

Motorcycle Safety Education Commission Meeting

**Kentucky Justice and Public Safety Cabinet
First Floor Conference Room
State Office Building Annex
125 Holmes Street
Frankfort, Kentucky 40601**

**10:00am-12:00pm
March 14, 2016**

Commission members present: Steve Hanlon, Jay Huber, Rick Schad, Jeannie Petty, Dean Broaddus
Not present: Glenda Hobbic, KSP representative

Commission Guests: Mike Schrivner, Bob Heckel, Bill Meister, Bruce Young

Justice and Public Safety Cabinet Staff Present: Diane Marcus, Donna Jones – Grants Management Branch, Andrew English – General Council and Elzie Burgher – Office of Administrative Services

• Greetings and Introductions

The March 14, 2016, meeting of the Kentucky Motorcycle Safety Education Commission (KMSEC) was called to order by Chair Steve Hanlon. An agenda and supporting materials were distributed for review and discussion. Chair stated Commission has five (5) members in attendance, therefore we have a quorum. Chair recognized and welcomed all guests especially Andrew English and Elzie Burgher with the Kentucky Justice and Public Safety Cabinet.

• Prior Meeting Minutes and Reports

The minutes for the December 14, 2015 KMSEC were distributed for review and discussion. Chair Hanlon asked if members had any questions or concerns. With no questions or concerns, Jay moved to accept the December meeting minutes with Dean seconding the motion. Motion carried; all in favor.

• Financial report

Chair Hanlon moved the attention of the Commission members to the Financial Report for review and acceptance. Chair Hanlon asked members if they had any questions or concerns. Jay mentioned that ECU has a history of being six (6) to eight (8) months being behind on submitting their financial reports and questioned if ECU was again behind in submitting their requests for reimbursements. Donna addressed his concern by stating ECU has been timely in submitting their reports. She went on to say Grants will periodically request supporting documentation for a more thorough desk review and this was the case. Grants requested November documentation and due to the size the documents were mailed to our office for review. It is currently being reviewed prior to processing. She reiterated that all program and financial reports have been filed timely.

Chair Hanlon pointed out other documents within their packet of information and inquired if those documents were in lieu of ECU being present to respond to any questions. Donna confirmed those documents were submitted to provide information on updates, sites, media plan, rider coaches, as well as

transitioning to 2014 MSF BRC. Chair Hanlon noted this portion of the discussion was not related to financial but wished to bring clarity to reason why it was included in today's packet of information.

Jay pointed out that EKU had responded to the issue of a trainer coach and his losing or being disqualified. He mentioned it has happened to at least thirteen (13) or fourteen (14) instructors over the past year. He questioned GMB's status regarding this issue? Diane responded that she had received a package from EKU regarding this issue but hadn't the time to review prior to today's meeting. The discussion moved on to the number of students trained as the data on the Word document didn't match the data on the submitted spreadsheet. Jay calculated that EKU is performing between 32-33% below the contract goal of what EKU is supposed to teach.

With no further discussion, Chair Hanlon asked if there was a motion to accept the financial report. Dean moved to accept the financial report with Jeannie seconding the motion. Motion carried; all in favor.

• Request For Proposal and Discussion

Diane began the discussion stating she had sent Jay an e-mail regarding changes to the upcoming RFP which is the main discussion on the agenda today. She cited GMB historically awarded the contract as a grant and went on to say we have statutory authority to administer criminal justice grants not the motorcycle program. With the new administration in place after the gubernatorial election, she had Mr. English review the Kentucky Revised Statutes (KRS) for his opinion on this as well as Mr. Burgher's expertise on procurement procedures on how best to handle this. She believes moving forward on the motorcycle program using a contract through the Finance Cabinet and not as a grant would best serve the program overall. She invited Mr. English and Mr. Burgher to join in the discussion.

Mr. English requested today's member to look at the provided KRS 45.356. He said the language is pretty clear with the statement that the cabinet may enter into a contract with his interpretation to mean to handle via a contract not a grant. Jay responded to Mr. English by saying he had a lot to do in writing the statute and is quite familiar with the language. He also brought up that it has always been treated as a grant first through the Kentucky Transportation Cabinet and now with the Kentucky Justice and Public Safety Cabinet (JPSC) and believes it does fall under the cabinet's authority. Mr. Burgher provided more clarity by saying that the JPSC enters into contracts all the time no matter what and all contracts go through the Kentucky Finance Cabinet. When questioned how the Finance Cabinet would know what an agency had done in past performance, Mr. Burgher responded saying the Commission can put into the contract specific criteria such as number of participants trained, past performance, etc. JPSC can work with the Commission on the contract language. The contract is a legal mechanism between the state and the agency awarded the contract. He also went on to say JPSC can enforce performance better using a contract versus a grant. And if they breach the contract, JPSC can either meet with them regarding performance or send them a thirty (30) day notice stating the contract ends.

Dean questioned if a contract could be written with language that would preclude an agency from applying especially if the current or prior contracts have not been fulfilled since 2007/2008. He went on to say, "anyone can write an excellent proposal but that doesn't mean they can provide training." So why would we allow them to enter the process? Mr. English cautioned the Commission by saying they didn't wish to write a contract to address a specific agency. It must be open and fair.

Jay questioned both Mr. Burgher and Mr. English if they've read the current contract. Mr. Burgher stated he hadn't yet read it but they could use it to go forward and craft a better contract. Diane

mentioned the current grant doesn't have benchmarks. Jay replied that it did. The contract stated they would train 4% of the registered motorcycles which equates to approximately 4,500 individuals trained in a given year. He added that since the Commission has pushed people out of holding onto their permits, it pushed them into the license so that number may have gone down. The metric had already been in place but EKU hasn't come close to it. When asked to explain a benchmark, Jay cited the Kentucky Motorcycle Program (KMP) had twenty-two (22) sites throughout the state to take the course. They are currently down to having only fifteen (15) sites to provide the same trainings. Of those sites, five (5) have trained fifty (50) or less students. He believes the reason for less students is lack of promotion. The Commission has pushed EKU to come up with promotion plans. While crediting EKU with nice t-shirts or bandanas but learning has continued to decrease and now recently lack of instructors. They're also engaging in predatory practices running other businesses out of business. This is all from years of mismanagement. Some sites are not scheduled weekly. Some sites have to share parking lot spaces which contributes to the problem. Again lack of promotion.

Bruce brought up the fact that Richmond/Lexington areas have plenty of instructors and last July and August during the height of riding season they couldn't fill the classes. Jay responded the problem in northern and western Kentucky and in London is due to lack of instructors. He went on to say sites in those areas are bringing instructors from Ohio. But EKU won't accept out of state instructors through reciprocity. What EKU is doing as it relates to instructors is ridiculous. Mr. English inquired about how an instructor would be kicked out of instructing. Jay cited the situation with Rick and Elaine who had not trained enough classes in Kentucky, but had trained weekly in Ohio, they lost their ability to train in Kentucky. They were given two months at the end of the season to meet EKU's requirement. That was not reasonable. From there he cited that EKU doesn't follow their own policy and procedure manual which has extensive legal language and has gone through six (6) or (7) years of dealing with EKU's policy and procedure manual. Mr. English said all these issues can be put into a contract which would hold them liable.

Mr. Burgher told the Commission they deserve an answer to their questions before putting a contract together. He went on to say that JPSC, Administrative Services does contracts on March 16th in preparation for a July 1st effective date and believes JPSC can have a contract in place for the upcoming state fiscal year. Mr. English included the contract needs to be based on the law and reiterated it needs to be a contract. Chair Hanlon stated it doesn't really matter if it's a contract or a grant as long as the Commission has a say in the contract.

Based on today's discussion, Jay who has always been on the RFP Committee would remain on the committee. Jeannie and Rick agreed to stay after today's meeting to discuss details with Mr. Burgher.

No other discussion on the Request For Proposal.

• **Other**

Dean questioned if a motion could be made indicating if KMSEC doesn't have an RFP by July 1st they would shut down the program. Chair Hanlon replied stating it will be that way regardless if an RFP was issued or not. Donna confirmed KMP is in their last year of the grant and can't continue under this grant.

Dean questioned the ownership of the equipment purchased through their past and current contract. Diane clarified that if EKU continues a motorcycle program the equipment remains with them. Mr. English said the new contract can include language which states if a program ceases to exist, all equipment purchased would return to the Commission.

Bruce expressed his viewpoint on EKU's motorcycle program with strong conviction stating he believes EKU has a very successful program and noted this Commission has other viewpoints. He went on to say EKU has trained 60,000 people since its inception and added the fact that you can't make people take this valuable training. He said he would love to make them but can't and that's a reality. His statement was countered with the fact that five (5) sites had trained only fifty (50) people. Rick joined the conversation by saying he understands the concerns of wishing to train. The people who have been trained have been quite successful based on the current motorcycle crash data available in Kentucky. He personally took the Advanced Rider Course (ARC) as well as the Advanced Rider Course II (ARC 2) because he felt it was important since he was working for the Transportation Cabinet in safety education. He was glad he did because he learned a lot and was in agreement with Bruce; you can't make them take it. He asked what incentive there was in taking this course. He went on to say most people don't like to be told how to do something especially if they've been riding for years. He recognizes the dealerships will endorse the program for first time riders but that doesn't reach the motorcycle riders who've been riding for years without training. Other contributing factors discussed were the downturn in the economy, cancellation of classes and lack of knowledge the program exists. Rick suggested to change the parameters from ten (10%) percent to something more manageable to meet training new riders.

Adjourn

Motion to adjourn today's meeting was made by Jeannie and seconded by Dean. Motion carried; all in favor.