

Law Offices of James J. Cunningham A.P.C.

JAMES J. CUNNINGHAM
CHRISTOPHER MORSE

ATTORNEYS AT LAW
10405 SAN DIEGO MISSION RD.
SUITE 200
SAN DIEGO, CA 92108

TELEPHONE: (858) 693-8833
TOLL FREE: (877) 976-7766
FAX: (858) 693-8834
EMAIL: jjc@jimcunninghamlaw.com

LEGAL ASSISTANT:
JACLYN SALAMONY
EMAIL: js@jimcunninghamlaw.com
OF COUNSEL:
LISA G. MCLEAN, ESQ
CERTIFIED WORKER'S COMPENSATION SPECIALIST

February 7, 2022

To: Los Angeles County Board of Supervisors (BOS)
Kenneth Hahn Hall of Administration
500 West Temple St. Ste 383 Los Angeles, CA 90012

From: Los Angeles County Professional Peace Officers Association (PPOA)
188 E. Arrow Highway
San Dimas, CA 91773

**Re: Agenda Item #18 Amending the Los Angeles County Code to Enhance Compliance
with and Enforcement of the County's COVID-19 Vaccination Policy**

Dear Board of Supervisors:

PPOA objects to the recommendation as submitted by Supervisor Kuehl to instruct County Counsel, in consultation with the Chief Executive Officer and Director of Personnel, to submit at the March 15, 2022, regular Board meeting amendments to the Civil Service Rules that would provide the Director of Personnel overriding authority to discipline the employees of any County Department for noncompliance with the County's Policy or directives related to the COVID-19 Vaccination Policy (Policy).

PPOA submits that any attempt to usurp the authority of the appointing authority, namely the Sheriff, is violative of established legal precedent limiting the power of a BOS over the appointing authority as well as the protections afforded on the Peace Officer's Bill of Rights (POBR).

The expansive authority of the Sheriff extends explicitly from the County's Charter, which describes the Sheriff as an elective County officer (County Charter Article IV, Section 12) that "shall have the powers and perform the duties now or hereafter prescribed by general law, and by this Charter..." (Article VI, Section 25). In addition, the California Government Code prescribes further instructions for how the responsibilities of the Sheriff, as an elected County Officer, are shared along with the County Board of Supervisors.

California Government Code Section 25303 provides that:

“The board of supervisors shall supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county, and particularly insofar as the functions and duties of such county officers and officers of all districts and subdivisions of the county relate to the assessing, collecting, safekeeping, management, or disbursement of public funds. It shall see that they faithfully perform their duties, direct prosecutions for delinquencies, and when necessary, require them to renew their official bond, make reports and present their books and accounts for inspection. *This section shall not be construed to affect the independent and constitutionally and statutorily designated investigative and prosecutorial functions of the sheriff and district attorney of a county.* The board of supervisors shall not obstruct the investigative function of the sheriff of the county nor shall it obstruct the investigative and prosecutorial function of the district attorney of a county. Nothing contained herein shall be construed to limit the budgetary authority of the board of supervisors over the district attorney or sheriff.”

Any attempt to take over the Sheriff’s ability to oversee the disciplinary process for his employees, it is submitted, would certainly not survive legal scrutiny by the Courts who would likely find the BOS exceeded their authority under well-established legal principals. Such supervisory control by the BOS would directly conflict with the admonition that ‘the board has no power to perform county officers’ statutory duties for them or direct the manner in which duties are performed...’ (*Hicks v. Board of Supervisors* (1977) 69 Cal.App.3d 228, 242; see also *People v. Langdon* (1976) 54 Cal.App.3d 384, 388-390 [county clerk].) Consistent with the *Hicks* rationale, the Supreme Court has ruled that the supervisory authority of a board of supervisors over the county assessor is limited to ensuring the faithful performance of the duties of that office, and does not permit the board to control, directly or indirectly, the manner in which the duties are performed. (*Connolly v. County of Orange* (1992) 1 Cal.4th 1105, 1113, fn. 9).” (emphasis added) *Id.* at 87-88. Accordingly, the BOS inserting themselves into the personnel decisions of the Sheriff, whether or not to discipline his employees, is a direct attempt to “control” the manner upon which the Sheriff wishes to deploy his employees whether it be while wearing masks and being tested on a regular basis, or be fully vaccinated. Both of which are consistent with State and Federal law.

Moreover, Government Code section 3301 (POBR) provides that:

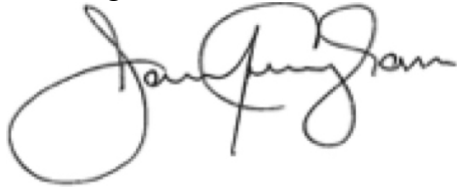
“The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.”

Nowhere in the Government Code, nor in the State Constitution, is there any authority for the notion that a BOS could substitute themselves into the role of the “employer” and or avoid the mandates and protection afforded by POBR for all sworn personnel. To do so would upend

decades of legal precedent confirming the sole authority to discipline its sworn employees rest solely with the appointing authority (employer).

PPOA respectfully requests that the BOS not pursue any amendments to the Civil Service Rules that would provide the Director of Personnel overriding authority to discipline the employees of any County Department for noncompliance with the County's Policy or directives related to the COVID-19 Vaccination Policy (Policy).

Best Regards,

A handwritten signature in black ink, appearing to read "James J. Cunningham". The signature is fluid and cursive, with a large initial "J" and "C".

James J. Cunningham Esq.
Law Offices of James J. Cunningham A.P.C.