

Colorado Rangers
Colorado Law Enforcement Reserve ("CLER")
Board of Directors Meeting
February 21, 2020

Location: El Jebel Shriners' building, 3443 S Galena Street, Suite 250, Denver, CO 80231

Commencement: 1000 MST, Pledge of Allegiance at 1001.

Div Chief Cleve Tidwell opened meeting and began with the Pledge of Allegiance. Chairman Lambert asked Ranger Hirschman to take roll.

Attendance (Board): Senator Kent Lambert (Present), Senator John Cooke (Not Present) excused and gave proxy vote to Senator Kent Lambert, Chief Abramson (Present), Chief Malanka (Present). Chief Hassler (Not Present) due to a Homeland Security threat incident in Elizabeth preventing his attendance.

Attendance (CLER Command & Support Staff): Deputy Chief Robert Pabst, Support Division Chief Cleve Tidwell, General Counsel Ken Willis, Ranger Norm Townley, Controller; Ranger Michael Hirschman, Professional Standards Officer and serving as Board Secretary due to Carl Luppens' absence.

Call to Order: Senator Lambert called the meeting to order and took roll call; all board members were present, except Senator Cooke, who provided proxy vote to Senator Lambert, and Chief Hassler who had an incident he was involved in. Senator Lambert recognized a quorum in attendance and opened the meeting for official business at 1003.

Approval of December 13th, 2019 Board Meeting Minutes: Senator Lambert advised that the meeting minutes were updated and looked good. Chief Abramson moved to approve the minutes and Chief Hassler seconded and the motion to approve the December 13th minutes, as submitted, was passed unanimously by voice vote.

Old Business:

TOPIC: Agency Support Fee

Chief Abramson spoke to being resource deprived for callouts this year with about 80 officers and several IGA and MAA partners who we serve. He expressed concern about not being able to support the existing partners.

Chief Abramson stated that the agency had established a fee set at \$3,000/year and he is not aware of any agency that can't pay the fee except for a couple of very small agencies. Chief Abramson is talking to about 5 new agencies and is looking to raise the fee to \$5,000/year for them coming on in 2020 and will speak to the existing agencies about raising their existing fees as of 2021. At \$5,000 per agency, the Colorado Rangers agency would become financially self-sustaining. He has not had any pushback from agencies on the \$5,000/year fee.

Senator Lambert made the statement that as an IGA we can and should charge a fee and that he sees it as currently too low and ok to raise the fee but wants to know if there needs to be a public notice and asked if there is a legal requirement around raising the fees. Chief Abramson stated that in 2017 the IGA gave authorization to charge a fee and that he chose \$3,000/year but the board gave him discretion to set the fee. He stated that there are some departments that pay more than \$3,000/year. Chief Malanka asked about having a graduated pay scale based on what the agency may need. Chief Abramson advised that we do have agencies that do that, and it would be the goal to adjust the fee as necessary. Senator Lambert stated that an agency that uses the Colorado Rangers is effectively buying margin and it is like insurance for them, therefore justifying a charge.

TOPIC: Academy Funding

Chief Abramson was concerned about being able to use the grant funds provided by the state, but he was able to get them to put in writing that the funds would roll over to this next year. We have \$160,000 to use for this year's academy. He was also able to get Adams County to agree to allow us to carry forward through 2021.

TOPIC: General Operations – Summit

The agency held a summit in January 2020, that was very well attended. Focus was to make sure that the agency was aware of what was coming for 2020. Going into 2020 very strong with committed people. Much effort has gone into shoring up the systems to manage the agency. Turnover is from people who have not been contributing, which is beneficial, so we don't have to pay for insurance of people who are not working for the agency. Chief Malanka stated that turnover is a problem for any agency and asked if we are looking for the 120 hours per year being lumped into months or spread over the year. Chief Abramson stated that the TARA requires 240 hours of service over two years but that a Ranger could put in their hours right away and then leave. He stated that we have had three people who have left the agency and two have paid the agency back for their academy charges.

General Counsel Report:

General Counsel referenced his report that had been handed out and stated that one of the items was, how do you determine whether an officer is on duty. The General Counsel advised that the IGA has given the Chief the authority to determine whether an officer is on-duty or off-duty. The status of a Ranger on-duty had been questioned by Chief Malanka that a Ranger may be on-duty but not have police powers or authority. The General Counsel did extensive research and has not found anything in the Colorado Statutes or Colorado Constitution that supports that assertion. The General Counsel states that you cannot separate a law enforcement officer being on-duty from the law enforcement officer having authority. He stated that one of the problems it would cause is if you separated the two, the question is then whether an officer would be covered by insurance. He points out that in order to train at Flatrock, you have to be an on-duty officer. He states that a police officer in a uniform is a target and you do not want to put an officer out there without the power to enforce the law. Discussion ensued and Chief Malanka wanted to ensure he was on public record with his issue of confusing "on-duty" with "assignment". He agrees that there has been no report of self-deployment by any Colorado Ranger.

Senator Lambert stated that the opinion written by General Counsel Willis is good because it is a legal analysis that points back to the original IGA, the state laws and the Constitution. He states that it is a good historical document that is valuable to be referenced in the future.

General Counsel Willis stated that if a Ranger is in uniform, he must have on duty status. Chief Malanka stated that he is on the same page.

General Counsel Willis discussed Issue 2, which introduces a new term “legally fallacious”, which means “not true” and says it is not a legal term. Discussion ensued.

Chief Malanka questioned what it means to be “statewide”. General Counsel Willis says that the Rangers can serve anywhere in the state. Chief Malanka agreed that the Colorado Rangers can serve at the request of any agency in the state.

Chief Abramson moved that the board adopt the opinion written by General Counsel. The Chief thanked the General Counsel for his work. Senator Lambert seconded. Chief Malanka asked for an amendment and wants to accept everything except the section referring to CRS 31-4-112 as he says it is incorrect on page 6 since the quote is not written in its entirety. Senator Lambert recommends striking the sentence to remove or amend the sentence to make it complete. Chief Malanka moves to strike the sentence, “the same power as Sheriffs by law...”. Senator Lambert clarifies Chief Malanka’s motion to modify as to strike from page 6 in the third full paragraph, starting with the second sentence, starting with “CRS 31-4-306 is even more explicit...”. Second by Chief Abramson of Chief Malanka’s motion to strike sentence. The motion carries to remove the sentence from the General Counsel’s report. Second by Chief Malanka of Chief Abramson to accept the adoption of General Counsel Willis’ report, advice and recommendation. The motion passed unanimously on a vote of 4 to 0. The minutes will mark Chief Hassler as excused.

Topic: Modify Section of CLER Policy Manual

Senator Lambert moves to go out of order to allow Chief Malanka to discuss new business about amending the CLER Policy Manual reference police powers. Chief Malanka stated there are more players than us and that in talking to fellow members of the CACP due to an incident that happened a few years ago, debate could be ceased if purpose of Rangers is modified. Discussion ensued and Chief Abramson stated that a Colorado Ranger is a police officer and has authority when in uniform, however they would not be self-deploying in a jurisdiction where they are not working unless there were exigent circumstances. Chief Malanka agreed that Chief Abramson’s statement on public record suffices.

Deputy Chief’s Report:

Senator Lambert returns to normal order at item three on old business for Deputy Chief’s Report. Deputy Chief Pabst reports as of last board meeting were through the evening prior to 12DEC2019. End of year report for 2019, total hours including travel, training, instruction, all logged hours were 23,833 hours. Breakout of hours consists of 7,879 admin hours, 1,625 instructor hours and 7,234 street hours. YTD 2020 consisted of 5 shifts for court bailiff duty. The agency has 77 sworn Rangers. Troop H has 27, Troop I has 12 and Troop K has 26, with 1 Ranger on leave of absence. There are 11 sworn Rangers and 1 civilian (Senior Chaplain) assigned to State Command. Senator Lambert asked if K-9 Blitz has been counted. Chief Malanka asked how many have come through the Colorado Rangers Academy. DC Pabst

stated that a handful are full POST. Chief Abramson stated that we have 16 POST-certified individuals who will be joining the agency. DC Pabst stated that we have a good web presence and are listed with POST for awareness to people looking for an agency. Senator Lambert pointed out that the Colorado Rangers is a special and unique agency that should get good publicity. DC Pabst updated the efforts to create the cyber security team and informed that he is gathering talented people and is vetting for ability and availability. Senator Lambert asked about the UCCS opportunity and grant. DC Pabst stated that the Colorado Rangers cannot yet qualify for grants because we don't have the three years' worth of financials.

Operations Division Report:

Division Chief Michael Morgan was not present due to his employment. His report was provided previously by DC Pabst.

Support Division Report:

Division Chief Tidwell gives an update on recruiting and states that we are working to meet a large academy and over the last seven days have been working on the selection process. He has updated the process and completing the process much quicker where it used to take 2-3 months. He stated that we should not be fooled by the big numbers of people who express interest in the Rangers because many do not complete the process. He says that we lose about 50 percent of the people who express interest and then more when they have to complete the process. We require 13 documents and then the background investigator follows up and makes a determination as to suitability. He wrote an email to the 169 people who expressed interest of joining the agency. He received 8 responses. We are now working with 46 people who are good candidates. Senator Lambert pointed out that the rapid response to a candidate shows a professional approach.

Chief Abramson invited everyone and stated that May 29, Friday evening at 6PM is the opening of the new academy if the board wants to attend. Chief has told Flatrock Academy that we are expecting 40-50 people in our academy.

Chief Malanka asked if the fees for 2021 will fund the academy. Chief Abramson said yes, that we have Colorado Rangers who are certified firearms instructors who do about 90% of the training, we have Colorado Rangers who are lawyers who teach much of the legal section and then have a medical doctor in our agency as well. We don't have many arrest control instructors but are working on that.

Financial Report:

Financial update provided by Norm Townley. Chief Abramson asked Ranger Townley to provide some background on who he is. He stated that he has a degree in business administration then became a CPA where he began working for government. Worked for the City of Longmont, CO. He then went to work for the Department of Revenue and spent 10 years there. He served as a reserve police officer in Nebraska as well.

He provided the financial report in hard copy to each board member.

Checking account was at \$77,209, we made payments \$2,674 and received deposits of \$5,559 making the current checking account balance \$80,000.

CMR is still an active checking account and is how all the payments are made to CLER but will be changed Monday.

Senator Lambert asked if we have any obligations to report to the state. Chief Abramson stated, yes, it was completed. Ranger Townley stated that there is a report that needs to be submitted to the state and is a multi-page submittal prepared by someone other than Ranger Townley. The CPA who had signed off on the prior submission declined to sign off on the audit. Ranger Townley has worked with Div Chief Tidwell and they have found a CPA that they are working with to complete the audit. Since this is governmental accounting, there are additional requirements that need to be met. Ranger Townley is currently working with the CPA to ensure all requirements are met.

Senator Lambert points out that the standards are raised as we are a government and this approach is good.

New Business:

Chief Abramson announced that Chief Hassler has asked to step down from our board due to many other obligations. Chief Abramson has spoken to Chief John Fryer from Fort Lupton PD about filling the position and he is very excited to serve. Chief will push his name out to the seven mayors for approval.

Senator Lambert went to Elizabeth PD and stated that Chief Hassler will be missed. Chief Abramson sends his deepest gratitude to Chief Hassler for his service. He says that he will continue to be a resource and support us. Senator Lambert wants to get some lessons learned from the Elizabeth school threat, so that we know how to be able to have CLER support an event like this. Chief Abramson advised that one of the four chiefs is always on duty and ready to deploy people at a moment's notice.

CPL Stein stated that Ranger Barton reached out to Elizabeth PD to offer bomb dog service but did not hear back.

DC Pabst advised that we have a common number where we can be reached and have the ability to reach out to the Rangers right away. Senator Lambert asked if it comes through Homeland Security. He stated that it may be available to us for notification.

TOPIC: Vehicle Expenses

Chief Malanka asked about the line item for vehicles and heard that the Rangers who are assigned vehicles are paying out of pocket for the expenses. He asked how we could be reimbursed for vehicle expense. He wants to know how vehicle costs be funded. He stated that even if we take part of the agency fee for vehicles.

Senator Lambert points out the fees that we charge agencies should cover these expenses and suggested that maybe agencies who require more vehicle use that they may pay more. Chief Abramson will speak to the command staff on the issue.

Public Comment:

Senator Lambert opened the meeting for comments from the public at 1158.

There were no other public comments.

Next Meeting: Recommended for Friday 08MAY2020, 10am, at the same location as today's meeting: El Jebel Shriners' building, 3443 S Galena Street, Suite 250, Denver, CO 80231.

Closing Comments: Chief Abramson stated that he is proud of the team. He states that his gratitude is the only currency he has. Senator Lambert seconded. Chief Malanka stated that we put a lot of hot button items to bed today. Senator Lambert expressed appreciation for making sure we are handling everything in a legal and appropriate manner. He stated that we are a government and should operate in a legal and transparent manner. He stated that maybe this is why we need to reach out to the law enforcement associations and let them know about the legitimacy of the Colorado Rangers. Chief Malanka will communicate with an association if Chief Abramson is willing to speak. Chief Abramson stated that he is more than willing.

Adjournment: By unanimous consent the public meeting was adjourned at 1202.

COLORADO RANGERS
OFFICE OF THE GENERAL COUNSEL



Serving & Protecting Colorado
Since 1861

Ken Willis, Esq.
Ken.Willis@coloradorangers.org
303.898.1700

CLER General Counsel Legal Opinion For the CLER Board of Directors
(February 21, 2020)

ISSUE 1

Issue: The issue presented to CLER legal counsel is where and under what circumstances Rangers shall be deemed to be “on duty”?

Conclusion: The Chief of CLER determines the duty status of Rangers and command staff under the broad authority granted to him by the Inter-Governmental Authority (IGA) formed to operate a shared state-wide police reserve. The adoption and unanimous ratification of the Policies & Procedures Manual by the CLER Board of Directors also grants him that authority.

Analysis:

Background: The authority for the Colorado Rangers Law Enforcement Shared Reserve is vested in the Intergovernmental Agreement which was signed by seven (7) Colorado political subdivisions and filed with the Department of Local Affairs – Division of Local Government on August 17, 2017. The authorities within the IGA are broad and clear: Operation of a law enforcement agency on behalf of the seven (7) governments providing shared reserve police officers by “establishing a POST certified statewide shared peace officer reserve force;”

This agreement among and between seven (7) Colorado municipalities mirrors the formation recommendation unanimously adopted by the 2016 SB-16-111 Task Force Final Report as well as the testimony before the Colorado Senate and House of Representatives in 2017 after submission of the Task Force Report. As noted during April 13, 2017 testimony by the Director of Public Safety, Stan Hilkey, the senior law enforcement official in the state, the formation of CLER was undoubtedly an exercise within the existing authorities granted to cities by the Colorado Revised Statutes.

“Through C.R.S. there exists ways for political subdivisions to come together through an intergovernmental agreement and become a new political subdivision which has the power to appoint police officers.” As he noted, this will be a “Statewide reserve force”, a “Reserve force available statewide”. A new political subdivision, as noted by Director Hilkey, is an independent and autonomous government under Colorado law and, contrary to statements made during the December 13, 2019 CLER Board of Directors Meeting, is not a “reserve government”, as no such legal entity exists within framework of the Colorado Revised Statutes.

Creation of a statewide shared Reserve peace officer agency was undoubtedly an exercise in courage and innovation as a first in Colorado, and a first in the nation endeavor. As noted by Director Hilkey during his House Judiciary Committee testimony, “This is something new that has never occurred in Colorado.” As likewise noted by Division of Homeland Security and Emergency Management Director Kevin Kline, “This fits in within our Resource mobilization program where we could deploy them [CLER] statewide.”

In order that Rangers are available to be deployed statewide it is axiomatic that the government needs to operate on a continuous (i.e. 24/7) basis in order to be available to handle incoming calls from other law enforcement agencies, respond immediately to the needs of those agencies, ensure its officers are trained, meet P.O.S.T. standards, are appropriately insured, have appropriate briefings, have operational plans, have adequate communications plans, have access to CLER vehicles, deal with Human Resources issues and all of the other functions of any full-time government.

In addition to pre-planned deployments, the agency also regularly receives emergency calls by its partners at all hours of the day and night including, but not limited to, recently assisting Douglas County Sheriff’s Office immediately following the recent STEM school shooting, assisting the Frederick Police Department after the gas line explosion, assisting Ft. Lupton PD after the overnight shooting of one of its officers and many other unplanned activations. CLER’s charge, as the Reserve operations for its partners, is to have Reserve Officers available 24/7 for any need and the agencies heavily rely upon CLER as a resource.

Legal Discussion: The Board of Directors has posed the question to legal counsel for an authoritative legal examination regarding when and under what circumstances the Chief of CLER has authority to declare Rangers on-duty for official agency operations. The Chairman of the Board has further asked legal counsel to examine if there is such a thing as an intermediate duty status in which a Ranger is consider on-duty as a Peace Officer, but without Peace Officer authority.

The answer is an unequivocal “NO.” I have conducted extensive legal research and I have found nothing in the Colorado Revised Statutes nor the Colorado Constitution nor case law from the Colorado Supreme Court recognizing the existence of any such duty status

applying to a peace officer in Colorado. I remember University of Denver School of Law Professor, Judge Francis Jamison, who said to his class that there is no such thing as an “off-duty” police officer in Colorado. Even though sworn peace officers may be referred to as “off duty” at the end of their watch they retain all powers of a peace officer regardless of whether on or off shift. Reserve officers, on the other hand, are not full-time peace officers. They may be logically classified as on or off duty. When officially off duty they possess no police power. When on duty they possess full police powers.

Not only is there no explicit definition of “intermediate duty status” in Colorado, an attempt to create one is to defy logic. Status as a law enforcement officer necessarily includes the authority to act as a peace officer. There cannot be any enforcement of the law without proper authority. Colorado Rangers hold such authority when designated as “on duty” by the Chief of CLER. The only difference between a reserve officer and a full time sworn officer is that the latter is on duty at all times while the reserve officer is on duty only at certain times. At those times there is no difference between full time sworn officers and reserve officers, at least as to the nature of their authority.

There are other considerations as a practical matter. Placing Rangers on duty as Peace Officers, but without peace officer authority, will subject them to extreme personal liability risk. Under the Colorado Statutes a Reserve Officer is a “peace officer while on duty.” If a Ranger is declared, by the Chief, to be on duty, they are peace officers by operation of law.

Reserve Peace Officers, while they have the same authority as any other peace officer in the state, are also subject to supervision requirements. Reserve officers may be supervised directly by Basic POST officers, which happens in many instances when Rangers are on direct duty for agency partners. They may also be supervised indirectly by a Basic POST Officer which often occurs during agency operations, trainings and other agency operational functions via the agency designated Basic POST officer on duty.

Insurance coverage should never be made more difficult than it already is. An intermediate status, if such existed, would deprive Rangers of CIRSA insurance coverage. CIRSA insures Rangers only when they are declared on-duty as Colorado Peace Officers. This is a function of CLER maintaining a Law Enforcement Agency insurance policy with CIRSA, not a general government policy which would be cost prohibitive for CLER. This non-existent, non-legally permissible intermediate status also ignores that all Rangers have completed P.O.S.T. Basic or Reserve Police Academies and carry P.O.S.T. commissions which affords them the authority of Peace Officers when they are on-duty for any CLER authorized function, which may include travel to and from agency partners, trainings, meetings/briefings, command staff operations, and other appropriate government functions. Importantly, as part of my report to this Board, I inquired and was unable to find a single instance of any Ranger being placed on duty inappropriately by the Chief since CLER operations commenced in 2017.

A. CLER On-duty Needs

Importantly Rangers are required to be on duty in many situations where they are not directly activated by partner governments in order to carry out the functions of CLER and/or maintain their P.O.S.T. certifications. For instance, the County Sheriffs of Colorado Association (CSOC) requires command staff authority from any law enforcement agency, including CLER, so that officers are deemed on-duty by their agency during all trainings. As required by CSOC, CLER command staff files the required “on-duty” letter with CSOC prior to any Ranger being authorized for law enforcement training.

In another example, the Adams County Sheriff requires any officer attending any training at the Flat Rock Regional Law Enforcement Training Center to be on-duty with their agency. CLER’s Reserve Police Academy and the vast majority of agency trainings take place at Flat Rock which has a classroom which seats up to 80, two (2) Defensive Tactics facilities, a simulator room and two (2) firearms ranges. To date, CLER has paid Flatrock over \$500,000 for sponsoring its agency trainings.

The Flatrock Training Element Rules and Fee Agreement (TERFA) which permits agencies to train at Flatrock “is an agreement between the User Agency (UA...and Adams County.” It is signed each year by CLER command staff which permits CLER Rangers to use and train at Flatrock. The TERFA specifically notes that the sponsoring (User) Agency is “shall be solely responsible for any damage to persons, entities or properties...” (para. 12), “agrees to maintain insurance in all forms and types...”(para. 13) and “will be responsible for costs of repair for any damage...” (para. 16). CLER is also required to sign a Liability Waiver on behalf of all of its Rangers. Specifically, it states that “In further consideration of being permitted to participate in any training with FLATROCK, [said Ranger] knowingly, voluntarily and expressly waive[s] any and all claims...against Flat Rock.” (Flat Rock Liability Waiver). Likewise the Flat Rock Training Center User Agreement requires the Agency to “indemnify and hold harmless, Adams County, the Adams County Sheriff’s Office, from and against...any and all claims...damages...and other liabilities, including reasonable attorney fees...sustained by any person...as a result of the use of Flat Rock by User or its employees, volunteers, agents or other personnel...”

Likewise, the Chief of CLER has determined it appropriate to deem Rangers on duty when they are travelling to and from duty responsibilities given they are in uniform and need the protections provided by law and the color of authority. It is critical for their protection and the protection of CLER as well as public perception that in any instance a Ranger is in uniform, with the authority of the Chief, that they are declared on-duty.

Safety of officers in uniform is critical in this new age of criminal defiance and the “war on cops.” Uniform police officers have been ambushed and shot. They have been subjected to

all sorts of humiliating experiences when the politicians who control their agencies have fallen down on their sworn duty to the public. Imagine the horror of a Colorado Ranger in uniform who hears gun shots and screams from panicked citizens, and yet he or she is without authority to act because of some silly notion of an intermediate form of “on duty.”

Important to each and every of these obligations, CLER is only able to maintain insurance coverage for its Rangers when they are deemed to be on-duty by the agency. In any instance in which Rangers are not on-duty, when performing functions on behalf of CLER, neither CLER nor the Ranger maintains any CIRSA insurance coverage.

B. CLER authority

CLER is its own government and its formation, as such, was clearly intended by its formation governments. As noted in the Intergovernmental Agreement, “CLER shall be a separate legal entity, political subdivision and a public corporation of the State of Colorado, separate from the parties to this Agreement...and shall be a validly created and existing political subdivision and public corporation of the state.” (Sec. 1.1). CLER “shall have the duties, privileges, immunities, rights, liabilities and disabilities of a public body politic and corporate.” (Sec. 1.1) It is therefore axiomatic that pursuant to Colorado state law and the authority vested to its formation governments, CLER is a full-time government with independent governmental authority. Its mission, as a state established government, is to operate a “statewide shared peace officer reserve force” and any function less than that would be in violation of its duties to its formation partners. (Whereas clause).

In order to operate a government established for their benefit, in Section 3.1 the governments establishing CLER puts the governance in CLER by a “a Board of Directors in which all legislative power is vested...”. A legal review of the IGA notes that the Board was granted very broad authority to operate the independent government including (Section 3.7.2):

(b) “To establish and operate an all-volunteer, unpaid statewide shared peace officer reserve force.”

(h) “To exercise any other powers that are essential to the provision of functions, services or facilities by CLER.”

Subsection (h) is a substantial grant of authority provided by the member governments to allow the independent government of CLER to operate and function effectively on their behalf and under their initial formation authority. The establishing governments clearly intended that CLER perform all functions necessary to support them which includes performing all of the functions of necessary to ensure reserve police officers can be deployed on their behalf. That includes all of the duties necessary to get officers onto the street for emergency, short notice or

pre-planned needs such as training, insurance, banking, travel, POST meetings and requirements, meeting with state, county and local officials, planning operations, senior command meetings and responsibilities, communications, etc.

It is obvious that there are many on-duty hours spent, especially by command staff, that are not street duty hours but are essential and critical to the operation of the government. Without these functions, neither CLER nor any similarly situated government could function. In order for Rangers, and Command Staff, to have the benefit of CIRSA insurance coverage, they must be deemed on-duty when performing functions on behalf of CLER, an authority granted to the Chief in the Policies and Procedures manual as ratified unanimously by the Board of Directors.

In addition to the grant of authority by the Board, the Chief of CLER has been granted considerable independent authority by the member jurisdictions, the same as any other Police Chief in the state. As noted in the IGA, "The Chief shall be the commanding officer and the chief executive of CLER and shall exercise those powers necessary for the effective operation of CLER" (3.4). "Additionally, the Chief shall exercise those powers and duties required pursuant to C.R.S. 31-4-112 and 31-4-306, the POST Board or any other relevant state or federal rule or regulation governing police chiefs." (3.4)

C.R.S. 31-4-112 vests the Chief of CLER with the authority of a Marshal or Chief of Police in the state of Colorado (with powers and responsibilities "similar to those that sheriffs have in like cases.") It is clear that the IGA formation governments intended for the Chief of CLER to have the broadest authority possible in order to operate their Reserve effectively.

In addition, "The Chief shall develop a policy and procedure manual, which...shall include...direction and guidance on CLER's law enforcement role and authority, organization and administration, and general operations." (Section 5). "CLER shall obtain the appropriate...general liability...errors and omissions...insurance (Section 8.2). All of these responsibilities the formation partners placed on the Chief of CLER requires him to have staff to operate the government.

In the Policies and Procedures Manual, ratified unanimously by the CLER Board of Directors, the Chief is given the explicit authority to declare Rangers on duty. "The Chief shall have the authority to determine the duty status of any Ranger." (CLER Policies & Procedures Manual Sec. 4.2.3).

I am unaware of any instances, since establishment of CLER in 2017, in which any incidents of CLER operating outside of its authority have occurred. To the contrary, CLER appears to be an enormously professionally run and operated government agency. From my vantage point as legal counsel to the Agency, this is especially impressive given it is an unfunded government run

completely by unpaid volunteers who have assumed great risk both personally and professionally.

C. Advice and Recommendation

It is legally permissible and required that Rangers be considered on-duty anytime they are performing functions on behalf of CLER under the authority of the Chief or are in uniform with authority from the Chief, and/or when serving their partners and maintaining their certifications as Reserve or Basic POST Police Officers with permission of the Chief. Any status less than an on-duty status would put Rangers in great legal peril, cause CLER to be at risk for potentially agency ending unfunded and uninsured liabilities. The Chief of CLER not only has the authority but has the duty to protect the Agency from liabilities and protect individual Rangers.

In light of this, I strongly advise and recommend to the Chief of CLER at all times to place on-duty all Rangers performing functions on behalf of CLER, whether street, training, meeting, administrative, command or any other duties.

ISSUE 2

Issue: The issue presented to CLER legal counsel is whether CLER's operation and authority is "legally fallacious" as opined by the prior General Counsel after he was dismissed as General Counsel to the agency.

Conclusion: CLER was formed and created under the full authority of the seven (7) IGA partner jurisdictions pursuant to very clear Colorado law, under the explicit approval of prior General Counsel, the legislature, the Attorney General's Office, the POST Board and the Department of Public Safety. It is without a scintilla of doubt that that CLER was properly formed and the allegations by prior General Counsel appear to be retaliatory as a result of his dismissal and are not supported in any manner by Colorado law. His position is especially curious given his unambiguous support and approval for the formation of CLER in 2016 & 2017 and throughout his tenure as General Counsel.

Analysis: I have reviewed the history, law, authority, testimony and emails regarding the formation of CLER and it is abundantly evident that CLER was created in full conformity with the Colorado Revised Statutes which allow any two governments to form a third government for any purpose. In this case, seven (7) governments formed CLER for the express purpose of "establishing a POST certified statewide shared peace officer reserve force;"

As noted by the Director of Public Safety, Stan Hilkey, during his testimony before the House of Representatives Judiciary Committee, "Through C.R.S. there exists ways for political

subdivisions to come together through an intergovernmental agreement and become a new political subdivision which has the power to appoint police officers.” As he noted, this will be a “Statewide reserve force”, a “Reserve force available statewide”.

State law is directly contrary to the unsupported claim in Mr. Lees’ email that “CLER is a fiction.” He claims that the “IGA statute...is limited to certain functions (water districts, for example).” He cites no law in support of his claim. We merely need to look to the law to understand CLER’s authority.

As noted by the Colorado Department of Local Affairs, the agency directly responsible for Intergovernmental Agreements and which accepted CLER’s filing on August 14, 2017.

“An intergovernmental agreement (IGA) is any agreement that involves or is made between two or more governments in cooperation to solve problems of mutual concern. Intergovernmental agreements can be made between or among a broad range of governmental or quasi-governmental entities. Governments use IGAs for cooperative planning, development review, resource sharing, joint planning commissions, building inspection services, and more.”

Starting an intergovernmental law enforcement agency is not novel in Colorado. In fact, the Department of Local Affairs holds out the Fraser/Winter Park Joint Law Enforcement Agency IGA as a “Sample IGA” for jurisdictions that wish to share law enforcement resources and, in fact, provided the basis for the CLER IGA and for Mr. Lees’ legal support for CLER’s formation.

The formation of IGA’s is directly supported by the Constitution of Colorado:

“Nothing in this constitution shall be construed to prohibit the state or any of its political subdivisions from cooperating or contracting with one another or with the government of the United States to provide any function, service or facility lawfully authorized to each of the cooperating or contracting units, including the sharing of costs, the imposition of taxes, or the incurring of debt (Article XIV, Section 18(2)(a)).”

In furtherance of the authority granted by the Constitution, the Colorado Revised Statutes (§ 29-1-203) specifically delineate very broad authority for local governments to cooperate on any matter “(1) Governments may cooperate or contract with one another to provide any function, service, or facility...” (emphasis added). “(4) Any such contract may provide for the joint exercise of the function, service, or facility, including the establishment of a separate legal entity to do so.”

The law allows CLER to exercise any functions and powers that the enabling governments have, in this case to operate a statewide shared Police Reserve. CLER's formation governments have specific powers to form police departments under Colorado law.

“(1) In relation to the general police power, the governing bodies of municipalities have the following powers:

(a) To regulate the police of the municipality, including employing certified peace officers to enforce all laws of the state of Colorado notwithstanding section 16-2.5-201 , and pass and enforce all necessary police ordinances;” § 31-15-401. General police powers.

In the instance of CLER, the formation municipalities formed a shared Police Reserve for their own benefit as well as the benefit of law enforcement agencies “statewide”. There is zero doubt that the formation municipalities had the authority to form the separate government of CLER, evidenced by the direct review by the Attorney General's Office in 2017 who recommended “best practices” amendments to CLER to ensure it would be in the best position to obtain the state police reserve academy grant passed by the legislature.¹

Curiously, Mr. Lees not only supported the formation of CLER in 2017, he actually wrote a letter dated August 14, 2017 to the state, on his legal letterhead, demanding acceptance of CLER's IGA filing with the Division of Local Affairs (DOLA).

“We represent the Colorado Ranger Law Enforcement Shared Reserve IGA...I have reviewed the IGA between the town of Fraser and the town of Winter Park, DOLA's website, and DOLA's IGA handbook, and other materials including the statutory protocols that DOLA requires with respect to such applications.

...A careful review of the IGA along with the materials I have reviewed in detail indicates that aside from having a dissolution clause, is in full compliance with DOLA's requirements. I believe it is now the statutory duty of DOLA to approve the IGA and to implement it as it can within its statutory framework of responsibility.

Would you be so kind as to contact me with any other issues I have overlooked or issues you may have with respect to the IGA? Since we are following the state act, signed by the Governor, I can find no reason why anything

¹ “If you have a copy of the IGA we can have we will run it by the AG.” Kevin Kline, Colorado Director of Division of Homeland Security and Emergency Management, email dated 8/26/17.

in the statutes or in DOLA's requirements that would inhibit the implementation of the IGA. If you would, please let me know as to any direct issues.

Thank you for your professional courtesies in this matter.

Very Truly Yours,
Robert A. Lees

Law Offices of Robert A. Lees

(emphasis added).

Prior to the formation of CLER as an Intergovernmental Agreement (IGA), Mr. Lees was actively involved in SB-16-111 (Senator Lambert/Rep. Lundeen) which established a Task Force to review the matter of statewide law enforcement Reserve support throughout the Spring of 2016. Mr. Lees provided legal advice and comments throughout the legislative period. After passage of SB-16-111, Mr. Lees was then actively involved in the Task Force itself which began its first meeting in June, 2016 and met throughout the remainder of the year.²

As different government formation options were being contemplated by the Task Force, on September 9, 2016 Mr. Lees and his associate prepared a 5 page legal memo titled "IGA Info" outlining the authority in the Colorado Constitution and the Colorado Revised Statutes for formation of a shared law enforcement IGA. In his email sharing his legal research, Mr. Lees wrote, "Michelle and I worked on this and feel free to amend and revise, then let's talk about it, you take care, Best regards, Bob." That information was shared with the state Task Force to help provide legal guidance, from Mr. Lees, to determine the best path for a shared law enforcement reserve.

The Task Force then met throughout the remainder of 2016 to recommend the best path forward for a shared Reserve, which was reported to the Colorado Senate and House of Representatives. After presentation of the final Task Force Report, unanimously recommending the formation of CLER *as an IGA*, Mr. Lees responded, "Great work Ron and Bill (and everyone!) (email from Bob Lees, Esq. dated 12/20/16). The Task Force Report and Recommendation to the legislature recommending the formation of CLER as an IGA was recommended and voted unanimously by all parties including the Attorney General's Office, the POST Director, the Director of Public Safety (a Governor's Cabinet appointee), the Director of the Division of Homeland and Emergency Management Security (a Governor's Cabinet appointee) and every other law enforcement representative appointed to the Task Force.

² "Thank you again, Bob, for the generous use of your conference room and more importantly for your great counsel and advice!!!!" July 19, 2016 email from Ronald Abramson to Robert Lees, Esq.

This may possibly be one of the most public IGA's ever formed in Colorado History given the enormous amount of input by all levels of government and CLER being formed as an IGA out of a legislative Task Force recommendation.

After receipt of the Task Force recommendation to form CLER as an IGA to the legislature, the legislature then proceeded to fund a Reserve Police Academy for the "statewide shared Reserve". After near unanimous passage of SB 17-096 funding the Colorado Rangers Reserve Police Academy, as General Counsel, Mr. Lees was assigned to the IGA Working Team and participated in every single process in forming the IGA that he now disavows three (3) years later after his dismissal.

By way of example, this is just a sampling of some of the emails sent by Mr. Lees on his approval/review/participation in the IGA formation:

"Hi Ron, hope you are well. I just got back from so. Colo and bragged about you to three depts." (July 7, 2017 Bob Lees, Esq. email to R. Abramson)

"Great work, Ron..." (July 18, 2017 Bob Lees, Esq. email to IGA Working Team)

"Great work Ron and to all." (July 25, 2017 Bob Lees, Esq. email to IGA Working Team in response to the first 3 IGA's being signed by the founding partners)

"Thanks, Terrance, you bet, let me review and what's a good number to call you on, you take care, Bob" (August 8, 2017 Bob Lees, Esq. email to IGA Working Team offering to review Attorney General Comments on IGA)

"Congrats Ron, you're a keeper! Bob" (August 17, 2017 Bob Lees, Esq. email to IGA Working Team upon signature of another IGA partner city)

"Thanks, Ron, you do a lot, more than humanly possible, and I didn't want this blown by someone else, you take care, my brother, Bob" (August 22, 2017 Bob Lees, Esq. email to IGA Working Team)

"That's outstanding." (August 25, 2017 Bob Lees, Esq. email to IGA Working Team upon acceptance of IGA filing by Colorado Dept. of Local Affairs)

"Congrats to All; we all had a part, you all take care, Bob" (August 25, 2017 Bob Lees, Esq. email to IGA Working Team, emphasis added, in response to email from R. Abramson expression of appreciation to Bob Lees and Terrance Carroll for their work on the IGA – "Bob and Terrance -

You have done SO MUCH to get the IGA operational and my eternal gratefulness is just as strong for both of you.”)

“Congrats to All and especially Terrance, for this, Bob Lees” (February 28, 2018 Bob Lees, Esq. email to IGA Working Team upon filing of CLER IGA First Amendment with the state)

“Dear All. I have no further changes to the CLER Mutual Aid Agreement...Thank you, Ron, for your kind remarks. And, are we to do the formatting, or is the rest of the team to do it? I couldn't tell from the email. Best regards, Bob” (July 20, 2018 Bob Lees, Esq. email to IGA Working Team regarding the drafting of the CLER Mutual Aid Agreement)

A. Advice and Recommendation

It is apparent that Mr. Lees, as former General Counsel, regretfully sent his December 10, 2019 email to the CLER Board of Directors in response to his dismissal from his position. There is no legal basis in support of his primary contention, that CLER lacks the authority it has been granted by its Founding member governments.

Mr. Lees was tremendously supportive of the creation of CLER as an IGA throughout the entire Task Force Process and provided legal advice, guidance and research which benefitted the Task Force in its study of forming CLER as an IGA. This included Mr. Lees' research citing authority under the Colorado Constitution, the Colorado Revised Statutes and other administrative legal authority for CLER's formation. As such, I find no merit to his contentions and recommend the Board continue the business of CLER by operating the “statewide shared police reserve” program it has been authorized by law to undertake.

Submitted this 21st day of February 2020.

Kenneth Willis, General Counsel for CLER