

TPSB Liaison

TPSB Committee Chairman

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Texas Private Security Board – Abridged Meeting Minutes – January 5, 2011

Posted: October 29, 2010: Agenda Approval of Minutes

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MINUTES

Agenda Item I: Approval of Minutes for Board Meeting from July 9, 2010

Chairman Chism introduced this agenda item. On a motion made by Vice-Chairman Johnsen and seconded by Secretary Smith, the Board voted unanimously to approve the Minutes for the Board meeting of **October 29, 2011**, as written:

Agenda Item III: Report from Private Security Board's Advisory Committee.

Secretary Mark Smith addressed the rest of the Board regarding topics the Committee was charged with discussing and developing. He stated the Committee would address the board on each topic as it appeared in the Agenda; items IV, VII, and VIII.

Agenda Item II: Report from Private Security Bureau.

Reggie Andrews presented the **Licensing** totals for the **1st QTR – 9/01/10 – 11/30/10**:
Bureau received:

- 285 - original company applications
- 1,258 - company renewals
- 11,371 - original individual applications
- 8,299 - individual renewals not including online applications.

The same time period the Bureau processed the following licenses/registrations:

- 210 - original company licenses (112 online, 98 manual)
- 1,198 - company renewals (777 online, 421 manual)
- 8,813 - individual registrations (2,106 online, 6,707 manual)
- 7,766- individual renewals (3,252 online, 4,514 manual)
- 5,915 - employee information updates (2,015 online, 3,900 manual).

This time period showed:

- 5,323 - active company licenses
- 248 - active school licenses
- 126,181- active individual registrants.

Lieutenant Park presented the Investigation Statistics for Districts A and B to the Board. **There were - 9/1/10-11/30/10:**

- 1050 - violations investigated
- 430 - in District A
- 620 - in District B

Additionally:

- 3 - cases of operating with an expired license
- 0 - cases of operating with a suspended license
- 42 - cases of operating without a license
- 22 - cases of failure to register employees
- 23 - cases presented to prosecutors during this time period
- 908 - cases were closed with no action
- 18 - cases were closed with administrative citation
- 43 - were closed with administrative warnings
- 81 - cases were closed with other actions

Chairman Chism asked why there were no OPSL cases to report for the 1st Quarter. Lieutenant Park stated the primary reasons for this were due to the transition with *reporting operation codes and personnel changes*. He stated the data was not lost, but more time would be needed to obtain the information.

Steve Moninger was the next person to address the Board. He stated all of the pending rules were published in the December issue of Texas Register and the comment period was set to expire on January 31st. He also stated all of the pending rules are posted on the PSB website under pending rules and anyone wishing to comment on them should submit the comments in writing to him by the expiration date of January 31st.

Agenda Item IV: Discussion & Possible Action: To Proposed Amendments to Rule §35.35, “Standards of Service”, Amending Notice Requirements For Alarm System Company and Monitoring Services - Pursuant to §1702.288 (Occ. Code):

Chairman Chism introduced; asked Rodney Hooker, with TBFAA, to address the board regarding their request to get information from Representative Dianne Delisi. Mr. Hooker stated he had been in contact with Bureau staff; the only other suggestion, to the proposed rule is to strike reference to subsection (e) (2). Mr. Moninger addressed the board and agreed with the proposed amendment. The BOD voted unanimously to accept the amendments to this rule as written with the addition of striking reference to (e)(2).

Agenda Item V: Discussion & Possible Action: To Proposed Amendment To Rule §35.70, “Fees” ~ Addressing The fees For Continuing Education Training Schools, and Instructors:

Vice Chairman Johnsen stated this item was regarding the fees section only and there was no need to vote on it, as there were no changes being made. Mr. Moninger stated that the only reason it was brought for discussion was because it was suggested at the last meeting of the board that the fees for instructors and schools should be revisited.

Agenda Item VI: Discussion & Possible Action: To Proposed Amendment To Rule §35.187 ~ Renewal Applications”; Adding The Safe Harbour Provision of Rule §35.185:

Mr. Moninger introduced this item to the Board, stating this rule had been discussed and approved at the last meeting, but based on public comment from members of the industry, it was suggested that changes be made regarding the 5 day, or Safe Harbour Rule. He stated he made the change as “unless a completed renewal application that complies with this rule is submitted within five working days following the employment of the individual in a regulated capacity.”

Mike Samulin, with TBFAA wished to address the board regarding this rule change. He commented; the rule states the application must include a state or government issued identification card and that means that the person would have to turn it over with their application. He suggested that “a copy” should be added to the language in order to make it clear. The BOD voted unanimously to accept the amendments to this rule as written with the additional amendment to read “copy of”.

Agenda Item VII: Discussion & Possible Action: To Proposed Rule §35.222, “Qualifications for Locksmith Company License”; Providing Fore Alternatives To The 2-Year Experience Requirement For Licensure – Pursuant To §1702.115 (Occ. Code):

Vice-Chairman Johnsen stated this item had also been discussed over several meetings and was drawn up by the Locksmith associations as acceptable substitutions. He further stated the committee could find no reason not to accept it as written. Chairman Chism stated the rule reads “successful completion of a 2000 hour internship”, which is 50 40 hour weeks. He asked if the board could really justify that much time needed. Vice- chairman Johnsen stated the locksmith industry as a whole felt it was not unreasonable.

He suggested the Board let it become part of the rule and see where it goes, stating modification could always be made to the rule at a later date, if necessary. He further stated that other members of the advisory committee had the same concerns, but if the industry was comfortable with it they should go ahead. Chairman Chism asked if there were any others who wished to comment before the Board’s ruling. For more information - Ref: **Agenda Item VII: More Online:** <http://www.txdps.state.tx.us/psb/>

Agenda Item VIII: Discussion & Possible Action: To Proposed Amendments To Rule §35.292: “Requirements for Continuing Education Courses”, Providing For The Offering Of Classes Taught By “Outside-School Experts”:

Vice-chairman Johnsen stated the first thing they did was look at what was happening in the industry as a whole. He stated the fact was everyone cares about having competent people licensed and their competencies, through *continuing education*, remain high. He went on to explain that some areas find it more difficult to have formal schools doing continuing education classes, but there are classes available that are taught by industry experts and manufacturers of products to be used.

Therefore, he stated, the advisory committee decided to formalize what already amending the rule, is doing, thus ensuring others are following the same rules as the schools, with the exception of

the instructor fees. In adding (7) the committee felt this would give the directors of schools the responsibility of ensuring things are done correctly as well as the responsibility for keeping proper records. It will also give the investigators an opportunity to know what to look for when doing investigations.

Board member Washington asked if there were a required curriculum for these classes. Chairman Chism explained that within the Board rules there are 5 areas that must be covered in continuing education, and each area is industry specific. This specific Agenda Item VIII is quite detailed & informative. For more information - Ref: **Agenda Item VIII: More Online:** <http://www.txdps.state.tx.us/psb/>

Agenda Item IX: Discussion & Possible Action: To Proposed Amendments To Rule §35.311: “Exemptions”, Clarifying – The Scope of Repossession Agent Exemption Provided In §1702.324 (b)(3) (Occ. Code) – Ref: Locksmith Services:

The Attorney General (State of Texas) was asked to provide an opinion as to whether the *repossession agent exemption* applied to locksmith services, to which they referred it back to the board for final decision.

The only guidance they provided was that there needed to be a relationship between repossession services and locksmith services. He went on to say that in the proposed language, making keys and installing and/or repairing locks is related to repossession services following the argument in Attorney General Opinion 0275, which discusses attorneys and their paralegals being exempt. Following that theory, a repossession agent who has employees who work only for that agent providing locksmith services in carrying out repossession services would be exempt.

However, independent contractors hired for similar work would not be exempt. Secretary Smith asked for clarification by stating if a repo company has to make keys in order to repo car, and has one of its full time employees as the key maker, that person would be exempt. Mr. Moninger stated yes that was correct. Billy Garrett with the Texas Locksmith Association addressed the Board regarding this item. He stated that the Attorney General opinion states, “When section §1702.324(c) is read together with the subsection §1702.324(b)(3) exemption, we see that the exemption applies to a repossession agent only when he or she is "performing services directly related to and dependent on the provision of [repossession]” and also states, “It merely allows such person to continue to perform ordinary repossession services”.

He stated that repossession by its very definition is to take back possession of, as an example, cars. In the repossession of cars this rule is stating it is ok to make a key in order to gain possession of the car, but that is not what is happening.

He stated the cars are being repossessed by using a tow truck and that keys are then being made for the vehicle after it is the company’s possession. He also stated that in the case of repossessing a home, he has not been asked to, as statute states, “decode or make a key”, but rather he is asked to take all locks and rekey. He further stated that the argument is that the key is not being sold, but it is being sold to the end user of that home or vehicle is sold to another individual. Mr. Moninger stated that the situation described would be for an investigator to determine if the manufacturing of the key related to the business of repossession or not, and the rule is simply stating that if it is then it is exempt.

Bonnie Brown Morse addressed the Board stating that if section (c) did not say decode, or make or repair then statute already provides an exemption for changing locks. But in saying decode, make or repair that is problematic. On a motion made by Vice-chairman Johnsen and seconded by Secretary Smith, the Board voted unanimously to accept these amendments as written.

Agenda Item X: Discussion & Possible Action: Proposed BOD Policy Ref: Negotiated Rule-Making:

Chairman Chism presented this item to the Board stating that a copy was provided of the administrative policy for the agency to use to meet statutory requirement set out as a set procedure for all new rules and rule changes to come before the board.

In the meantime, he stated, the policy could be adopted by the board and placed on the private security website to provide the industry and public with some guidance and idea on how the board is planning to proceed. Mr. Chism stated this new policy states how new rules and rule changes will be handled. He stated an interested party with suggestions to a new rule or changes to an existing rule should provide a written proposal of the changes to be made and present it to the chair or board member, who in turn would give it to the chair to be placed on the agenda. For more information - Ref: **Agenda Item IX: More Online:** <http://www.txdps.state.tx.us/psb/>

Agenda Item XI: Public Comment

Bonnie Brown Morse: President of Locksmith Association of San Antonio:

Addressed the Board. She began by asking the board a question regarding continuing education credits; asking the required number of CEU Hours for locksmiths. Chairman Chism stated that 16-hours are required, even if a person holds additional licenses.

RenEarl Bowie-, Assistant Director of Regulatory Services Division of TX-DPS:

Mr. Bowie stated he wanted to give the Board more information regarding the investigation numbers presented earlier in the meeting. He stated that the area of Operating with a Suspended License is usually insurance suspension cases. He went on to explain that in the past an insurance suspension resulting from information not sent on time, lapsed insurance policy, or even staff error in entering the information would result in an OPSL case being generated and sent to the field for investigation.

With the changes to the bureau, these instances now are handled administratively by a staff member calling the companies directly and handling the information in that manner. He explained that it is the same with Operating with an Expired License cases as well; staff contacts the companies directly to inquire about the company renewals. He finished by stating the section that is handling these cases are keeping separate statistics regarding these type cases, but due to time constraints they were not available for the present meeting. Vice-chairman Johnsen asked if there were any word regarding the pocket cards have been in the works. Mr. Bowie stated that he would prefer to answer the question at a later time, possibly during Executive Session.

**Agenda Item X:
Administrative Hearings on Licensing and Disciplinary Contested Cases:**

Scott Merchant presented the following Hearing Case To The Board:

Wilburt Smith- Docket No. 005852010 Mr. Smith was present to address the Board on this case, but did not have counsel present on his behalf. Mr. Merchant stated Mr. Smith's license as a commissioned security guard was revoked due to his two disqualifying convictions: a 1985 Class A misdemeanor conviction for Assault, and a 1978 felony conviction for Arson. He also stated that under Federal Law, both of these convictions disqualify Mr. Smith from possessing a firearm.

Mr. Smith addressed the Board on his own behalf. He stated that when these incidents occurred, he was a much younger man. When he first applied for a license, he stated, he was told that he would have to wait 3 years before he was qualified. He stated he waited the allotted time, and during that time received his rights to carry a firearm by ATF (Bureau of Alcohol, Tobacco, and Firearms), but no longer has the paperwork showing it. Board member Washington asked if he had been licensed for 10 years, why was his license being revoked now. Mr. Merchant stated due to the age of the convictions they may not have been put into the criminal history database. He also stated that over time as the database becomes more complete; there will be more of these cases being brought to light. Mr. Merchant stated that until the Bureau received evidence of Mr. Smith's restoration of rights, he is not qualified to possess a firearm under State and Federal Law. Board member Crenshaw asked what Mr. Smith's legal pathways were to re-obtain his rights to possess a firearm. Mr. Merchant stated Mr. Smith would need to obtain a pardon from the Governor or a judicial pardon from the original convicting court. Secretary Smith made a motion to uphold SOAH's decision to revoke Mr. Smith's commission as a security guard. Board member Washington seconded the motion, and the Board voted unanimously in favor of the motion.

Sarah Carnes-Lemp presented the following Hearing case to the Board:

Steve Rowland- Docket No. 004342010 Mr. Rowland was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Carnes-Lemp stated Mr. Rowland's registration as a non-commissioned security officer was revoked based on his felony conviction of Intoxication Assault. Ms. Carnes-Lemp reminded the Board that there are currently pending rules that change assaults to all assaults being occupationally related, but that intoxication assault is not listed among them. However upon the adoption of the new rule, all assaults would be considered related to the occupation.

Vice-chairman Johnsen made a motion to uphold SOAH's decision and revoke Mr. Rowland's registration as a non-commissioned security officer. Secretary Smith seconded the motion, and the Board voted unanimously in favor of the motion.

Scott Merchant presented the following Hearing case to the Board:

Luis Gonzalez- Docket No. 008452010 Mr. Gonzalez was not present to address the Board on this case, nor did he have counsel present on his behalf. Mr. Merchant stated Mr. Gonzalez's application for registration as an alarm system installer was denied based on his misdemeanor conviction for Driving While Intoxicated. Board member Crenshaw made a motion to deny SOAH's decision and deny Mr. Gonzalez's application for registration as an alarm system installer. Secretary Smith seconded the motion, and the Board voted unanimously in favor of the motion.

Sarah Carnes-Lemp presented the following Hearing cases to the Board:

Anthony Garcia- Docket No. 008462010 Mr. Garcia was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Carnes-Lemp stated Mr. Garcia's application for licensure as a non-commissioned security officer was denied based on his Class A misdemeanor conviction of Assault Causing Bodily Injury. Mr. Garcia received deferred adjudication probation, but it was revoked due to several violations of the probation and Mr. Garcia was sentenced to 350 days in jail. Based on Texas

Administrative code he would not be eligible for licensure until December 16, 2011. Vice-Chairman Johnsen made a motion to deny SOAH's decision and deny Mr. Garcia's application for licensure as a non-commissioned security officer. Board member Crenshaw seconded the motion, and the Board voted unanimously in favor of the motion.

Herman Jack- Docket No. 008972010 Mr. Jack was present to address the board on this case, but did not have counsel present. Ms. Carnes-Lemp stated Mr. Jack's application for licensure as a commissioned security officer was denied based on his felony conviction of Burglary of a Vehicle. She went on to say Mr. Jack is federally disqualified to possess a firearm.

Mr. Jack stated that since May he has been fighting to obtain his commissioned license. He stated that he did not burglarize any vehicle, but was running with the wrong crowd and was guilty by association. Mr. Johnsen stated that the Board was not able to grant him a commissioned license when it is against federal law for him to possess a firearm. Secretary Smith asked if he was able to be a non-commissioned officer, to which Ms. Carnes-Lemp stated he was eligible to be a non-commissioned officer. Board member Crenshaw stated that Mr. Jack was sentenced to four years confinement, and in lieu of confinement, he served four years probation. He went on to say that it is unlawful for a person to possess a firearm "who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year". He asked if probation in lieu of confinement was equal to confinement. Ms. Carnes-Lemp stated that the law reads "convicted of a crime punishable by imprisonment for a term exceeding one year" and does not state that the person has to serve that amount of time; it is based upon the conviction. Secretary Smith made a motion to uphold SOAH's decision and deny Mr. Jack's application for licensure as a commissioned security officer. Vice-chairman Johnsen seconded the motion, and the Board voted unanimously in favor of the motion.

Christopher McElveen- Docket No. 009812010 Mr. McElveen was present to address the Board on this case; and, Attorney Kyle Varret represented him. Ms. Carnes-Lemp stated a recent review of the Department's database revealed that Mr. McElveen is required to register as a sex offender and under Texas Occupation Code 1702.361 he was notified that his licensure as an alarm installer and locksmith would be revoked. This Docket Item was quite detailed – For More Information Ref: Christopher McElveen- Docket No. 009812010 More **Online:** <http://www.txdps.state.tx.us/psb/>