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AGENCY POLICIES AND PROFESSIONAL ETHICS

CHAPTER 10

UTAH STATE BOARD OF EDUCATION
CAREER AND TECHNICAL EDUCATION

CHAPTER TEN: AGENCY POLICIES AND PROFESSIONAL ETHICS

LAW, POLICY, AND ETHICS

Three factors influence the choices that an officer must make in his/her position as a law enforcement officer. These factors are the law (federal, state, and local), department policies, and an individual's own ethics. Each of these factors can be involved in the various choices that an officer must make.

The law can allow or restrict an officer's activities and is enforceable through the threat of punishment. The officer who disregards laws concerning his/her conduct is subject to criminal prosecution and/or civil penalties. *Restrictive* laws place restrictions on the use of deadly force, require certain standards of conduct when involved in emergency driving, and dictate when someone can be searched. However, not all laws are restrictive. In certain circumstances, officers are allowed to disregard some traffic laws, break into a house, or impound a car. Not only can an officer do these things, but sometimes he/she is legally obligated to do so. In such cases, the law creates a duty to act in a specified manner.

Policy consists of the procedures set up by a specific law enforcement agency to control the actions of its members. Policies are designed so that an officer's actions are consistent and fair, and officers can be held responsible for their actions. Policy is also used to reduce the number of individual decisions that have to be made by an individual officer. It protects the officer by placing the officer in a position where his/her actions meet an acceptable standard of conduct prescribed by his/her department. Violation of policy is handled within the agency's own command structure. An agency may take disciplinary action ranging from a reprimand to suspension or possibly even termination.

Ethics involves individual decisions based on the officer's own moral values of what is right and wrong. Ethical values are a factor in many decisions that an officer must make on a daily basis. Although each peace officer has his/her own code of moral behavior, there is also a moral obligation to uphold the law and policies of the agency. This obligation is created by taking an oath of office appointment to the police force.

UTAH LAWS ON DUTY, OBLIGATIONS, AND ETHICAL STANDARDS OF POLICE

The following Utah laws apply specifically to police officers and other public servants.

Official Misconduct—Unauthorized Acts or Failure of Duty (76-8-201, UCA): A public servant is guilty of a class B misdemeanor if, with intent to benefit himself/herself or another, or to harm another, he/she knowingly commits an unauthorized act that purports to be an act of his/her office, or knowingly refrains from performing duty imposed upon him/her by law or that is clearly inherent in the nature of his/her office.

Receiving or Soliciting Bribes or Bribery by a Public Servant (76-8-105): A person is guilty of receiving or soliciting a bribe if that person asks for, solicits, accepts, or receives, directly or indirectly, any benefit with the understanding or agreement that the purpose or intent is to influence an action, decision, opinion, recommendation, judgment, vote, nomination, or exercise of discretion, of a public servant, party official, or voter.

Receiving or soliciting a bribe is a third degree felony when the value of the benefit asked for is \$1,000 or less, and a second degree felony when the value of the benefit asked for exceeds \$1,000.

Improperly Disclosing or Using Private, Controlled, or Protected Information (67-16-4 UCA): A public officer, public employee, or legislator may not accept employment or engage in any business or professional activity that he/she might reasonably expect would require or induce him/her to improperly disclose confidential information that he/she has gained by reason of his/her official position, or disclose or improperly use controlled, private, or protected information acquired by reason of his/her official position. He/she may also not attempt to use his/her official position to further substantially his/her personal economic interest or secure special privileges or exemptions for himself/herself or others, or accept other employment that he/she might expect would interfere with his/her independence of judgment in the ethical performance of his/her public duties.

DISCRETION

Discretion is the power or authority to decide or act in accordance to an individual's own knowledge and judgment. Although obligated to act when discovering a criminal violation, an officer can exercise considerable discretion or choice over how to handle a situation. A speeding violation is a good example of this. The officer has the discretion to verbally warn the offender, issue a warning citation, issue a regular citation, book the driver in jail, and/or request re-testing of the driver by the Driver License Division. Discretion allows an officer to judge each violation or case on its own merits and decide what is appropriate.

In-Class Discussion Exercise

Indicate whether the following actions are illegal, against department policy, and/or individually unethical. Discuss why you believe that the officer involved might commit the act or take such actions.

1. Accept free coffee while in uniform.
2. Accept half-price meals while in uniform.
3. Pick up uniform from cleaners while on-duty.
4. Ask a traffic violator for a date.
5. Shoot a juvenile fleeing forcible felony.
6. Hit a prisoner who attempted to hit him/her but missed.
7. Hit a prisoner who succeeded in hitting him/her.
8. Steal candy while arresting a shoplifter.
9. Investigate a new neighbor on the computer to see if the neighbor has ever been arrested.
10. Drive a drunk driver home in his/her patrol car, rather than arresting the drunk driver.

CIVIL LIABILITY

Civil liability occurs when a person can prove that another person, such as a police officer, has failed to fulfill his/her required duty to that person. Such a case is referred to as a *tort*, defined as a civil wrong committed against an individual for which the injured party is entitled to compensation. Judgment in this type of case is handled in a civil court proceeding. The standard for deciding who is in the wrong in a civil case is not the criminal standard of reasonable doubt, but signifies instead a preponderance of evidence.

The person accusing an officer of a tort must show that the officer was obligated to do, or not to do, certain acts, and that the victim has suffered in some way because of the officer's failure to carry out these obligations. In a successful civil suit, the agency and the officer committing the misconduct may be liable to pay damages to the person harmed, as well as attorney fees.

Some of the major categories or types of civil liability claims are:

- False arrest where there was no probable cause.
- False imprisonment or illegal detainment.
- Malicious prosecution (i.e., a person was prosecuted with no probable cause).
- Negligence or demonstrating improper care towards others.
- Lack of training (i.e., the failure of an agency or other supervisors to properly train members).
- Negligent supervision (i.e., the failure to properly supervise members of the police force).

1983 ACTIONS

Title 42 of the U.S. Code 1983 reads as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

This law allows federal courts to hear cases involving issues such as:

- A violation of the right to consult an attorney.
- The privilege against self-incrimination.
- The right to assemble.
- A reasonable bail to be set and posted.
- Receive a prompt arraignment.
- The right to a fair trial.
- Receiving medical care while a prisoner.
- Access to the courts while incarcerated.
- Free to attend religious services while in jail.
- Free from physical abuse by corrections officers.
- Freedom from illegal search and seizure.
- Free from coercion to obtain a confession.
- Freedom from malicious prosecution.
- Free from false imprisonment.

THE LAW ENFORCEMENT CODE OF ETHICS

All law enforcement officers must be fully aware of the ethical responsibilities of their position, and must strive constantly to live up to the highest possible standards of professional policing. It is important that police offices have clear advice and counsel available to help them perform their duties consistent with these standards. The following ethical mandates are guidelines to meet this end:

- **Primary responsibilities of police officer:** A police officer acts as an official representative of the government, and is required and trusted to work within the law. The officer's powers and duties are conferred by statute. The fundamental duties of a police officer include serving the community, safeguarding lives and property, keeping the peace, and ensuring the rights of all to liberty, equality and justice.
- **Performance of the duties of a police officer:** A police officer performs all duties impartially, without favor, affection or ill will and without regard to status, sex, race, religion, political belief, or aspiration. All citizens are treated equally, with courtesy, consideration and dignity. Officers never allow personal feelings, animosities, or friendships to influence official conduct. Laws are enforced appropriately and courteously and, in carrying out these responsibilities, officers strive to obtain maximum cooperation from the public. They conduct themselves, in appearance and deportment, in a way that inspires confidence and respect for the position of public trust they hold.
- **Discretion:** A police officer uses responsibly, and within the law, the discretion vested in the position. The principle of reasonableness guides the officer's conclusion, and the officer considers all surrounding circumstances in determining whether any legal action will be taken. Consistent and wise use of discretion, based on professional policing competence, does much to preserve good relationships and retain the confidence of the public. It can be difficult to choose between conflicting courses of action; however, it is important to remember that a timely word of advice, rather than arrest (which may be correct in appropriate circumstances), can be a more effective means of achieving a desired end.
- **Use of force:** A police officer never employs unnecessary force or violence, and uses only such force in the discharge of duty as is reasonable in all circumstances. Force is used only with greatest restraint, and only after discussion, negotiation, and persuasion have been found to be inappropriate or ineffective. While the use of force is occasionally unavoidable, every police officer refrains from the unnecessary infliction of pain or suffering, and never engages in cruel, degrading or inhuman treatment of any person.
- **Confidentiality:** Whatever a police officer sees, hears, or learns of, which is of confidential nature, is kept secret unless the performance of duty or legal provision requires otherwise. The public has a right to security and privacy, and information obtained about members of the public must not be improperly divulged.
- **Integrity:** A police officer does not engage in acts of corruption or bribery, nor does an officer condone such acts by other police officers. The public demands that the integrity of police officers be above reproach. Police officers must, therefore, avoid any conduct that might compromise their integrity or that undercuts the public confidence in a law enforcement agency. Officers refuse to accept any gifts, presents, subscriptions, favors, gratuities, or promises that could be interpreted as seeking to cause the officer to refrain from performing official responsibilities honestly and within the law. Police officers must not receive private or special advantages from their official status. Respect from the public cannot be bought; it can only be earned and cultivated.
- **Cooperation with other offices and agencies:** Police officers cooperate with all legally authorized agencies and their representatives in the pursuit of justice. An officer or agency may be one among many organizations that provide law enforcement services to a jurisdiction. It is essential that a police officer help colleagues fully and completely, with respect and consideration.

- **Personal/professional capabilities:** Police officers are responsible for maintaining a high standard of professionalism, and should take every reasonable opportunity to enhance and improve their level of knowledge and competence. Through study and experiences, a police officer can acquire the high level of knowledge and competence that is essential for efficient and effective performance. The acquisition of knowledge is a never-ending process of personal and professional development that should be pursued constantly.
- **Private life:** Police officers will behave in a manner that does not bring discredit to their agencies or themselves. A police officer's character and conduct while off duty must always be exemplary, thus maintaining a position of respect in the community in which he/she lives and serves. The officer's personal behavior must be beyond reproach.

These ethics are summed up in the following first-person statement:

“As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality and justice.

“I will keep my private life unsullied, as an example to all, and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear that is of a confidential nature, or that is confided to me in my official capacity, will be kept ever secret unless revelation is necessary to the performance of my duty.

“I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities, or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

“I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police services. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

“I know that I alone am responsible for my own standard of professional performance, and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.

“I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession of law enforcement.”

LAW ENFORCEMENT DISCIPLINARY ACTION

Almost all large law enforcement agencies have a special unit assigned to investigate allegations of misconduct by officers. This unit, which is often called Internal Affairs, is usually composed of high-ranking officers. Their job is much like that of any other investigator—to uncover the facts of an allegation of misconduct. After the investigation is completed, the matter is turned over to the agency head, who decides the type of action to take.

Citizens may contact Internal Affairs for a variety of reasons. Many are upset because they have received a citation or been arrested, or they feel that an officer did not take the action that the citizen wanted him to take. The type of misconduct alleged may range from rudeness to police brutality or the unlawful use of deadly force. Most complaints are for minor misconduct, and one survey showed that many people filing a complaint would be satisfied with an apology from the agency involved.

Officers who violate policy and laws are subjected to a variety of punishments. The most familiar is a suspension or days off without pay. This costs an officer a part of his/her salary and seniority. Less serious discipline involves oral and written reprimands, which may be reviewed as part of an annual merit raise or promotion process. Repeat offenses or failure to change as required by such reprimands can lead to a suspension. More serious discipline measures include demotion, being placed on probation, remedial training, or termination.

Many progressive departments are concerned that such discipline alone does not eliminate the causes of officer misconduct. They emphasize that an officer's misconduct can be the failure of his/her supervisor, the failure of department training programs, or the application of negative sanctions that work in reverse of the desired effect. Just as with any other education process, police need to be rewarded for acceptable conduct. Supervisory officers need to be rewarded for solving problems, rather than being punished when their subordinates perform poorly. These rewards can be monetary, or other forms of recognition such as praise.

Practical Exercise

1. Do all laws tell police only what they cannot do? Yes No

2. Moral obligations to uphold the law and policies of the agency are created by taking an oath of office when appointed. True False

3. Official misconduct is what classification of crime? _____

4. Define "discretion" in one sentence: _____

5. What is a tort? _____

6. What are three factors that influence the choices that officers make? _____

7. Which unit within a law enforcement agency investigates allegations of police misconduct?

8. List four kinds of discipline that could result from the violation of laws or agency policies:

9. Does the Law Enforcement Code of Ethics apply to off-duty conduct? Yes No

10. Does the Law Enforcement Code of Ethics prohibit accepting gratuities? Yes No