms and had not having received the required yearly in-service training. As a result, Lin Miller may have inappropriately received a salary increase meant only for sworn officers in the DPS. We therefore reviewed his training record for comparison with POST requirements and DPS policies regarding sworn peace officer status to determine if he was qualified as a peace officer at the time of the salary increase.

To become a "Peace Officer" one must complete the basic course at a peace officer training academy and be POST certified. Thereafter, the officer must complete annual POST certified training of at least 40 hours per year as directed by the POST director. In addition, DPS policy states that "all sworn officers shall be armed with a department issued handgun while on duty," and "every officer shall qualify semi-annually on a department approved course with every type of firearm issued...." Furthermore, according to D. Douglas Bodrero, DPS Commissioner, all sworn personnel within the department are required to maintain an acceptable and identifiable uniform to be used in case of emergency regardless of assignment.

Lin D. Miller Jr. successfully completed the basic course at the Utah Police Academy in May of 1971. After service in the military, Miller was re-instated as a peace officer in the State of Utah in July of 1977. We reviewed his training record from FY 1980 to FY 1993 and noted that according to POST, he has received the yearly 40 hours of approved training needed for continued POST certification. We were unable to immediately obtain Lin Miller's 1985 to 1993 POST in-service training records, but received them piecemeal from the department over the course of several weeks. In addition, Mr. Miller claimed personnel training as POST in-service training, and did not comply with DPS firearms and uniform policies. We found that although Mr. Miller did not comply with many DPS policies, he was considered a sworn peace officer because of exemptions to these policies granted him by his chief administrative officer.

DPS' Director of Administrative Services, Herb Katz, is Lin Miller's chief administrative officer and as such decides which training qualifies as POST certified in-service training and whether to enforce certain DPS policies with his subordinates. The Utah Administrative Code states that "All training offered by POST (basic training, in-service training, and regional training) is authorized for POST in-service credit. The authority and responsibility for accepting other forms of training belongs to the chief administrative officer of each law enforcement

agency. If the chief administrative officer approves the training, POST will accept that training to satisfy the 40-hour training requirement. However, the chief administrative officer accepts the responsibility and liability for course content and instructor qualification." (**Utah Administrative Code R728-500-7**)

Nearly half of the training reported by Mr. Miller in FY 93 was for Americans with Disabilities Act (ADA) seminars he had attended. While clearly of value for a personnel manager, these seminars appear removed from the topics relevant for a police officer. Mr. Katz, however, officially accepted Lin Miller's ADA seminar attendance as satisfaction of the POST in-service training requirement for FY 93.

In addition, while Mr. Miller declared peace officer status in 1992, he had neither qualified with nor had issued to him the department's standard sidearm. DPS policy states that "Officers failing to qualify with any firearm may be dismissed from employment with the department." Herb Katz told us that as Lin Miller's chief administrative officer he chose not to issue Miller a sidearm, and not to require him to receive firearms training and qualify semi-annually. However, DPS Commissioner Bodrero stated that division directors such as Mr. Katz are not authorized to deviate from department firearms policy. Mr. Miller was not issued a firearm and did not qualify semi-annually as required by DPS policy. He has, however, recently been told by Mr. Katz that he will now be issued a sidearm and required to qualify according to department policy.

Finally, Lin Miller did not have a uniform and was not required to maintain one. A memorandum from Herb Katz to Mr. Felix McGowan, Executive Director of DHRM, dated May 18, 1992, requested approval for a "special salary adjustment" for Lin Miller of \$0.25/hour. The memo explains that the special salary adjustment amount is equivalent to the uniform allowance that was currently provided to Miller. Mr. Katz stated that while he wished to take Miller off uniform allowance, he didn't wish to see a reduction in his overall compensation. Mr. McGowan approved the special adjustment on May 27, 1992. Although Mr. Miller had received a uniform allowance starting in 1989, it was converted to a salary adjustment in 1992. Mr. Katz explained that the conversion of the uniform allowance to a special adjustment was meant to bring Lin Miller's salary into parity with other bureau chiefs in the department and personnel directors in the state. Therefore, because Mr. Miller is not given a uniform allowance, he is not required to possess, wear, or maintain a uniform.

Lin D. Miller Jr. was able to qualify as a sworn officer in the Department of Public Safety because of his compliance with POST rules and DPS policy. His compliance, however, was made possible by the exemptions to these rules and policies granted him by his chief administrative officer. While Mr. Katz was authorized to determine acceptable POST in-service training and exempt Lin Miller from the department's requirement to maintain a uniform, he was not authorized to exempt Mr. Miller from the department's firearms requirements, according to the department director.

Because he was considered a sworn peace officer in the Department of Public Safety, Lin Miller was included in the legislatively authorized pay increase by DPS management. Mr. Katz stated that he was hesitant to grant Miller the salary increase, but felt compelled to because he believed that Mr. Miller had maintained his sworn officer status. Commissioner Bodrero was also aware of Lin Miller's request, and stated that while he knew it would cause controversy to give Mr. Miller the sworn officer increase, he felt it would have been inequitable to deny it.

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Therefore, on September 3, 1992, Herb Katz contacted DHRM and authorized Mr. Miller to receive the special salary adjustment the Legislature had authorized for sworn peace officers. On that same day, however, a "memorandum of agreement" was signed by both Lin Miller and Herb Katz. Among other things, this agreement called for a waiver on future merit increases in Mr. Miller's salary until July 1, 1998. Miller is not entitled to receive future pay increases prior to July 1, 1998, except where such increases are general cost of living increases resulting from adjustments to the overall pay plan of the state.

Employee Personnel File was Not Changed

A second allegation regarding the personnel manager at the Department of Public Safety involves the alleged changing of an employee's computer personnel file. Although there appears to have been some misunderstanding about an officer's proper pay rate, we found no evidence that the officer's permanent personnel file was altered.

State employee's personnel files are maintained by the Department of Human Resource Management (DHRM). Additions made to these files are first requested at the department level, then implemented through DHRM. Specifically, additions to employee files by the department are first entered into a temporary computer file and, after review and approval by DHRM, made part of the employee's permanent personnel file by a separate order from the department.

According to DPS, an officer had been given an excessive pay increase and DPS needed the error corrected. The officer was notified by letter of a proposed reduction in salary, and his temporary computer personnel file was updated to reflect the change. The department, however, did not order the change made part of his permanent file, pending his appeal.

When the officer challenged the proposed reduction it was found to be without merit and abandoned. The salary reduction was then removed from the temporary computer file. Because the change was never ordered part of the officer's permanent personnel file, no update to that file was necessary.

DPS asserts, and DHRM staff re-affirm, that the temporary file does not represent the officer's personnel file. Only changes to the permanent computer file represent a "change to the personnel file." Therefore, the allegation that DPS made changes to an employee's personnel file are unfounded.

We hope this letter has provided the information you need on these issues. A response from the Department of Public Safety is attached. If you have any questions or need additional information, please contact us.

Sincerely,

Wayne L Welsh
Auditor General

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