

**LOUISIANA STATE POLICE COMMISSION**

**IN RE: APPEAL OF TROOPER RANDALL DICKERSON, TROOPER GEORGE HARPER AND TROOPER DAKOTA DEMOSS**

**APPELLEE BRIEF (LOUISIANA STATE POLICE)**

**Docket No. 21-249-RV**

---

**This Commission Does Not Have the Authority  
to Stop the Pending, Administrative Investigation**

May it please the Commission:

On behalf of Louisiana State Police Superintendent, Colonel Lamar Davis, the Appointing Authority for the Louisiana State Police, submits this legal brief. The question Appellee has been requested to brief is, "Whether or not the Louisiana State Police Commission ("the Commission") has the authority to stop the pending, administrative investigation." The answer is no.

This Commission, though vested with many powers as it pertains to the State Police Service, does not have the authority to stop this pending administrative investigation. The Commission has provided an exclusive remedy for a violation of Rule 12 and that remedy does not include stopping the administrative investigation. Moreover, there is no right of appeal for a rules violation as such, there is no right to the remedy they seek. Finally, public employers have a right to an accounting from public employees.

**Exclusive remedy provided**

Under the Commission's own rules, the remedy that the troopers seek is not available. The Commission rules specifically provide for the exclusive penalty for a Rule 12 violation. That remedy is a review of discipline. Nowhere in Rule 12 does the Commission envision stopping an administrative investigation.

The troopers allege a violation of Rule 12.18. Even if they establish that this rule was violated, the LSP Commission Rules specifically provide for the remedy of violations of Rule 12 at LSP Rule 12.20. That provision clearly states:

**Rule 12.20 Penalty**

Any disciplinary action taken against the Louisiana State Trooper in violation of these Rules may be reduced, modified or reversed by the Commission, in accordance with Rule 13.20.

Rule 13.20 provides:

**13.20 Commission Action on Appeal.**

(a) After hearing of an appeal, the Commission shall make a written decision containing its findings of facts and conclusions, which shall be filed with the Executive Director. The decision of the Commission shall be final on the day that it is filed.

(b) On the same date that the decision is filed, the Executive Director shall mail a copy of the decision to the parties or their counsel.

(c) If the Commission after any hearing orders a dismissed or suspended employee reinstated, it may reinstate such employee under such conditions as it deems proper and subject to Rule 13.9 may order full pay for lost time.

These are the exclusive provisions for a violation of Rule 12. Ordering that the investigation be terminated is not one of the penalties, nor is it provided or inferred anywhere in the LSP Commission Rules.

The Louisiana Supreme Court has held that the courts cannot provide a remedy where the legislative body has spoken and not provided one. Likewise, where the legislative body has provided a remedy, no other should be ordered upon review by a court. The same reasoning applies here where the LSP Commission Rules provide for the exclusive remedy for a rules violation. As the reviewing body, the commission cannot provide for a different remedy than

what has been already prescribed. *Marks v. New Orleans Police Department*, 943 So.2d 1028 (La. 11/29/06)

In *Marks*, like here, the law enforcement officer complained that the administrative investigation had not been timely. At the time of that case, the minimum standards for law enforcement officer investigations did not provide for a penalty for violation of its rules. The law enforcement officer sought to have his termination reversed. The Court focused on the fact that the legislature did not include a penalty for non-compliance in the statute. “Certainly, the statute does not provide, nor suggest, that the remedy for non-compliance with the sixty-day period is dismissal of the disciplinary action.” *Marks*, at 1035.

Using the rules of interpretation, the Court reasoned in *Marks*, that although the statutory minimum standards for investigation of law enforcement officers was written in mandatory language, the Court could not impose its own penalty. Citing to *Carter v. Duhe*, 05-3090, p. 10 (La.1/19/06), 921 So.2d 963, 970, the Court analogized the minimum standards to the New Home Warranty Act which provides mandatory rules for new home constructions. Like the minimum standards, the NHWA was couched in mandatory terms but provided no penalty. Upon review of that case, the Court found that it was not the judicial function to provide a penalty. Likewise, here, where the “legislative body” the LSP Commission, has provided its own rules and remedy, this reviewing body cannot not impose something outside that which is provided.

**No right of appeal – no remedy**

Although the LSP Commission Rules articulate a right to appeal on a rules violation, at 13.1(c), that rule runs outside the Constitutional grant of authority to the Louisiana State Police Commission and therefore affords no remedy.

Article 10 Section 50 of the Louisiana Constitution of 1974 provides for jurisdiction of this Commission to hear appeals. It provides only for appeals on discipline and discrimination alone and provides:

Section 50. The State Police Commission shall have the exclusive power and authority to hear and decide all removal and disciplinary cases, with subpoena power and power to administer oaths. It may appoint a referee to take testimony, with subpoena power and power to administer oaths to witnesses. The decision of the commission shall be subject to review on any question of law or fact upon appeal to the court of appeal wherein the commission is located, upon application filed with the commission within thirty calendar days after its decision becomes final.

The trooper's right to appeal is at Article 10 Section 46 of the Louisiana Constitution of 1974 and it provides:

#### Appeals

Section 46.(A) Disciplinary Actions. No person who has gained permanent status in the classified state police service shall be subjected to disciplinary action except for cause expressed in writing. A classified state police officer subjected to such disciplinary action shall have the right of appeal to the commission. The burden of proof on appeal, as to the facts, shall be on the appointing authority.

(B) Discrimination. No classified state police officer shall be discriminated against because of his political or religious beliefs, sex, or race. A classified state police officer so discriminated against shall have the right of appeal to the commission. The burden of proof on appeal, as to the facts, shall be on the state police officer.

Neither the constitutional grant of jurisdiction or right of appeal includes an appeal of a rules violation as is provided at Rule 13.1(c) and the grant of authority cannot be expanded by the Rules. *La. Const. Art. 10 Sec. 50* amounts to a limited divestiture of jurisdiction from the judicial branch of the government, and grant of limited exclusive judicial jurisdiction to the Commission. That grant of authority is to hear and decide appeals of disciplinary actions, and claims of

discrimination. The LSP Commission cannot expand their judicial grant of authority by rule promulgation.

The Supreme Court of Louisiana stated such in *Louisiana Department of Agriculture and Forestry v. Sumrall*, 728 So.2d 1254 (1999). At issue in that case was a rule promulgated by the Louisiana State Civil Service Commission that expanded the (Civil Service) Commission's jurisdiction to hear appeals brought by classified employees beyond those specifically contained in their constitutional grant of authority. The Louisiana Supreme Court held that the Commission could not expand its grant of original exclusive jurisdiction by exercising its rulemaking authority. The State Constitutional provisions do not grant power, rather they are limitations upon power otherwise plenary and held by the people.

State Police Commission Rules that expand the scope of appeal have been found to be outside their Constitutional grant of authority for the above reasons by the First Circuit Court of Appeal, *Berry v. Department of Public Safety and Corrections*, 835 So. 2d 606 (La. App. 1 Cir. 2002).

Although the rule still stands, this Commission has continuously declined to provide a right of appeal to anything other than discipline or discrimination citing to the above reasoning. *In Re Appeal of Kenneth D. Bailey*, Louisiana State Police Commission Docket 02-119-O, *In Re Appeal of Jason Starnes*, Docket No. 06-162-O and *In Re Appeal of Reuben Berry, Jr.*, Docket No. 10-185-O.

Rule 13.1(c) goes outside the limits of judicial review granted to the LSP Commission via the Constitution. The expansion of its jurisdiction beyond the constitutional limits is not required in order for the Commission to achieve the goals and principal objectives of the established state police system which is designed to protect public career employees from

political discrimination by eliminating the spoils system. This Commission cannot grant a right of appeal for an alleged violation of its rules.

### **Public employer has a right to investigate its public employees**

The Louisiana jurisprudence is devoid of any case where a Civil Service Board or Commission enjoined or prohibited a police agency from conducting an administrative investigation. To the contrary, the jurisprudence stands for the right of a public employer to compel a public employee to account for his public official conduct.

Nowhere in the LPSC Rules does it provide for the LSPC to issue an injunction or otherwise prohibit an administrative investigation into alleged misconduct of troopers. Any attempt to do so would infringe on the appointing authority's implied powers in exercise of this statutory authority to discipline and remove employees in the State Police service.

It is well settled in Louisiana that it is an implied power of the appointing authority to conduct administrative investigations into his employees in reaching decisions to discipline or remove them from the state police service. See *Guillory v. Police Jury of Parish of Evangeline*, 1 La. App. 195(1924) (where the district court ruled that the clerk of court had no right of action to enjoin the police jury from investigating.) There is a long line of precedent for an employer having the authority to compel an employee to answer work related questions, and punish refusal to do so by discipline, including termination. (An agency may direct an employee to answer work-related questions and may discipline an employee who refuses to do so. *Jones v. Department of Public Safety and Corrections*, 2004-1766 (La.App. 1 Cir. 9/23/2005); *Jones v. Department of Public Safety and Corrections*, 2004-1766 (La.App. 1 Cir. 9/23/2005); 923 So.2d 899, which upheld the termination of a corrections master sergeant accused of sexual harassment who refused to comply with a supervisor's instructions to submit to a polygraph examination;

*Sterling v. Department of Public Safety & Corrections, Louisiana State Penitentiary*, 97–1959, 97–1960 and 97–1961 (La.App. 1 Cir. 9/25/98); 97–1961 (La.App. 1 Cir. 9/25/98); 723 So.2d 448, which upheld the twenty-day suspension of a corrections sergeant accused of leave abuse who refused to comply with the investigator's orders to answer questions in an internal investigation; *Public Emp. Ass'n of New Orleans, Inc. v. City of New Orleans* 404 So.2d 537 (La.App. 4 Cir.1981), which denied injunctive relief to city employees who, under threat of disciplinary action, were required by the Chief Administrative Officer to answer questions about outside employment; *Creadeur v. Department of Public Safety, Division of State Police*, 364 So.2d 155 (La.App. 1 Cir.1978), which upheld the dismissal of a state trooper accused of non-criminal activity who refused to comply with a superior's order to take a polygraph; and *Lemoine v. Department of Police*, 301 So.2d 396 (La.App. 4 Cir.1974), which upheld the suspensions of police officers accused of public bribery who refused to comply with an order from the Major over internal Affairs to answer questions in an internal investigation.)

Moreover, and more importantly, the United States Supreme Court has recognized that public employees must answer for their conduct when questioned in a narrow manner that is specifically about the performance of their duties if they are not required to relinquish their Fifth Amendment right against self-incrimination. The LSP Commission rules specifically guarantee that troopers are not required to waive that right (LSP Commission Rule 12.17) granting “use immunity” yet these troopers seek to avoid ever answering for their conduct. They want this Commission to give them a pass on having to answer for their conduct.

The *Garrity v. New Jersey* case and its progeny<sup>1</sup> set the rules for administrative investigations. The line of cases balances the obligation of public employees to account for their

---

<sup>1</sup> *Garrity v. New Jersey*, 87 S.Ct. 616 (1967), *Gardner v. Broderick*, 88 S.Ct. 1913 (1968), *Uniformed Sanitation Men Association v. Commission of Sanitation*, 88 S.Ct. 1917 (1968).

actions in the performance of their jobs with the right against self-incrimination. After addressing the competing interests under the law in the developing cases, the United States Supreme Court struck the balance that the public employer is entitled to have its public employees account for their actions so long as they are not required to give up their Fifth Amendment Immunity. If the public employee refuses to account for his conduct, the employer may terminate him. The public employer is not required to maintain an employee who refuses to account for his public actions. "Public employees subject themselves to dismissal if they refuse to account for their performance of public trust." *Uniformed Sanitation Men Association v. Commission of Sanitation*, 88 S.Ct. 1917, 1920 (1968). "Public employees do not have an absolute right to refuse to account for their official actions and still keep their jobs." *Uniformed Sanitation Men Association v. Commissioner of Sanitation*, 426 F. 2d 619, 627 (1970).

The Supreme Court spoke to the serious nature of the obligation of law enforcement to answer to the State as his employer about his official duties, stating of the policeman at issue in that case, "he is directly, immediately and entirely responsible to the city or State which is his employer. He owes his entire loyalty to it." Further, the Court reasoned, "he is a trustee of the public interest, bearing the burden of great and total responsibility to his public employer...the policeman is either responsible to the state or to no one." *Gardner v. Broderick*, 88 S.Ct. 1913, 1916 (1968). If these troopers don't answer to this administrative investigation, they will answer to no one.

This "Appeal" by these Troopers seeks relief from this Commission ordering just that: that no investigation into their conduct be performed, that they never have to provide a statement about their conduct and that they get to keep their jobs pending the outcome of their criminal trials.



Appellants cite to and argue the Appointing Authority's violation of an LSP Commission rule requesting that the administrative investigations into their conduct related to two separate arrests and uses of force. They have been charged criminally for their conduct but none have provided statements in those criminal investigations answering for their conduct. They do not have to give a statement in a criminal case because they cannot be forced to self-incriminate. But they do in fact have to account for the performance of their public duty in an administrative action, yet they want this commission to condone their conduct and order the Appointing Authority to stop the investigation and any investigations related to these two incidents.

These two companion actions, the Petition for Permanent Injunction of the Investigation in the 19<sup>th</sup> JDC and this Appeal and request for Emergency Hearing were filed days before the troopers scheduled interviews. Their goal is to avoid giving a truthful compelled statement to their employer about their conduct, and still keep their jobs. The Supreme Court says they cannot do that.

#### **The "appeal" is premature**

This "appeal" is premature because no disciplinary action has been taken. Appellants allege a violation of Rule 12 which is the Rule on Discipline and no discipline has been issued. As stated above, Rule 12.20 provides for the penalty for a violation of Rule 12 and it only allows for review of a disciplinary action. The penalty presupposes discipline. As cited above, "any disciplinary action taken against the Louisiana State Trooper in violation of these Rules may be reduced, modified or reversed by the Commission." There has been no discipline so this appeal of an alleged "rule violation" is premature.

**Conclusion**

For the reasons stated above there is no authority to stop this administrative investigation and to do so would certainly amount to a violation of the public trust.

Respectfully Submitted,



Faye Dysart Morrison, BRN 23049  
Michele M. Giroir, BRN 22393  
Department of Public Safety & Corrections,  
Public Safety Services, Office of State Police  
7979 Independence Blvd., Suite 307  
Baton Rouge, LA 70806  
P.O. Box 66614  
Baton Rouge, LA 70896  
Telephone: (225) 922-2312  
Facsimile: (225) 925-4624  
Email: Michele.Giroir@la.gov  
Email: Faye.Morrison@la.gov

**CERTIFICATE**

I hereby certify that this Brief, has been filed with the Louisiana State Police Commission via email, and that it has been served on Appellants, through their attorney of record, Michael Dubos and Adam Kamaranis, via email on the 9<sup>th</sup> day of March, 2021.

Baton Rouge, Louisiana, this 9<sup>th</sup> day of March, 2021



**Faye Dysart Morrison**  
*Attorney for Appellee, the Department of Public Safety & Corrections,  
Public Safety Services, Office of State Police*

**RECEIVED**

**MAR 09 2021**

**State Police Commission**