

# POST COUNCIL MEETING

March 22, 2012

*Dixie State College, Kenneth Gardner Center  
St. George, UT*

## MINUTES

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On March 22, 2012, a quarterly POST Council meeting was held at 1:00pm at the Kenneth Gardner Center located at Dixie State College, in St. George, Utah. Chairman Mike Larsen conducted.

### **The following POST Council members were in attendance:**

Director Mike Larsen, Chairman, Orem DPS  
Chief Terry Keefe, Vice-Chairman, Layton City P.D.  
Sheriff Lamont Smith, Kane County Sheriff's Office  
Executive Director Tom Patterson, Department of Corrections  
Colonel Daniel Fuhr, Superintendent, Utah Highway Patrol  
John Crowley, UPOA Representative  
Commissioner Kerry Gibson, Weber County Commissioner  
Supervisory Special Agent Leo Lucey, Attorney General's Office (Proxy for Attorney General Mark Shurtleff)  
Dr. Sterling R. Provost, At Large  
Robert D. Robertson, At Large  
Sheriff James O. Tracy, Utah County Sheriff's Office  
Mayor Melissa Johnson, West Jordan City  
SAC David Johnson, FBI  
Sheriff Dave Edmunds, Summit County Sheriff's Office

### **The following were excused and/or absent:**

Chief Chris Burbank, Salt Lake City P.D.  
Vice-President Donna Dillingham-Evans, Dixie State College  
Attorney General Mark Shurtleff (Proxy by Supervisory Special Agent Leo Lucey)  
Chief Val Shupe, South Ogden City P.D.

### **POST staff present:**

Scott Stephenson, Director  
Kelly Sparks, Deputy Director  
Shaunna McCleve, Administrative Secretary  
Wade Breur, POST Basic Training Bureau Chief  
Lana Taylor, DPS Legal Counsel representing POST, Asst. Attorney General  
Al Acosta, POST Investigations Bureau Chief  
Rex Dana, POST Investigations (DOC)  
Rich Fordham, POST Investigations  
Brad Zeeman, POST Investigations  
Alex Garcia, POST Investigations  
Chris Fielding, Media Specialist

**Others present:**

Lori Prichard, KSL TV  
Jon Shields, Grantsville  
Frankie Shields, Grantsville  
Jared Shields, Grantsville  
Dan Chamberlain, Grantsville City  
Steve Barrett, Grantsville City  
Randee Larsen, Public Oversight  
Timothy Larsen, Public Oversight  
Hanah Johnson, Danny Johnson  
Lisa Johnson, Danny Johnson  
Jonathan Johnson, Danny Johnson  
Danny Johnson, Self - Grantsville PD  
Brent Marshall, Grantsville  
Corene Marshall, Grantsville  
Ruth Johnson, Danny Johnson  
Merlene Christensen, Danny Johnson  
Doug McCleve, UHP  
C. R. Gibson, AG  
Mick Spilker, AG  
James Van Fleet, St George PD  
Doug Sargent, St George PD  
Ken Carpenter, Parowan PD  
Ron Kirby, Visitor  
Justin Wingfield, Grantsville City  
Linda Wingfield, Grantsville City  
Jack Rickards, Weber State Academy  
Michael Forshee, Utah County SO  
Nate Carlisle, Salt Lake Tribune  
Michael Forshee, Utah County SO  
Robert Dekker, Millard County SO  
Trent Wyan, Self  
Paul Gill, West Valley PD  
Kodie Gill, Self  
Sid Groll, Utah Division of Wildlife Resource  
Dee Rosenbaum, Self  
Wayne Andersen, Spanish Fork Mayor  
S. Junior Baker, Spanish Fork City Attorney

**Others present online:**

Julie Johnson, Grantsville Police Department  
Jolene Sturzenegger, Grantsville Justice Court  
Susan P. Gustin, Grantsville City  
Christine Webb, Grantsville City  
Scott Swapp, Kane County

**WELCOME AND INTRODUCTIONS**

The meeting was called to order at 1:00pm. Chairman Mike Larsen welcomed those in attendance at POST Council.

**APPROVAL OF POST COUNCIL MINUTES**

The POST Council minutes of December 5, 2011, were reviewed and the following motion was made:

**Motion:** *Commissioner Gibson motioned to approve the minutes of December 5, 2011.*  
**Second:** *John Crowley seconded the motion.*  
**Vote:** *The motion passed with all in favor.*

## **ANNUAL REPORT**

Director Stephenson reported the following information on investigations for 2011:

- I. Received and reviewed 147 complaints
- II. Opened 74 new cases
- III. 41 cases reviewed by the POST Council
- IV. Cases that were closed:
  - a. closed two 2009 cases
  - b. closed twenty 2010 cases
  - c. closed nineteen 2011 cases

## **LEGISLATIVE UPDATE**

Director Scott Stephenson told the Council there were two bills POST supported this legislative session sponsored by Representative Greenwood. The first bill will allow the Superintendent of the Utah Highway Patrol to have a designee; this was the only administrative position on the Council not afforded this opportunity. The FBI position was removed from the Council and will become an at large appointment. The second bill created parity for out of state waivers with in state reactivations. If an officer is out of the profession for four years or longer, regardless in-state or out of state, they will be required to attend an academy.

***Chairman Larsen moved agenda item, Disciplinary Guidelines Discussion, to the end of the agenda.***

## **SATELLITE ACADEMY AUDITS**

Lieutenant Wade Breur reported on two satellite audits conducted this quarter. The first one was Weber State University which resulted in no exceptions. This academy recently moved to a new location and is currently operating two classes, day and evening. The second audit was on the Salt Lake City Police Department Academy. They have one class in session with twelve officers in attendance. POST observed the firearms training and found only the main instructor was POST firearms qualified, all other instructors teaching were not. To remedy this, the firearms instructors have registered to attend the next firearms instructor course in April. Both academies are doing a great job.

Sheriff Edmunds asked how many cadets from the satellite academies are being hired. Lt. Breur replied it would take research to obtain exact numbers, but believes approximately half are getting hired.

## **DISCIPLINARY ACTIONS:**

Director Stephenson presented the following cases to the POST Council and gave a brief synopsis of each case.

### **JASON BERNARDS**

Offense – Assault DV

Category – C

Recommended Discipline – 2 year suspension

Status – Resigned 10/26/2011

Jason Bernards and his attorney addressed the Council telephonically. Bernards' attorney made the following statements: She felt the two year suspension was appropriate, if not less. He has always been

honest with his agency and with POST. He has taken steps to insure an incident like this will not occur again. He is in therapy and would like to return to his career.

Council members inquired about the injuries to his wife's finger and their marital status. The attorney responded Bernards' wife's finger was in a brace for a couple of months and they are in the process of getting a divorce.

**Motion:** *Chief Keefe motioned to accept the recommended 2 year suspension of Jason Bernards' peace officer certification (10/26/12–10/26/14)*  
**Second:** *Executive Director Patterson seconded the motion.*  
**Vote:** *The motion passed with all in favor.*

**CHARLES HENRY FRAZIER**

Offense – Disorderly Conduct  
Category – E  
Recommended Discipline- Letter of Caution  
Status – Still Employed

**Motion:** *Robbie Robertson motioned to accept the recommended letter of caution on Charles Frazier.*  
**Second:** *Dave Edmunds seconded the motion.*  
**Vote:** *The motion passed with all in favor. Dir. Patterson recused himself.*

**CLARA JEAN JARVIS**

Offense – Allowing Vicious Animal to go at Large  
Category – E  
Recommended Discipline - Letter of Caution  
Status – Still Employed

**Motion:** *Sheriff Smith motioned to accept the recommended letter of caution on Clara Jarvis.*  
**Second:** *Chief Keefe seconded the motion.*  
**Vote:** *The motion passed with all in favor. Dir. Patterson recused himself.*

**TRENTON K. WYNN**

Offense – Disorderly Conduct  
Category – E  
Recommended Discipline – Letter of Caution  
Status – Still Employed

Trenton Wynn addressed the Council and stated he never thought he would be in front of the POST Council explaining his behavior and gave a description of the incident. He feels he is a good officer and apologized for his actions.

**Motion:** *Commissioner Gibson motioned to accept the recommended letter of caution on Trenton Wynn.*  
**Second:** *Colonel Fuhr seconded the motion.*  
**Vote:** *The motion passed with all in favor. Dir. Patterson recused himself.*

**JAMES I. MORGAN**

Offense – Unlawful Taking of Wildlife  
Category – D  
Recommended Discipline – 3 month suspension  
Status – Terminated 2/13/12

**Motion:** *Executive Director Patterson motioned to accept the recommended 3 month suspension of James Morgan’s peace officer certification (2/13/2012-5/13/2012).*  
**Second:** *Sheriff Tracy seconded the motion.*

Discussion: Sheriff Edmunds stated there are mitigating circumstances in this case and the officer willfully disclosed the information.

Sub-Motion: Sheriff Edmunds motioned to reject POST’s recommendation and issue a letter of caution.  
Second: Commissioner Gibson seconded the motion.

Discussion: Executive Director Patterson is concerned changing his suspension when the director of The Department of Natural Resource’s states in a letter this is an appropriate sanction and does not want to set a dangerous precedence. Director Stephenson referred the Council to the guidelines stating this is a category “D” and said a letter of caution would put the Council outside the adopted guideline. The Council discussed his position as a natural resource officer when this occurred.

Vote: *The motion failed with a 6 in favor and 6 opposed, Chairman Larsen broke the tie with an opposing vote.*

*The Council returned to the original motion.*

**Vote:** *The original motion passed with 10 in favor and 2 opposed.*

**DAVID ANDERSON**

Offense – DUI  
Category – D  
Recommended Discipline - 1 year suspension  
Status – Terminated 1/27/12

**Motion:** *Sheriff Smith motioned to accept the recommended 1 year suspension of David Anderson’s peace officer certification (1/27/12-1/27/13).*

**Second:** *Commissioner Gibson seconded the motion.*

**Vote:** *The motion passed with all in favor. Dir. Patterson recused himself.*

**KODIE GILL**

Offense – DUI  
Category – D  
Recommended Discipline - 1 year suspension  
Status – Resigned 11/11/11

Kodie Gill addressed the Council and took responsibility for her actions and stated she is trying to do

everything she can to make it right. She apologized to the Council.

**Motion:** *Chief Keefe motioned to accept the recommended 1 year suspension of Kodie Gill's peace officer certification (11/11/11-11/11/12).*  
**Second:** *Commissioner Gibson seconded the motion.*  
**Vote:** *The motion passed with all in favor.*

**DAVID LAYTON**

Offense – Driving Under the Influence  
Category – D  
Recommended Discipline- 2 year suspension  
Status – Resigned 9/22/10

**Motion:** *Sheriff Edmunds motioned to accept the recommended 2 year suspension of David Layton's peace officer certification (9/22/10-9/22/12).*  
**Second:** *Sheriff Tracy seconded the motion.*  
**Vote:** *The motion passed with all in favor.*

**DANNY JOHNSON**

Offense – Wanton Destruction of Protected Wildlife and Aiding or Assisting  
Category – B  
Recommended Discipline - 3 year suspension  
Status – Still Employed

Director Stephenson passed out a letter from the Grantsville Mayor for the Council to review.

Lorenzo Miller representing Danny Johnson addressed the Council and stated the mayor has written another letter for the Council to review. He presented a photo of the deer and informed the Council this was not a case of trophy hunting, this is a father taking his son out for his first hunt. He further explained the situation stating Mr. Johnson took responsibility for his actions and said the Grantsville Mayor stands behind him. Mr. Miller argued this case does not merit a three year suspension and asked the Council not to take away Johnson livelihood. Miller asked the Council to compare this case with a domestic violence case or a DUI, this case does not rise to that level and asked for a lesser sanction.

The Council asked about the tagging of the animal, Johnson stated he did not know what he did was against the law and was considered party hunting. Director Stephenson referred the Council to [wildlife.utah.gov](http://wildlife.utah.gov); it gives the description of party hunting. Utah code 23-19-1 and also Utah Administrative Rule R657-5-16 reads; "You may not take a big game animal for another person"; for example you cannot kill a big game animal and then tag the animal with a tag that belongs to one of your hunting companions. This practice is called party hunting and it is illegal.

The Council discussed the reasons why Johnson was charged with a Class A Misdemeanor. A map outlining the area closed to hunting was displayed and discussed. Mr. Johnson stated he has enforced the law for 28 years and would never intentionally break the law.

**Motion:** *John Crowley motioned to reject the recommended 3 year suspension and recommended an eighteen month suspension of Danny Johnson's peace officer certification (4/6/12-10/6/13).*  
**Second:** *Sterling Provost seconded the motion.*

Discussion: Sheriff Edmunds feels there is aggravating circumstances in this case and does not support the motion. Commission Gibson does not believe Johnson intended to take a deer outside of the hunting area. Executive Director Patterson supports the motion and believes when the guidelines were established, Council members were not thinking about the taking of wildlife. Patterson was also concerned with the lack of cooperation Johnson gave the US Forest Service Ranger. The Council discussed Johnson's lack of cooperation and his return to the property after being told not to return by the property manager.

**Vote:** *The motion passed with 7 in favor and 5 against.*

**DEE W. ROSENBAUM**

Offense – Theft, Lying Under Garrity  
Category – A & B  
Recommended Discipline- 4 year suspension  
Status – Still Employed

Spanish Fork City Attorney Barker approached the Council and stated he does not represent Chief Rosenbaum and was there on behalf of the city. Attorney Taylor, representing the Council, informed the Council according to administrative rules, only the officer or his attorney may address the Council, other interested parties are not allowed to participate. Atty. Barker referred to Utah Code which states the employing agency, the city in this case, is entitled to make a comment to the Council. He said they were not notified of this and feels it is a procedural defect. Atty. Taylor informed Atty. Barker according to the rules the officer's chief administrator should have been notified by POST in order to obtain a written statement, which would be supplied to the Council for their review. POST staff informed the Council a letter from the Mayor was included in their information packets. Chairman Larsen said only legal counsel or accused officer may address the Council. Atty. Barker read part of State Code 53-6-211. Atty. Taylor referred Atty. Barker back to administrative rules. Atty. Barker gave the Council a letter in support of Rosenbaum and said Mayor Anderson was present and would like to make a statement. Chairman Larsen stated only Rosenbaum or his legal counsel may address the Council.

Atty. Taylor advised the Council Rosenbaum's attorney was aware of the Council meeting today. Rosenbaum told the Council Mike Petro is his legal counsel and Petro contacted Atty. Taylor requesting a continuance of this case, but was declined. Atty. Taylor stated Atty. Petro did contact her about a continuance and she informed him administrative rules state the matter will be heard at the next regularly scheduled Council meeting. Atty. Taylor advised the Council they could entertain a motion from Mr. Rosenbaum to postpone this matter, but that would be at the Council's discretion. Mr. Rosenbaum said Atty. Taylor continued another matter scheduled for today. Atty. Taylor replied a prior matter with a consent agreement was allowed to wait until the June Council meeting. Chairman Larsen asked Mr. Rosenbaum if he was requesting a continuance from the Council. Mr. Rosenbaum stated he was.

Executive Director Patterson expressed concerns with continuing the case as there has been an ALJ hearing and Rosenbaum's counsel was aware of the meeting. Chief Larsen asked why Atty. Petro was not present. Mr. Rosenbaum did not know. Atty. Taylor informed the Council POST did not receive a written request for a continuance from Atty. Petro.

**Motion:** *Executive Director Patterson motioned to not grant a continuance on the Dee Rosenbaum case and move forward.*  
**Second:** *Sheriff Edmunds seconded the motion.*  
**Vote:** *Motion passed with all in favor.*

Mr. Rosenbaum addressed the Council and gave his account of the events on June 5, 2010. Rosenbaum stated “he never has, nor never would, not pay for items at any store”. He also explained he did not lie under Garrity, he may have given more details in different interviews, but did not lie. Rosenbaum stated he had every intention of paying for the items placed in the bag and he never tried to leave the store. He recognized taking the Dillard’s sacks into the store was poor judgment. Rosenbaum stated the Provo prosecuting attorney declined to press charges because of the lack of proof of intent and the Spanish Fork Mayor, city council, city manager, and city attorney all determined the evidence was not there. Rosenbaum said he did not commit a crime and does not feel he should lose his certification and career. Council members asked for clarification on a couple of questions which Mr. Rosenbaum provided. Director Stephenson reiterated this case was heard before an Administrative Law Judge and POST’s burden of proof is clear and convincing which is less than is required for a criminal prosecution. POST met its burden of proof according to the ALJ’s findings.

- Motion:** *Executive Director Patterson motioned to accept the recommended 4 year suspension of Dee Rosenbaum’s peace officers certification (4/6/12-4/6/16).*
- Second:** *Robbie Robertson seconded the motion.*
- Vote:** *The motion passed with all in favor. Sherrif Tracy recused himself.*

**RYAN FREDERICK REYNOLDS**

Offense – Assault, Criminal Mischief, Unlawful Detention, DV in the Presence of a Child  
Category – C  
Recommended Discipline – 3 ½ year suspension  
Status – Terminated 4/25/11

Director Stephenson amended the POST recommended discipline from 4 to 3 ½ years to be consistent with the disciplinary guidelines.

- Motion:** *Sheriff Edmunds motioned to accept the recommended 3 ½ year suspension of Ryan Reynolds’ peace officers certification (4/25/11-10/25/2015).*
- Second:** *Commissioner Gibson seconded the motion.*
- Vote:** *The motion passed with all in favor.*

**DISCIPLINARY GUIDELINE DISCUSSION**

Director Stephenson reported to the Council regarding their request for a recommendation to modify the disciplinary guidelines related to providing false information after receiving a Garrity warning. Director Stephenson stated after considering the matter, he felt the Council should discuss the guidelines and make the recommendation. Chief Keefe recommended reclassifying “Lying under Garrity” from a Category B to a Category A on the disciplinary guidelines. Chairman Larsen stated there should be a motion for this change. The following motion was then made.

- Motion:** *Chief Keefe motioned to reclassify “Lying under Garrity” to a Category A.*
- Second:** *Sheriff Smith seconded the motion.*

Discussion: Sheriff Tracy asked for clarification as to how long an officer has before false statements are considered lying under Garrity. It was clarified as soon as an interview is concluded and the officer leaves the interview, any false statements that have not been corrected would be considered a violation of Garrity. There was discussion about the Garrity warning in response to questions asked by Mayor Johnson.

**Vote:**            *The motion passed with all in favor.*

**NEXT POST COUNCIL MEETING**

The next POST Council meeting will be at Public Safety Education and Training Building in Sandy, June 4, 2012, at 10:00am.

**ADJOURNMENT**

Sheriff Smith motioned to adjourn.

The POST Council meeting adjourned at 3:31pm.