

## **Opinion No. 82-10**

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**OPINION OF:** Jeff Bingaman, Attorney General

**BY:** Jill Z. Cooper, Deputy Attorney General

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### **LAW ENFORCEMENT**

The director and board of the law enforcement academy are authorized to review and consider the qualifications of instruction at facilities not otherwise under the control of the law enforcement academy board, however, where such comparable programs are offered by facilities which are established independently, the board can not prescribe instructor qualifications.

### **QUESTIONS**

Is the law enforcement academy board required by Section 29-4-4(C) NMSA 1978 to prescribe qualifications for instructors of basic training programs taught pursuant to independent statutory authority?

### **CONCLUSIONS**

No.

### **ANALYSIS**

The Law Enforcement Training Act, Sections 29-7-1 through 29-7-11 NMSA 1978, is intended to establish minimum training requirements for all police officers in the state. In particular, Section 29-7-8(B) provides that no person may be employed by any law enforcement agency in this state

". . . unless within twelve months from the date of his employment he satisfactorily completes a basic law enforcement training program and is awarded a certificate attesting thereto."

### **OPINION**

The need to insure proper training of employees of law enforcement agencies has been illustrated by recent court decisions which hold that a governmental body may be held liable in a civil rights case for the acts of its police officers where it can be shown that the police officers' training was so lacking as to reach the level of "gross negligence."

**See, e.g., Hays v. Jefferson County, Kentucky**, 668 F.2d 869 (6th Cir. 1982); **Owens v. Haas**, 601 F.2d 1242 (2nd Cir. 1979), **cert. denied**, 444 U.S. 980 (1979).

The New Mexico law enforcement academy is established, in part, "to provide a planned program of basic law enforcement training." The academy is "controlled and supervised by policy set by the [New Mexico law enforcement academy] board." Section 29-7-3. Among its powers and duties, the board is required to "prescribe qualifications for instructors and prescribe courses of instruction for basic law enforcement training and in-service law enforcement training." Section 29-7-4(C). Clearly, therefore, the board is authorized to set qualifications for instructors at the academy.

However, not all police officers must complete the basic law enforcement training program offered by the law enforcement academy in order to be certified for permanent appointment. A police officer may also be certified by waiver under Section 29-7-10 which provides that:

"The director shall, with the approval of the board, waive the basic law enforcement training program and certify applicants who are employed as full-time {<sup>288</sup>} police officers and who furnish evidence of satisfactory completion of a basic law enforcement training program which is comparable to or exceeds the standards of the programs of the academy."

Thus, police officers may receive basic law enforcement training at a facility which offers a program "which is comparable to or exceeds the standards of the programs of the academy."

Where such comparable programs are offered by a regional training facility certified by the director of the academy with the approval of the board, **see**, Section 29-7-7(G), the board would have authority to "prescribe qualifications for instructors." However, where such comparable programs are offered by facilities which are established independently of the law enforcement academy, the board could not have been given that authority. For example, the authority to define the course of instruction for appointees to the New Mexico State Police is specifically vested in the New Mexico State Police Board. Section 29-2-16 NMSA 1978. By implication, that board may define the qualification of its instructors. **See, e.g., Wimberly v. New Mexico State Police Board**, 83 N.M. 757, 497 P.2d 968 (1972).

Nevertheless, in exercising his authority to certify by waiver, the director should take into account the qualifications of instructors to determine if another basic law enforcement training program is comparable to the academy program. In that context, the director and the board are authorized to review and consider the qualifications of instructors at facilities not otherwise under the control of the law enforcement academy board.

**ATTORNEY GENERAL**

Jeff Bingaman, Attorney General