

MUNICIPAL ALERT

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IN THE LINE OF FIRE

Time to Evaluate the Supervision of Municipal Police Departments

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Over the past several months, local law enforcement has been the target of the national news media as municipalities around the country contend with allegations of police misconduct and heinous acts of violence committed against police. Graphic videos of violent interactions between officers and the public, aired on television and YouTube, have drawn criticism of the manner in which police are trained and supervised. Some commentators claim that recent events represent a “déjà vu” of the divisive relationship between the police and certain segments of society in the 1960’s and 70’s.

Such events have also grabbed the attention of the United States Department of Justice, which has flexed its muscle under the Violent Crime Control and Law Enforcement Act, a law enacted in 1994, following the Rodney King incident. This law authorizes the federal government to investigate and prosecute local police officers in cases where officers engage in a pattern or practice of conduct that deprives persons of rights protected by the Constitution or laws of the United States. These investigations can lead to far-reaching consent decrees that impose substantial financial burdens upon local governments whose officials fail to implement effective internal controls over department activities.

The effective management of local police departments in Pennsylvania is constrained by a number of factors, which include a lack of clearly defined state laws that address the internal affairs function. The provision of local police services in Pennsylvania consists of scores of local departments, all of whom are controlled solely by their local governing body or regional commissions. In 2013, Pennsylvania had 986 municipal police departments (both full-time and

part-time), 34 regional police departments (comprised of 102 municipalities), and 1,279 municipalities receiving their police services solely from the Pennsylvania State Police.¹

Unlike states such as New Jersey which require their law enforcement agencies to implement guidelines consistent with its attorney general's model IA procedures, Pennsylvania lacks such guidance. The Pennsylvania Municipal Police Officers' Education & Training Commission ("MPOETC") was established in 1974 to set certification and training standards for police officers employed by municipalities in the Commonwealth of Pennsylvania. Regulations published from the Act 120 statute guide the process for determining eligibility for certification and standardize the basic academy and annual in-service training curriculum provided to all certified police officers. However, the MPOETC has not promulgated rules pertaining to internal affairs and does not presently offer model policies.

Against this backdrop, there is no better time than the present for local governments to evaluate how they supervise their police force. So, where should the assessment begin? A review of the department's Standard Operating Procedures ("SOP") is recommended. The SOP should provide a clear process for handling complaints of police misconduct, whether they are filed externally by members of the public or internally by the municipality's employees.

Who's in Charge?

The municipality should ensure that the SOP does not designate the chief of police as the final decision-maker concerning the internal affairs function in all cases. The failure to ensure that the *governing body* is properly and timely notified of complaints of police misconduct --- such that appropriate action may be taken *by the governing body* --- can result in substantial exposure to civil rights lawsuits. With respect to Pennsylvania boroughs and townships of the first and second class, the General Assembly authorizes the governing boards and councils to fire, suspend and demote municipal police officers. It follows that Chief of Police should not be considered the final policymaker when it comes to these levels of adverse employment action. The governing body should, therefore, obligate the chief of police to timely notify the governing body of complaints against officers in cases where the alleged misconduct or neglect of duty could result in suspension, demotion or termination.

It is worth noting that internal complaints of workplace harassment, hostile work environment, or discriminatory practices that pertain to police personnel should be handled uniformly with other workplace complaints. Such complaints need to be communicated as soon as possible to the manager or mayor *and* to the governing body. The Equal Employment Opportunity Commission, Pennsylvania Human Relations Commission and the courts will inquire whether the *employer* took appropriate action. In this regard, the buck stops with the board, commission or council, not the chief of police, mayor or manager. A proper assessment of these policies, together with proper training of municipal employees should substantially reduce the risk of exposure to costly and disruptive litigation.

¹ September 2014 report issued by the Pennsylvania General Assembly Legislative Budget and Finance Committee on Police Consolidation in Pennsylvania.

How to Achieve the Proper Balance of Power

Requiring police chiefs and other police personnel to improve transparency can be met with resistance for some understandable reasons. For instance, officers may argue that the safe and efficient provision of police services is dependent upon a clear chain of command that is inherent in their “quasi-military institution.” As such, they may argue that interference in police operations by untrained, non-uniformed elected officials or municipal employees will only serve to jeopardize the integrity of police investigations and prosecutions. On its face, I agree that elected officials and non-uniformed employees should not interfere with police *operations*. However, accountability for the *manner* in which police carry out their operations is subject to the ultimate review and supervision of the final policy maker, i.e. the governing board, commission or council.

Drawing this line is achievable through effective leadership and communication from the top. As such, the governing body should consider adopting an ordinance that defines the role, duties and expectations of the chief of police. For example, the ordinance could specifically obligate the chief to timely advise the governing body (and mayor or manager) of all complaints against any officer in circumstances where the gravity of the complaint could warrant the suspension, demotion or termination of an officer. This form of mandatory notification should enable the governing body to take appropriate action by, among other things, designating who will conduct the investigation and setting forth a reasonable timetable.

While the governing body should be timely informed about complaints about police officers, members of the governing body should not participate in the investigation. The investigatory and “prosecutorial” roles in an internal affairs investigation must be kept separate and distinct from the “adjudicatory” role. As the adjudicator, the governing body may sit in judgment of the target officer who faces demotion, suspension or termination. “Commingling” these functions (when the adjudicator also serves as an investigator) can violate the target officer’s rights to due process under the Fourteenth Amendment, which can lead to litigation and, possibly, the overturning of disciplinary action by a labor arbitrator.

The governing body, managers, mayors and police department command staff should also conduct periodic conferences to ensure that all officials understand and fulfill their respective roles. These proactive measures should improve transparency up and down the chain of command and lead to greater clarity of the rights and obligations of all persons involved in managing and operating municipal police departments.

Should you have any questions regarding this subject matter, the attorneys at Siana, Bellwoar & McAndrew, LLP would look forward to counseling your municipality and police department in this area. You may also visit our website at www.sianalaw.com for other pertinent articles and updates.

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