



POST Investigations Bulletin

State of Utah

Department of Public Safety Peace Officer Standards and Training



June 2016

One of the duties of the Peace Officer Standards and Training (POST) Council is to establish and enforce rules of conduct for certified peace officers and certified dispatchers throughout the state. During each POST Council Meeting, the Council reviews cases investigated by the POST Investigations Bureau and rules on the suspension or revocation of these individuals in accordance with Utah Code 53-6-211 and 53-6-309. The decisions the council makes help to define acceptable and unacceptable conduct for Utah peace officers and certified dispatchers.

Please note that the actions taken by the POST Council are not binding precedent. The POST Council makes every effort to be consistent in its decisions, but each case is considered on its own individual facts and circumstances. The *POST Investigations Bulletin* is a sample of the cases heard by the POST Council and is published to provide insight into the Council's position on various types of officer misconduct.

On June 2, 2016, POST Council convened and considered 7 cases of officer discipline.

Case 1

Officer A was investigated for the theft of two generators. The investigation disclosed that Officer A stole a large Honda 6500 generator (valued at over \$1500) and a small Honda EU2000 generator (valued at over \$900) from a building which was under construction. The owner of the stolen Honda 6500 generator informed law enforcement that Officer A had been seen loading a large, red Honda generator into his pickup. Law enforcement officers made contact with Officer A and asked him about the generator. Officer A explained he had loaded a small generator along with some camp supplies into his pickup earlier that day. Officers informed Officer A someone had seen him load a large generator into his pickup. Officer A denied having a large generator and showed officers a small Honda EU2000 generator and said it belonged to his employer.

Further investigation discovered multiple discrepancies in Officer A's story, and when questioned further, Officer A admitted to stealing the two generators, believing they both belonged to his [non-law enforcement] employer. Officer A claimed the employer owed him over \$1000 in back pay. Officer A said he took the generators to hold as collateral for the back pay he believed he was owed. However, Officer A did not realize that one of the generators (Honda 6500) did not belong to his employer, but to another individual. Criminal charges were filed on Officer A for theft, a 3rd degree felony, and burglary, a 3rd degree felony. Officer A pled guilty to theft, a 3rd felony, and the burglary charge was dismissed with prejudice.

A Notice of Agency Action was filed by POST and mailed to Officer A. Officer A failed to respond to the notice of agency action and an order of default was signed by the administrative law judge and mailed to Officer A. POST recommended Officer A's certification be revoked. After hearing POST's findings the Council ratified POST's recommendation and voted to revoke Officer A's peace officer certification.

Case 2

Officer B went to a parking lot of a local business to confront his wife about marital issues. Officer B concealed his personal handgun, fully loaded, in his pant pocket when he went to talk to his wife. Officer B's wife worried Officer B had a gun in his possession and summoned police because she was concerned for his wellbeing. Local law enforcement arrived and Officer B informed officers he had a loaded handgun in his pocket. Officer B was a correctional officer and did not have peace officer authority while off duty. Officer B also did not have a concealed carry permit and was not authorized by his agency to carry a gun off-duty. Officer B did not display or threaten to use his handgun.

During an internal investigation Officer B told investigators the firearm was loaded and he was involved in an emotional conversation with his wife. The internal investigation determined Officer B violated Utah Code Ann. § 76-10-504, a class A misdemeanor. Officer B was suspended for forty hours and given a letter of reprimand; he retained his employment.

A Notice of Agency Action was filed by POST and mailed to Officer B. Officer B failed to respond to the notice of agency action. An order of default was signed by the administrative law judge and mailed to Officer B. POST recommended a three year suspension of Officer B's certification. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer B's peace officer certification for three years.

Case 3

Officer C was investigated by his agency for allegations of officer misconduct and inappropriate sexual relations with a city employee. The internal administrative investigation revealed a Facebook account with a fictitious name that was created and controlled by Officer C for the purpose of communicating with the city employee. During a *Garrity* interview, Officer C was asked if he was familiar with the fictitious name assigned to the Facebook account, he replied no. He was then asked if he ever had control over a Facebook profile or Facebook messenger account assigned to someone by that fictitious name. Officer C said no again. Officer C was re-interviewed the next day by his agency regarding the statements he made in the previous *Garrity* interview. After being presented with evidence confirming the statements were false, Officer C said he understood why he was being terminated. In the POST *Garrity* interview, Officer C admitted to lying under *Garrity*.

A Notice of Agency Action was filed by POST and mailed to Officer C. Officer C waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended the revocation of Officer C's certification. After hearing POST's findings the Council ratified POST's recommendation and voted to revoke Officer C's certification.

Case 4

Officer D, who recently completed a suspension from the Council, was investigated for use of a controlled substance without a prescription. The investigation disclosed Officer D's certification was suspended by the POST Council two years previously, for driving under the influence of alcohol. Officer D applied to reactivate his POST certification. In his application for reactivation, Officer D disclosed that he used his wife's prescription hydrocodone for back pain approximately one year previously while he was still on suspension.

During a *Garrity* interview with POST, Officer D admitted to using his wife's prescription hydrocodone. Officer D said he developed back pain over a weekend and attempted to manage it with Ibuprofen which had been prescribed to him. Officer D said when the Ibuprofen did not alleviate the back pain; his wife gave him one of her prescribed hydrocodone pills. Officer D admitted he may have taken a second pill the following day, but was able to manage the pain again using only Ibuprofen. During the investigation,

Officer D provided a letter from his doctor. The doctor confirmed Officer D was being treated for back pain and was prescribed hydrocodone in the past.

A Notice of Agency Action was filed by POST and mailed to Officer D. Officer D waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended Officer D's certification be suspended for 18 months. Officer D appeared before the POST Council. After hearing POST's findings and hearing from Officer D, the Council rejected POST's recommendation and voted to suspend Officer D's certification for three months.

Case 5

Officer E entered private property without permission from the owner of the property while hunting. Officer E remained on the private property to track a wounded elk, previously shot on public land by a member of his group. The property was clearly marked as private property with signs and orange paint. Officer E was aware he had to obtain permission from the property owner before entering the property, while tracking a wounded elk, but chose not to. The next day, Officer E and his group drove three ATV's onto the property about 100 feet, and hid them behind some brush to continue tracking the elk. Officer E entered a plea of guilty, to be held in abeyance, to a charge of criminal trespass, under Utah Code Ann. § 76-6-206, a class B misdemeanor.

A Notice of Agency Action was filed by POST and mailed to Officer E. Officer E waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended a six month suspension of Officer E's certification. Officer E appeared before the Council. After hearing POST's findings and hearing from Officer E, the Council rejected POST's recommendation and voted to issue Officer E a letter of caution.

Case 6

Officer F was investigated by his agency for the allegation of supplying alcohol to a minor. The investigation disclosed Officer F hosted a birthday party at his residence. Officer F provided alcohol for the party and left it readily available on the kitchen table. Several individuals attended the party, including a number of individuals under the age of 21. An 18 year old drank the alcohol that was available for the party and became intoxicated. The 18 year old drank the alcohol openly at the party and was observed by several witnesses. A few months later, Officer F and the same 18 year old went on a vacation together to Nevada. Officer F purchased alcohol, handed the 18 year old the sack containing the alcohol, the 18 year old took a bottle out, and drank from it. The 18 year old consumed additional alcohol throughout the rest of the vacation in front of Officer F. The 18 year old said he was told by Officer F that he could not drink, but Officer F would turn his head or leave for a minute and the 18 year old could do what he wanted. The 18 year old would then drink the alcohol. The 18 year old said he did not witness Officer F consume any of the alcohol, but believed he purchased it for the 18 year old to consume. Officer F resigned from his agency prior to being interviewed by the department.

A Notice of Agency Action was filed by POST and mailed to Officer F. Officer F waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended a four year suspension of Officer F's certification. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer F's certification for four years.

Case 7

Officer G was investigated for intoxication. The investigation disclosed that Officer G was at home with her two children, ages seven and five. Officer G had been drinking beer and whiskey throughout the day. Officer G's children wanted to go to their grandfather's house. When the grandfather arrived at the

residence, the seven year old informed Officer G and said goodbye. When the children left the house, they told their grandfather they were having difficulty waking their mother. The grandfather, who is Officer G's ex-father-in-law, called police and requested a welfare check. Police responded and found Officer G sleeping or passed out on her couch. The officer had to shake Officer G to get her to wake up. Once Officer G was awake, the officer spoke with her briefly, and asked Officer G if she was okay. Officer G informed the officer she was fine and she just needed some sleep. Officer G declined medical attention, the officer left and no action was taken.

A few months later, Officer G was again investigated by a local police agency for intoxication. The investigation disclosed that Officer G's ex-sister-in-law, who was caring for Officer G's children, called police when she returned to Officer G's residence and found Officer G sleeping or passed out on the couch. The ex-sister-in-law reported she could not wake Officer G up. Police arrived at Officer G's residence and found medical personnel already there treating Officer G. Officer G appeared very intoxicated and was trying to refuse medical treatment. Officer G was taken to a local hospital where she was kept overnight for observation.

The city attorney filed two charges of intoxication on Officer G. One charge of intoxication was filed in relation to the first incident and one charge of intoxication was filed in relation to the second incident. Officer G entered a plea of guilty to one charge of intoxication in relation to the second incident under Utah Code Ann. §76-9-701, a class C misdemeanor. The charge of intoxication related to the first incident was dismissed. During a *Garrity* interview, Officer G admitted to having a drinking problem and using alcohol as an escape.

A Notice of Agency Action was filed by POST and mailed to Officer G. Officer G waived her right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST notified the Council that POST determined through its independent investigation that the elements of the offense of intoxication had not been completely satisfied, but POST was compelled to bring this matter before the Council as a result of the conviction. POST recommended Officer G be issued a letter of caution. Officer G appeared before the Council. After hearing POST's findings and hearing from Officer G, the Council rejected POST's recommendation and voted to take no action against Officer G's peace officer certification.

Special Note: The disciplinary proceedings of the POST council are administrative and are independent from any criminal prosecution. POST Investigations is charged with investigating misconduct to determine if there is clear and convincing evidence that a peace officer or certified dispatcher has violated Utah Code 53-6-211 or 53-6-309. The fact that a peace officer or certified dispatcher has been convicted of a criminal violation, or has plead guilty to a criminal violation, is in and of itself clear and convincing evidence that the peace officer or certified dispatcher has violated Utah Code 53-6-211(1)(d) or 53-6-309(1)(d). Where there is clear and convincing evidence to show a violation has taken place POST is obliged to bring that matter to the Council. The POST Council has the statutory authority to determine what the appropriate sanction should be.

For reference we have included below Utah Code 53-6-211 and a portion of Administrative Rule R728-409. The POST Council Disciplinary Guidelines can be found online at <http://publicsafety.utah.gov/post/>. Please direct any questions regarding the statute or the POST investigation process to support@utahpost.org

53-6-211. Suspension or revocation of certification -- Right to a hearing -- Grounds -- Notice to employer -- Reporting.

- (1) The council has authority to suspend or revoke the certification of a peace officer, if the peace officer:
 - (a) willfully falsifies any information to obtain certification;
 - (b) has any physical or mental disability affecting the peace officer's ability to perform duties;
 - (c) is addicted to alcohol or any controlled substance, unless the peace officer reports the addiction to the employer and to the director as part of a departmental early intervention process;
 - (d) engages in conduct which is a state or federal criminal offense, but not including a traffic offense that is a class C misdemeanor or infraction;
 - (e) refuses to respond, or fails to respond truthfully, to questions after having been issued a warning issued based on *Garrity v. New Jersey*, 385 U.S. 493 (1967);
 - (f) engages in sexual conduct while on duty; or
 - (g) is certified as a law enforcement officer, as defined in Section 53-13-103 and is unable to possess a firearm under state or federal law.

- (2) The council may not suspend or revoke the certification of a peace officer for a violation of a law enforcement agency's policies, general orders, or guidelines of operation that do not amount to a cause of action under Subsection (1).

- (3)
 - (a) The division is responsible for investigating officers who are alleged to have engaged in conduct in violation of Subsection (1).
 - (b) The division shall initiate all adjudicative proceedings under this section by providing to the peace officer involved notice and an opportunity for a hearing before an administrative law judge.
 - (c) All adjudicative proceedings under this section are civil actions, notwithstanding whether the issue in the adjudicative proceeding is a violation of statute that may be prosecuted criminally.
 - (d)
 - (i) The burden of proof on the division in an adjudicative proceeding under this section is by clear and convincing evidence.
 - (ii) If a peace officer asserts an affirmative defense, the peace officer has the burden of proof to establish the affirmative defense by a preponderance of the evidence.
 - (e) If the administrative law judge issues findings of fact and conclusions of law stating there is sufficient evidence to demonstrate that the officer engaged in conduct that is in violation of Subsection (1), the division shall present the finding and conclusions issued by the administrative law judge to the council.
 - (f) The division shall notify the chief, sheriff, or administrative officer of the police agency which employs the involved peace officer of the investigation and shall provide any information or comments concerning the peace officer received from that agency regarding the peace officer to the council before a peace officer's certification may be suspended or revoked.
 - (g) If the administrative law judge finds that there is insufficient evidence to demonstrate that the officer is in violation of Subsection (1), the administrative law judge shall dismiss the adjudicative proceeding.

- (4)
 - (a) The council shall review the findings of fact and conclusions of law and the information concerning the peace officer provided by the officer's employing agency and determine whether to suspend or revoke the officer's certification.
 - (b) A member of the council shall recuse him or herself from consideration of an issue that is before the council if the council member:
 - (i) has a personal bias for or against the officer;
 - (ii) has a substantial pecuniary interest in the outcome of the proceeding and may gain or lose some benefit from the outcome; or

(iii) employs, supervises, or works for the same law enforcement agency as the officer whose case is before the council.

- (5) (a) Termination of a peace officer, whether voluntary or involuntary, does not preclude suspension or revocation of a peace officer's certification by the council if the peace officer was terminated for any of the reasons under Subsection (1).
- (b) Employment by another agency, or reinstatement of a peace officer by the original employing agency after termination by that agency, whether the termination was voluntary or involuntary, does not preclude suspension or revocation of a peace officer's certification by the council if the peace officer was terminated for any of the reasons under Subsection (1).
- (6) A chief, sheriff, or administrative officer of a law enforcement agency who is made aware of an allegation against a peace officer employed by that agency that involves conduct in violation of Subsection (1) shall investigate the allegation and report to the division if the allegation is found to be true.

R728-409-3. Definitions.

A. Terms used in this rule are defined in Section 53-6-102.

B. In addition:

3. "on duty" means that a peace officer is:

- a. actively engaged in any of the duties of his employment as a peace officer;
- b. receiving compensation for activities related to his employment as a peace officer;
- c. on the property of a law enforcement facility;
- d. in a law enforcement vehicle which is located in a public place; or
- e. in a public place and is wearing a badge or uniform, authorized by a law enforcement agency, which readily identifies the wearer as a peace officer;

6. "sexual conduct" means the touching of the anus, buttocks or any part of the genitals of a person, or the touching of the breast of a female, whether or not through clothing, with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant.