

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,
JULY 23, 2008**

**TEXAS DEPARTMENT OF PUBLIC SAFETY
5805 NORTH LAMAR BLVD. BUILDING C
TRAINING ACADEMY AUDITORIUM
AUSTIN, TX 78752**

BOARD MEMBERS PRESENT:

Honorable John Chism, Chairman;
Honorable Howard H. Johnsen, Vice-Chairman
Honorable Mark Smith, Secretary
Honorable Charles Crenshaw
Honorable Doris Davis-Washington
Honorable Harold Warren

BOARD MEMBERS NOT PRESENT:

Honorable Stella Caldera

STAFF PRESENT:

Valerie Fulmer, Texas Department of Public Safety, Assistant Chief, Regulatory
Licensing Service;
RenEarl Bowie, Captain- Manager, Private Security Bureau;
Steve Moninger, Senior Staff Attorney, Texas Department of Public Safety,
Regulatory Licensing Service;
Jim Morgan, Lieutenant - Investigations, Private Security Bureau;
Reginald Andrews, Program Supervisor II – Licensing, Private Security Bureau;
David Wise, Private Security Board Attorney, Texas Department of Public Safety,
Regulatory Licensing Service;
Other members of the staff;
Members of the industry;
Members of the general public.

MINUTES

These minutes are a summary record of the Board's work session meeting. This meeting was audio recorded and video taped. For a detailed record of discussions and statements made by persons speaking at this meeting, please consult the audio tape and/or video tape on file at the Board's office. The Board meeting was called to order at 9:01 a.m.

Chairman Chism welcomed everyone to the meeting and asked that all cell phones and pagers be turned off or set to vibrate for the duration of the meeting.

Agenda Item I: Approval of Minutes for Board Meeting from March 6, 2008.

On a motion made by Vice-Chairman Johnsen and seconded by Board Member Warren, the Board voted unanimously to approve the Minutes for the Board Meeting of March 6, 2008 as written.

Agenda Item II: Status report from advisory committees.

Chairman Chism introduced this agenda item and asked Secretary Smith if he had anything to report from the Advisory Committee regarding Drug Testing. Secretary Smith stated that the committee met on May 7th to discuss a Drug Testing policy and came up with a solution to the drug screening policy that is in continuity with the Texas Workforce Commission policy. He further stated that he would continue discussion later during the meeting under Agenda Item X.

Agenda Item III: Status report on pending proposed rules.

Steve Moninger, Bureau Attorney, stated that there were no pending proposed rules to discuss other than those to be discussed during the meeting; Agenda Items IV-XIV.

Agenda Item XVII: Executive Session as authorized under §551.071; Pending and Contemplated Litigation.

Chairman Chism announced that at this time the Board was electing to take this agenda item out of order and go into Executive Session to discuss pending litigation.

Executive Session began at 9:04 am.

Executive Session ended at 9:50 am. Chairman Chism called the meeting back to order at this time. He also stated that the Executive Session was a discussion regarding a pending lawsuit against the Board. The Board had discussed the matter with their attorneys and had been advised not to discuss it further in open session.

Agenda Item IV: Discussion and possible action regarding proposed amendments to Rule 35.1, relating to definitions of “application” (to include renewal applications) and “due diligence”, (as used in Rule 35.204).

Steve Moninger, Attorney, presented this item to the Board. He stated that the definition of “due diligence” needed to be elaborated on for purposes of Rule 35.204, as enforcement has been hampered by the lack of guidance to the field and the industry regarding the employers’ specific obligations in performing background checks. Secretary Smith stated that his interpretation under subsection 16 was that applicant backgrounds had to be run through the non-confidential Criminal History website with Department of Public Safety.

Assistant Chief Fulmer stated that using the Department of Public Safety website was not required, but was one avenue that could be used to satisfy the requirement. Other, more stringent methods can be used. Vice-Chairman Johnsen asked if the definition of Due Diligence was to be used for all rules, and was informed by Mr. Moninger that it was for the purposes of Rule 35.204. Secretary Smith stated that the proposed rule read like it was a requirement to use the Department of Public Safety's website for criminal history checks. He further stated that the website for non-confidential criminal history checks are done for \$3.50 each, while other websites, such as publicdata.com offers criminal history checks for \$250 for 1,500 background checks. He stated that he would like to see the wording of the rule changed to allow companies to use other websites for their criminal history checks. Assistant Chief Fulmer proposed the wording of the rule to say, "non-confidential criminal history on the Department of Public Safety's public website or other comparable website." Mr. Moninger stated that he would like to strike references to Rules 35.364 and 35.3615 when modifying the definition of application. He would rather it state, "For all purposes of Chapter 1702, the term application includes". On a motion made by Secretary Smith and seconded by Board Member Crenshaw, the Board voted unanimously to accept the amendments to Rule 35.1, with additional amendments as discussed during this item.

Agenda Item V: Discussion and possible action regarding proposed Rule 35.14, relating to provision of regulated service through licensed subcontractors, by unlicensed general contractors, brokers, or other intermediaries.

Chairman Chism stated that he wanted to remove the word "broker" from the title of this rule. Steve Moninger presented this rule to the Board and stated that this new rule would clarify the Bureau's existing policy, which is based generally on the statutory definitions of regulated services and the existing administrative rules relating to consumer protection, such as §35.35 and §1702.328 of the Private Security Act. He further stated that the situation addressed here is quite common and recurring, and the rule change would provide guidance to the many service providers and commercial enterprises seeking to avoid the appearance of operating without a license. Board Member Warren asked for clarification of subsection (c) to add the phrase "stated or expressed party". Vice-Chairman Johnsen stated that when hiring a licensed contractor to perform a job, one would assume that the sub-contractors working for him would be licensed. Assistant Chief Fulmer stated that this was the issue that this rule would address. The Bureau is trying to address general contractors' concern that they are inadvertently violating the statute because it looks like they are offering to perform a regulated service. Mr. Moninger stated that this rule would specify that sub-contractors need to be licensed, and that they also need to be named in the contract so everyone understands the arrangements. Board Member Crenshaw asked that if the Board enacted the rule and a contractor were to hire an unlicensed person to do work, what are the enforcement provisions of the agency. Mr. Moninger stated that the statute provides that knowingly employing an unlicensed person can result in a Class A misdemeanor. If a person unknowingly hires an unlicensed person to perform regulated services, they are sent a notice of law and given 30 days to cease. On a motion made by Board Member Crenshaw and seconded by Secretary Smith, the Board voted unanimously to accept Rule 35.14 with additional amendments as discussed during this item.

Agenda Item VI: Discussion and possible action regarding proposed amendments to Rule 35.34, relating to employer notification of employee arrests.

Steve Moninger introduced this item to the Board. He stated that with this rule the Bureau is addressing concerns raised by managers and employers regarding the existing rule on Bureau notification of an employee arrest. The amendment would clarify the notification procedures for employers who become aware of criminal offenses committed by their licensed employees through means other than notification by the licensee. As the rule currently states, the employer would only notify the Private Security Bureau of an arrest if notified by the licensee. Amending this rule would obligate employers to notify the Private Security Bureau even if they were to find out in a manner other than direct employee notification. Vice-Chairman Johnsen asked what “otherwise made aware of the offense” was to mean. Mr. Moninger stated that it means however they may find out, such as from another employee telling them, seeing it on a criminal history website, or an investigator mentioning it. This change in the rule is meant to expand the ways in which employers may become aware of the offense and therefore may become obligated to notify the Bureau. Board Member Crenshaw stated that the rule read that the employer was to notify the Private Security Bureau by fax or in writing. He asked if there were other acceptable ways of notifying the Bureau. Steve Moninger stated that email, or telephonic notification would also be acceptable means of notification. At this time, Chairman Chism asked if anyone from the industry had comments regarding this rule amendment.

C.D. Lipscomb addressed the Board regarding this rule. He stated that reading the rule leads him to ask what is being changed. An employee has 72 hours to notify their employer of an arrest and then in turn the employer has 72 hours to notify the Private Security Bureau. Assistant Chief Fulmer stated that the amount of time is not at issue, it will still be 72 hours for an employer to notify the Private Security Bureau of an employee arrest regardless of the means of notification.

George Craig was the next to address the Board. He stated that he felt it would place an undue burden on the employers. He then asked if an employer heard a rumor regarding an employee being arrested; shouldn't that employer find out if the rumor is a fact before notifying the Bureau. He also asked if while substantiating the rumor, is that part of the 72 hours or just when you know for sure. Board Member Warren stated that he thought when an individual has been arrested, the 72 hour window starts at the point that the employer knows.

Board Member Crenshaw stated that it did seem to be a grey area. Steve Moninger stated that it was a grey area and that this amendment to the rule was meant to clarify that. He further stated that as with any rule's enforcement, defense could be raised that the employer just thought it was rumor and therefore didn't report it. The Bureau doesn't want that to be a defense to not notifying them of an arrest. Chairman Chism stated that to clear it up, it could state “that when an employer is made aware or receives other confirmation that an offense has occurred”. Vice-Chairman Johnsen asked what the agency did when notified. Steve Moninger stated that statutorily it states that when an individual has a disqualifying charge or indictment, then they are summarily suspended. Vice-Chairman

Johnsen then asked if an individual is arrested and then the charges are dropped would he have to still notify the employer and Bureau. Steve Moninger stated that the individual would still notify the employer who would notify the Bureau, but then the Bureau would not act on the information. On a motion made by Secretary Smith and seconded by Board Member Washington, the Board voted unanimously to accept amendments to Rule 35.34 with additional amendments as discussed during this item.

Agenda Item VII: Discussion and possible action regarding proposed amendments to Rule 35.61, relating to manager requirements and nature of written examination.

Steve Moninger introduced this item to the Board. He stated that amendments to this rule reflect requests from the regulated profession for enhancement of the experience and eligibility requirements for company managers. In subsection (e) of the rule, the passing grade would be at the Bureau Manager's discretion. Also, the change in the Managers test would make the questions more relevant to managing of companies and less specific questions that may not be relevant to that particular company.

Board member Warren stated that he had concern regarding the Bureau Manager being able to determine the passing grade. Steve Moninger stated that the intent was to not limit the Bureau, in light of the changes to the test. Vice-Chairman Johnsen asked who evaluated the tests. Reggie Andrews, Bureau Licensing Supervisor stated that they were evaluated by licensing section Bureau employees. Vice-Chairman Johnsen then asked if the employees had enough knowledge regarding specific areas to grade these tests. Assistant Chief Fulmer stated that the exams are geared to management, specifically statute and rules. The Bureau is currently wanting to take out what is not relevant to their regulated companies, and trying to make it more specific to management of companies. She also stated that it was an open-book, multiple choice test. Board member Washington stated that she did not understand why there was no standard of passing. Steve Moninger stated that the Bureau wanted to see how the new test goes. Rules are difficult to change so the Bureau wants to be able to set the standard with the Bureau Manager's discretion. Board member Washington further asked if 20 people are testing and only 5 pass, will the Bureau adjust the grades to reflect more people passing. Steve Moninger stated that with the test being newly revised, the Bureau wanted a little room to adjust as needed when it is noted how the new test goes. He further stated that the 75% passing rate is based on a 200 question exam. With the new exam of 120 questions, the passing rate might need to be changed accordingly. Captain Bowie went on to explain that the exam has been made more specific to management. It has also been shortened, but is still an open book test.

Board member Crenshaw asked why the age for managers was changed from 18 to 21 with 3 years experience, rather than 2 years. Chairman Chism stated that these changes were put forth by members of the industry. He then asked if anyone from the industry had interest in speaking on the subject.

Chris Russell addressed the Board. He passed out a copy of Transmitter (A publication of TBFAA) to each Board member and asked them to refer to page 14. He stated that this page outlined TBFAA's objection to the proposed rule changes. He went on to state that TBFAA spent a lot of time discussing the proposed changes. He stated that they (TBFAA) strongly opposed these changes, mainly because it was thought that these changes would make things a lot harder to become a manager and do not serve the consumers of the state of Texas. He further stated that the newsletter could be viewed online at tbfaa.org.

Next to address the Board was Bonnie Morris. She stated that she too had several concerns. First, how was a person to obtain 1 year experience as manager and be a start up company? Her second concern was why is there no set minimum of passing on the manager's exam. The person taking the exam has a right to know what is expected of them to pass and should not pass based on a curve. A third concern that she stated was with subsection (h) of the rule. She stated that she felt it should state "at the discretion of the Bureau Manager", not just Manager. She also stated that there should be a maximum amount of time noted as well, so that testers know how much time they have. Assistant Chief Fulmer stated that there is a time limit, and that examiners are notified in advance of the time limit. She further stated that the reason it is not set by Rule is that if changes are needed, it would take quite a while to make the changes to the time limit.

Joe Koontz was the next person to address the Board. He stated that if everybody misses a certain question, that question should be taken out of the exam. He also stated that the first passing rate was 41% and if there was not a set rate of passing, this could change. He felt that it would be unwise to have a floating rate of passing.

Walt Roberts, with ASSIST, addressed the Board next. He stated that their organization supported the changes. He stated that part of the change in experience was to have a manager with knowledge of paperwork and how the Bureau works. He further pointed out that if an individual were a manager of an armed guard company, that person would have to be 21 in order to buy a gun, and should therefore be 21 in order to operate the company as well. He went on to say that a lot of work requires security personnel to protect facilities with critical infrastructures. He further stated that this requires experienced security persons to oversee and manage those guards and that is a part of management experience you can't get at only 18 years of age.

C D Lipscomb also addressed the Board. He stated that his organization supported nearly all of these changes. He stated that since the managers exam was written, there are several companies coming in; different types of companies. He stated that he himself did not know how much a guard dog is to be fed, for example. He asked why those questions are on the test, and stated that he would much rather be tested on things that directly affect his company. He further stated that he had full confidence in the Bureau Manager's ability and gives him flexibility in such matters.

John Arnold was next to address the Board. He stated that 75% passing is weak. If there is a problem with more people not being able to pass, the test should be looked at not the passing rate. He further stated that TLA opposed the need for the increase in manager experience. He stated that it was impossible to get 1 year experience before opening a company. He suggested separating the rule from Security companies and the other companies. He stated that two separate rules might solve the problem.

Michael Samulin was next to address the Board. He stated that he also had some concerns regarding this rule. He stated that age had no factor in knowing the statute and it didn't matter how long a manager was in the industry as long as he had a knowledge of §1702. He also stated that many companies have a business person who handles the managing of the company and has nothing to do with the day to day operation. He further stated that one suggestion was to have a new rule regarding parts A & B of the rule and pass parts C through H.

Chairman Chism stated that the rule appeared to be saying that managerial or supervisory experience could be obtained outside of the industry. Assistant Chief Fulmer agreed with his interpretation and further stated that the Bureau would enforce whatever the Board decided with this rule. Steve Moninger stated that one possible suggestion for this rule would be to table subsections (a) & (b) and draft a new rule on this later. Then the Board could pass subsections (c) through (h). Secretary Smith stated that it was a difficult problem if different industries wanted to make up the difference and increase the professionalism of the industry as a whole. He further stated that he thought these changes were approved by the industry. Chairman Chism stated that a year ago a group of different industries were put together on this issue. This proposal was a compilation of recommendations that they furnished to the Board. He further stated that these changes were what the industry requested.

Rodney Hooker addressed the Board. He stated that the proposal was not proposed by TBFAA. He stated that there may need to be a separate rule for different companies in regards to age requirements and testing requirements. He also suggested that another committee be put together to look at the issue.

Keith Oakley was next to address the Board. He stated that his organization would be happy to agree to amendments that would reflect subsection (a) as "all applicants for registration as manager of a guard company" and subsection (b) as "all applicants for registration as manager of a guard company".

Assistant Chief Fulmer stated that there were currently two suggestions for having the subsections (a) & (b) refer to guard companies and subsections (c) through (h) refer to all companies. She also stated that the passing rate of 75% in subsection (d) could also be changed. Board Member Warren stated that it could be left as "determined by the Bureau Manager". Board Member Washington asked if the test was too difficult and too many people failed, would the Bureau bring the passing rate down. Mr. Moninger stated that the intention was to be able to change the test. Board Member Washington stated that it should be a set standard and those taking the examination should know what the passing

rate is ahead of time. Assistant Chief Fulmer stated that subsection (d) could be changed to state, "Bureau Manager will post passing score ahead of examination".

On a motion made by Board Member Warren and seconded by Board Member Crenshaw, the Board voted unanimously to table subsections (a) & (b) of Rule 35.61 and accept subsections (c) through (h) as written with the understanding that the Bureau would post or otherwise inform the applicants of the passing score prior to taking the exam. On a second motion made by Secretary Smith and seconded by Board Member Crenshaw, the Board voted unanimously to accept subsections (a) & (b) of Rule 35.61 with reference to guard companies only.

Agenda Item VIII: Discussion and possible action regarding proposed Rule 35.78, relating to required evidence of insurance.

Steve Moninger presented this agenda item to the Board. He stated that this new rule was intended to clarify the statutory requirements for proof of insurance for licensees and to facilitate enforcement. He further stated that staff spends an inordinate amount of time going back and forth with insurance agents and this rule would clarify the insurance coverage documentation requirements. At this time, Chairman Chism asked for any public input on this item.

Michael Samulin addressed the Board. He stated that he didn't feel insurance agents had any way of knowing if the insurance is applicable to the conduct for which the licensee is licensed. He stated that if a standard ACCORD form would be acceptable, then that would be fine. He further stated that he was concerned that the Bureau was asking for a lot of detail that insurance agents do not know.

Donna Sheare was the next to address the Board. She stated that a form on the Private Security Bureau website indicates the business and coverage levels. She further stated that the insurance agent had to check off and attest to minimum limits of coverage. She further stated that, in her opinion, the rule didn't need changing.

On a motion made by Board Member Crenshaw and seconded by Secretary Smith, the Board voted unanimously to accept the amendments to Rule 35.78 as written.

Agenda Item IX: Discussion and possible action regarding proposed Rule 35.97, relating to requirement of responsive pleading in contested cases at State office of Administrative Hearings.

Steve Moninger presented this item to the Board. He stated that the Department of Public Safety has a similar rule in place that he tailored to the Board's requirements. He also stated that in contested cases the Bureau files with SOAH (State Office of Administrative Hearings), the respondent must file and make a formal appearance in response. The reason behind this rule is to facilitate obtaining a default judgment. Assistant Chief Fulmer went on to say that currently SOAH cannot give the Bureau a default judgment. She stated that

SOAH makes a recommendation and it comes before the Board for a vote. on the default judgment for cases in which the person hasn't ever showed up and the proposed rule would allow them to simply issue a default judgement. On a motion made by Vice-Chairman Johnsen and seconded by Secretary Smith, the Board voted unanimously to accept Rule 35.97 as written.

Agenda Item X: Discussion and possible action regarding proposed amendments to Rule 35.143, relating to drug testing requirements for Commissioned Security Officers.

Secretary Smith presented this item to the Board. He stated that the committee met to come up with a standard that is in line with what is done in the state of Texas. He further stated that the best idea they came up with was to adopt the Texas Workforce Commission's policy on a drug-free workplace. This policy states that the company is striving to have a drug free work environment. He went on to say that what the committee liked best is that it is simple and to the point as well as backed by another state agency. Chairman Chism stated that at this time, only commissioned security guards are required to submit to testing and expected to be drug-free. He further asked if this rule were adopted, would it mean that all companies and employees would have to comply with it. Secretary Smith stated that his statement was correct. Chairman Chism asked if there were any public comments on this agenda item.

Michael Samulin spoke first to the Board. He stated that he had a concern with the wording of "consistent with the Texas Workforce Commission's Drug-Free Workplace Policy". Mr. Samulin asked if a company's policy is not exactly what the Texas Workforce Commission's policy is, would the company be in violation of the Rule and have a citation issued. Vice-Chairman Johnsen stated that as long as a policy is in place, the company would be in compliance. He went on to say that the intent of this rule was to provide a drug-free workplace and to have proof that you informed your employees that you have a drug-free workplace policy. He stated that the companies determine what that policy will be.

Joe Koontz addressed the Board next. He stated that the problem he foresaw with this rule was requiring employees to sign the notice and terminating those who didn't comply. He also stated that it would be difficult to have two different rules in effect. Any employee hired up until this time having to submit to drug screening, while those hired after the adoption of the rule not having to submit to drug screening. Vice-Chairman Johnsen stated that this rule had nothing to do with testing of employees. He stated that this rule was only speaking to providing a drug-free workplace and employee acknowledgment of the drug-free workplace. He also stated that the committee wanted to simplify this rule on drug-testing and put the specifics of the policies on the companies. He stated that it was the individual companies' decision whether or not to perform drug-screening of their employees. He stated that what this rule was asking for is that companies have proof that they informed their employees that they have an expectation of a drug-free workplace.

Randy Kildow was the next person to address the Board. He stated that there are many one or two man shops around. He stated that it would be those people making the policy and signing them. He further stated that it would be the owners keeping their own drug-free policy files. Vice-Chairman Johnsen stated that all companies would comply with this rule regardless of their size. The committee's interest was in making it broad enough to encompass all companies.

On a motion made by Secretary Smith and seconded by Board Member Washington, the Board voted unanimously to accept amendments to Rule 35.143 as written.

Agenda Item XI: Discussion and possible action regarding proposed repeal of Rules 35.221 & 35.222, relating to general and limited reciprocity.

Steve Moninger presented this item to the Board. He stated that the statutory provisions on which these rules rely provide for discretion on the part of the Board. He further stated that staff recommends that the rules be repealed until such time as the Board chooses to pursue such reciprocity agreements. Chairman Chism stated that the subject of reciprocity was brought before the governor several years ago and they were informed, at that time, that any reciprocity agreement must be signed by the governor. He further stated that the Board did not have the power to grant reciprocity to another state.

George Craig addressed the Board to say that he was present during the meeting in which these rules of reciprocity were passed. He stated they were visited by the Director of the Oklahoma Licensing Bureau and the Board felt no problem with reciprocity at that time and passed the Rules.

On a motion made by Board Member Crenshaw and seconded by Secretary Smith, the Board voted unanimously to repeal Rules 35.221 & 35.222.

Agenda Item XII: Discussion and possible action regarding proposed amendments to Rule 35.257, relating to exemption from Level III training courses for honorably retired peace officers.

Captain Bowie presented this item to the Board. He stated that the proposed amendments to this rule would give current retired peace officers a chance to "Clep-out" of the Level III examinations with proper documentation. Vice-Chairman Johnsen asked if there was to be a time limit on when the person retired. He asked if an individual being retired 20 years would still qualify. Captain Bowie stated that the person would have to be retired within 2 years and an honorably retired Texas peace officer; not out of state. Assistant Chief Fulmer stated that the reason they must be retired within 2 years, was because their TCLEOSE training would still be valid. On a motion made by Secretary Smith and seconded by Board Member Warren, the Board voted unanimously to approve the amendments to Rule 35.257 as written.

Agenda Item XIII: Discussion and possible action regarding proposed amendments to Rule 35.311, relating to installation of locksets and exemption from licensure as locksmith.

Steve Moninger presented this item to the Board. He stated that the addition of subsection (b) is intended to clarify those individuals, such as carpenters, who merely place a customer-purchased lockset into a door as an incidental part of other carpentry services, do not need to be licensed. He further stated that this addition would allow homeowners to hire handymen to install locksets, without them being licensed, as long as no re-keying was taking place. Vice-Chairman Johnsen asked what prevented him from taking it to Home Depot and having them re-key it. Mr. Moninger stated that Home Depot and hardware stores generally are exempt under the statute. He explained that the issue was raised by the Comptroller's office, which asked whether such services were regulated for the purpose of determining whether sales tax was due. Mr. Moninger gave the further example of a safe being installed in a house. He stated that if the person making the hole and placing the safe in the hole need not be a licensed locksmith then the mere physical installation of a lock should not require licensure as a locksmith. Vice-Chairman Johnsen stated that the issue should be tabled and looked into further. He also stated that if a contractor is doing work indirectly through a third party, he probably should have a license. On a motion made by Vice-Chairman Johnsen and seconded by Board Member Crenshaw, the Board unanimously voted to table discussion of amendments to Rule 35.311 until the next Board meeting.

Agenda Item XIV: Discussion and possible action regarding proposed Rule 35.321, relating to types of entities required to be licensed as investigations companies under Occupations Code, 1702.104.

Assistant Chief Fulmer presented this item to the Board. She cautioned the audience that this rule involves issues very similar to issues in a lawsuit that has been filed regarding the Board. She stated that the Board was represented by the Attorney General's office and did not intend to discuss the lawsuit. She further stated that the Board could not answer any question about the lawsuit as it is a pending matter. She stated to the Board that it seemed clear to the Bureau that Section 1702.104 did not apply to persons who are merely performing computer repair and that in the Bureau's opinion the addition of subsection (b) to Section 1702.104 did nothing to change that section or to cause it to apply to computer repair technicians. She further stated, and Captain Bowie affirmed, that at no time had the Bureau taken enforcement action under the Private Security Act against computer repair technicians and that they had no intention of doing so in the future under the statute as it is currently written. She told the Board that the Bureau had been asked to submit some proposed rule language to reduce this enforcement policy to writing. Chairman Chism asked if there were any who wished to comment on this item.

Michael Samulin addressed the Board. He stated that on July 22nd, he and Mr. Craig had the opportunity to meet with several people who would be affected by this proposed rule as well as some of the people who were players in HB 2833. He went on to say that some of the representatives assembled for this meeting were with the Retail Trade Association, Dell, Hewitt Packard, TALI, ASSIST, TBFAA, Department of Information Resources, and

Chairman Driver's office. He also stated that they were asked to meet and work on a proposed rule to clarify this issue further at the request of Representative Driver. He then read the proposed rule that the group drafted as: "(a) Information obtained through the review and analysis of the content of computer-based data with the intent to use such data as evidence in a criminal or civil hearing must be obtained and furnished by an investigations company license under the Act or by an individual exempted from licensure under §1702.323 (a) of the Act. (b) The repair or maintenance of a computer does not require licensing under the Act, even if during the course of the repair or maintenance the person discovers information described by §1702.104 (a) (1)." He went on to say that the theory is that a person who repairs computers sometimes discovers something while doing the repair. If the discovery is something as egregious as child pornography they would need to report that to Law Enforcement. If they were to discover something that might be used at some point in litigation, they need to take that to a licensed investigator who can handle that and knows the chain of custody for evidence. He further stated that if they are simply putting on Norton Anti-Virus, or something of that nature, then a license is not needed. He stated that simply put, if intention is find evidence to enter into litigation then a license is needed, if no litigation is intended, and then no license is needed. He also stated that everyone in attendance at the July 22nd meeting was in unanimous agreement with the language. He went on to say that what they were seeking of the Board was for them to put forth a policy that would adopt this language. He further stated that the intention of the people involved in HB 2833 last legislative session was to be inclusive of the industry group and that they would work to add this type of language into an omnibus bill to be presented to the legislature this coming session so that this issue could be cleared up in chapter 1702 once and for all.

Secretary Smith asked if the Bureau had an issue with the language of the rule that Mr. Samulin and Mr. Craig passed out to the Board. Assistant Chief Fulmer stated that the language is consistent with the current policy of the Bureau regarding computer repair technicians. Vice-Chairman Johnsen stated that to his knowledge the Bureau had never enforced the statute against any computer repair company. He also stated that it was not the Board's intent to do anything differently until the legislature meets, and certainly they would not expect the Bureau to take enforcement action against any computer repair company at this time. Assistant Chief Fulmer stated that she was in agreement with Vice-Chairman Johnsen's statement and reiterated that as the statute is currently written, the Bureau did not believe it had authority to enforce the statute against any company doing purely computer repair. Board member Crenshaw stated that perhaps the Board should take time to look at the rule proposals and gain their legal staff's consultation on the matter especially in light of pending issues.

George Craig asked to address the Board. He stated that the sole purpose of their draft of proposed Rule 35.321 was to give Representative Driver's office some relief from the hundreds of phone calls that they are receiving on this issue. He further asked the Board to take a look at the proposed rule and if they agreed with the Bureau's current policy, then it could be put forth to the public and the people who are incessantly calling Representative Driver's office. He also stated that he didn't think the Bureau staff had any issues with the language of their draft. Assistant Chief Fulmer stated that their draft of Rule 35.321 was in

agreement with the Bureau's current enforcement policy regarding individuals doing computer repair. Chairman Chism stated his belief that the proposed rule that the industry drafted reflects the current policy and that the Board would continue with that policy until the next legislative session.

Michael Samulin addressed the Board again asking the Board if it would direct Bureau staff to put the policy in writing for the benefit of Representative Driver's office. He stated that the Press had done such a great job distorting this issue that the Board should put out something tangible to the citizens of Texas letting them know that they don't need to worry about an investigator coming in and issuing them a big ticket or arresting them for performing a regulated service without a license.

Chairman Chism stated that there were two proposed rules before the Board; one was drafted by Bureau staff and the other was drafted by members of the industry. He further stated that the Board should take the time to evaluate each of the proposed rules thoroughly before making a decision to ensure that they chose what would be best for the citizens of Texas and not be an undue burden on the industry. He recommended that the issue be tabled at this time for further study by the Board and its legal staff.

Secretary Smith asked Captain Bowie if it would be possible for the Bureau to put the policy in writing for Chairman Driver's office. Captain Bowie responded that the Bureau could certainly put the policy in writing, but it is state statute, and the policy would not bind any other law enforcement agency in the state. He further stated that it would be a departmental policy and guide on which Department of Public Safety personnel would operate. Again, he stated that if it would help Chairman Driver's office the Bureau would be happy to put its current enforcement policy in writing and post it for public view. Assistant Chief Fulmer stated that at this point the policy had probably been printed in every newspaper in Texas, and could probably be copied and posted. She went on to say that they were in a public meeting in which the minutes of the meeting were open to view by the public, and if it were the will of the Board to direct the Bureau and Bureau staff that the current enforcement policy is in keeping with the Board's opinion of the statute and wish the Bureau to continue with the current policy, that information would be reflected in the minutes of the meeting and would be made public.

On a motion made by Vice-Chairman Johnsen and seconded by Board member Crenshaw, the Board voted unanimously to table discussion of Rule 35.321 until the next meeting of the Private Security Board. Chairman Chism also requested that the information be posted on the Department's website regarding the Board's decision that the proposed rules discussed during the meeting are in keeping with the Bureau's basic policy in regard to computer repair companies. Vice-chairman Johnsen further stated that the Board finds no reason for enforcement action to be taken and has no intention of changing that especially before the next legislature has a chance to conference. Mr. Craig addressed the Board and asked that the language of their drafting of the rule be used. Vice-Chairman Johnsen stated that the Bureau could use it as a guideline.

Agenda Item XV: Discussion and possible action regarding Alarm Company Sales Issues.

Board Member Crenshaw spoke to the Board on this issue. He stated that there had been several complaints coming in regarding unlicensed activity as Alarm Company Sales. He then asked Rodney Hooker with TBFAA to address the Board on this issue.

Rodney Hooker addressed the Board and stated that at the beginning of the summer they had seen a rash of unlicensed activities in San Antonio, Houston, Dallas, Fort Worth, Austin, and even as far down as Laredo. He stated that what they found was that a lot of out of state companies have been coming in, who are not even licensed in their own states. He stated that they are using college-aged kids who are Canadian citizens and here on work visas. He further stated that violations include non-licensed activity of sales, non-licensed installation, and interference with contracts with existing alarm customers. He stated that the agents were targeting those customers with yard signs or stickers in their windows so they didn't have to do a true alarm installation and can put equipment in to replace existing equipment. He stated that they are also telling customers that they do not need alarm permits either. He further stated that he intended to address this issue in the legislature, and that there needed to be a tightening of the statute and rules to prohibit or discourage this type of activity. He went on to say that they were very pleased with the response of DPS to this problem. He stated that the level of tenacity of investigators going after these people has been wonderful. He further stated that he had great concern of consumer complaints to the Attorney General's office and then having them come down on the industry during legislative session; especially since most of this activity is coming from out of state companies. Vice-Chairman Johnsen asked if there were any laws saying that you can't monitor unlicensed systems. Mr. Hooker responded that there were laws stating such. He went on to say that there were news reports on all of the unlicensed company activity going on. He stated that Captain Bowie may want to add to the discussion of this issue. Captain Bowie stated that he did have comments, but would like to present them to the Board during the Bureau Report later in the meeting under Agenda Item XVIII.

Agenda Item XVI: Discussion regarding interpretation of 1702.322 (Herbert Isham with Gladius Inc.)

Herbert Isham, with Gladius Inc. addressed the Board on this issue. He stated that he was a former police officer and lawyer and was now manager of Gladius Inc. He stated that he had received a visit from two DPS troopers saying that the Bureau had received a complaint that his company was employing peace officers and not registering them. He further stated that he was using full time police officers that met all of the requirements for exemptions, but was told that unless they were paid directly by the individual receiving the services, they must be registered and were not exempt. He went on to say that one thing that troubled him was the form that is used and signed when registering someone, which states, "I'm requesting that the above applicant be issued registration with my company as my employee". He stated that as a manager if he were to say someone is an employee that would be an outrageous cost with taxes, etc. He further stated that he had done extensive research and couldn't find anything in writing in regard to this issue.

He said that he did find two Board opinions on the website that analyzed exemptions but they did not talk about being paid directly by the person receiving the services. He went on to say that police officers have more training than required by the rules and should be entitled to exemption. Vice-Chairman Johnsen asked if the people he had working were independent contractors and whether or not they make the decision to take a job. Mr. Isham stated that they were independent contractors and did make that decision. He went on to ask the Board to look at this issue and give direction.

Chairman Chism asked Mr. Moninger where in §1702 the rule on exemptions began. Mr. Moninger stated that in §1702.322 (1) (A) the language at issue is that an officer be employed in an employee-employer relationship or on an individual contractual basis. He further stated the Board and Bureau had historically interpreted this to mean a police officer must be directly employed by person receiving the services and not through a company. He went on to say that when he spoke with Mr. Isham several months ago, he had not had the opportunity to research this issue. He further stated that upon doing so, he found that there was actually an Attorney General opinion issued in 1994 regarding this same issue. He stated that a question was put forth by Ms. Clema Sanders, Director of the Board at that time, and asked whether full-time peace officers work as a private patrolman, guard, or watchman from the requirements of the Act when the entity receiving the private services is not directly employing the peace officer. He went on to say that the Attorney General reviewed the statute and Legislative history and concluded that the Legislature's intent was that the provision in question exempts from the Act, only persons who are employed as an employee or independent contractor directly with the recipient, for the individual rendering of security services.

Vice-Chairman Johnsen stated that it was the Board's opinion that peace officers can work if paid directly by club or such company receiving the services. He stated that they could not be both a contractor and be employed by a security company. Chairman Chism stated that the situation needed to be addressed legislatively. He went on to say that the interpretation that the Board had from the Attorney General had been practiced in the state for years under this interpretation. Mr. Isham stated finally that he had looked at the Attorney General's opinion previously and had felt that the example did not address this issue specifically. He further stated that he would take up this issue again at a later time.

Agenda Item XVII: Executive Session as authorized under §551.071.

This agenda item was taken earlier in the meeting.

Agenda Item XVIII: Report from Private Security Bureau.

Reggie Andrews, Bureau Licensing Supervisor addressed the Board. He stated that the following statistics were for the 3rd quarter 03/06/08 to 07/21/08. 185 original company applications had been received. 1,832 company renewal applications had been received. 14,322 original individual applications had been received. 10,028 individual renewal applications had been received. 283 original company licenses had been issued, while 1,787 company renewals had been issued. 14,070 original individual registrations had been issued, while 10,557 individual renewals had been issued.

He further stated that at the time of this meeting there were 4,926 active company licenses, 192 active school licenses, and 112,992 individual registrations.

On another issue, he stated that there had been several complaints regarding calls to the Bureau not being answered. He stated that due to unusual industry growth as well as shortage of staff there had been issues of this nature. He went on to say that these issues had been dealt with including upgrading the phone system to handle these calls. He stated that with the new phone system there was a new message regarding the high volume of calls currently coming into the Bureau and provides music while the caller is waiting rather than a "dead" line. He went on to say that he also now has the ability to monitor the phone calls each employee is handling via his computer. He also stated that even though some callers may have to leave a message, all messages were returned. Captain Bowie went on to elaborate on this subject by saying that it was amazing how many calls the employees handle on a daily basis. He stated that it was evident that we do need additional help in this area. Furthermore, he stated that if callers continued to have trouble getting through, they may wish to contact their trade association representative for assistance.

Captain Bowie went on to introduce Lieutenant Jim Morgan from Criminal Intelligence Service in Hurst. Lieutenant Morgan stated that he looked forward to meeting each of the Board members and was enthusiastic in taking the position of Lieutenant and Supervisor of Investigations as well as learning this industry better.

Captain Bowie presented the Board with the investigation section's statistics for the 3rd quarter 03/01/08 to 07/22/08. He stated that the number of violations investigated by investigators during this period was 2,046. He also stated that the number of cases opened during this period for operating with an expired license was 51 cases. Cases opened during this period for operating with a suspended license were 573 cases. Cases opened during this period for operating without a license were 249 cases. Of these cases, 122 were presented to prosecutors as criminal cases.

Captain Bowie went on to discuss the unlicensed activity in the alarm industry. He asked Board Member Crenshaw if there were specifics about the unlicensed activity that he wished him to cover. Board Member Crenshaw stated that he wanted to pursue into the future, enforcement of new rules or handling of things legislatively to combat some of the unlicensed sales tactics taking place. He stated that he would like to see the Bureau and the Board explore ideas that may help with enforcement of these rules. Captain Bowie stated that Mr. Hooker had spoken earlier about some of the unlicensed activity going on around the state and he wished to add that a total of 78 people in Houston had been arrested due to unlicensed alarm sales and activity. He went on to say that he felt he had failed the Board in keeping them up to date regarding unlicensed enforcement activities. He stated that during the Board meetings, they are presented with a lot of statistics, facts and figures, but are not presented with the information behind some of the numbers. He went on to say that the Board was aware of the El Paso operation regarding unlicensed locksmith activity, but may not have heard of the Houston operation. He stated that the Supervisor in Houston did a similar type sting operation and arrested some unlicensed locksmiths. He also stated that in Mission and McAllen a similar operation occurred

which resulted in arrests as well; one being the arrest of a registered sex offender. He then spoke of another operation in Dallas that netted the arrest of 44 illegal immigrants operating as security guards. He further stated that in the future he intended to keep the Board up to date with this type of information.

Secretary Smith asked if in the statistics the Captain presented, did the 122 cases presented to prosecutors all relate to unlicensed activity. Captain Bowie answered that some were unlicensed activity cases.

Chairman Chism called for a 10 minute recess of the meeting at 12:40 pm.

Chairman Chism called the meeting back into order at 12:55 pm.

Agenda Item XIX: Public Comment

Bob Burt, with ASSIST, addressed the Board by stating that Captain Bowie had spoken already regarding some of their concerns. He went on to say that the other concern that they have is with online registration. Right now, an individual can go online and register himself with a company and what should happen is they should submit the paperwork to the manager who will approve or disapprove it, do a background check and then submit the paperwork to the Bureau. He stated that with the volume of registrants if someone wanted to be an alarm salesperson they could register themselves as a salesperson regardless of the wishes of the company. He also stated that the really big concern is that it is going to be hard to keep the really bad guys out, such as terrorists. He went on to say that it would take time and money, but ASSIST would be happy to help with the process. Also, he stated that having one card is a burden. If an individual works for more than one company, where does the renewal for that go?

Secretary Smith stated that an individual going online to register themselves with a company is a serious problem. He asked Chairman Chism for this issue to be put on the next agenda to be discussed. Chairman Chism asked if there were some type of code that a company would have to enter that would block individuals from going in and registering themselves. Assistant Chief Fulmer stated that there were a couple safeguards already in place. One safeguard is that the company number is required as well as further paperwork that must be submitted by the company beyond just the registration. She further stated that the paperwork had to be signed by a representative of the company. Chairman Chism stated that it was possible for an individual to forge a signature. He further stated that in the past year the Board had discussed companies using a code. He asked why that same thing couldn't be used to block employees from registering themselves. Assistant Chief Fulmer stated that the Bureau currently had an application that is a template application which is used by 50 or 60 other agencies and that the Bureau is required to use by the state unless funding for a custom system is used. She further stated that at this time, the Bureau is using pieces of a template and there is not a way for the Bureau to add additional codes at this time. Vice-Chairman Johnsen asked when a person applies for an individual

license, does a document get produced automatically. He also asked if anyone checked to be sure that that individual is employed by that company. He asked if a code or authorization number could be used, one that is randomly assigned to each company and must be included with the application. He went on to say that eventually it could be done electronically. He further stated that this was a serious enough issue that it shouldn't wait for additional funding from the Legislature. Captain Bowie stated that he was in complete agreement with the Vice-Chairman on this issue but wanted to remind him that this solution would put the burden back on the managers to ensure that the paperwork is completed correctly. Any paperwork that is incorrect would get kicked back and therefore create a lag time in getting employees registered. Vice-Chairman Johnsen stated that this was an issue that would have to be seriously looked at and solutions come up with for both a quick fix as well as a long term solution.

Joe Koontz, with Forensic and Security Services, Inc. was next to address the Board. He stated that the Board needed to look at eliminating Social Security Numbers off of license cards. He also stated that forensic examiners needed to be pre-licensed and ready to be called for investigations. He stated that computer forensics is becoming a larger part of the Private Security scene and there needs to be specific language added to the rules that lets computer repair companies know that if they do perform investigations without licensing they will be prosecuted. He also stated that a blanket statement saying that the PSB would not prosecute computer repair companies is not the way to go because there are those companies out there who are doing investigative work. He also stated that he has two classes on §1702 coming along and will be ready to hold those classes soon.

C.D. Lipscomb, with Navco Safe and Lock Co. addressed the Board. He stated that he would like to see the Board reverse its ruling regarding not licensing individuals or companies that open cars. He stated that he had recently been part of a group including LOA and Attorney Generals Association in trying to establish some numbers as to the amount of money being taken from the citizens of this country by scammers. He stated that based on advertising, the low end estimate was \$53,000,000 and the high end was estimated at \$200,000,000 being taken from citizens nationally in a year when you take into account the abuses of the telephone and yellow pages. He also stated that scammers were being allowed to exist in this State because the Board does not regulate car opening. He further stated that at one time they were included in the definitions of the industry but that was changed about two years ago. He further stated that he would like to see the Board revisit this issue. He also stated that he felt that the Private Security Bureau pocket cards were not professional enough and he would like to see them upgraded to something professional.

John Arnold, with TLA was next to address the Board. He stated his congratulations to Captain Bowie on becoming the Captain and Manager of the Bureau. He went on to state that they have been receiving a lot of calls regarding the New York group again. He stated that a person could go onto Google to find a company and this group will have your name and license number but with their phone number. He further stated that they get called out to do work, rip the people off and then their companies are the ones getting the complaints

when they were never the ones to go out and do the work. He stated that he was unsure of what could be done to catch these people but perhaps having them regulated as well would help. He also stated that he has people who have to carry multiple pocket cards; one for access control and one for locksmith. He stated that it would be nice to have one card with both licenses on it. Vice-Chairman Johnsen stated to Assistant Chief Fulmer that perhaps this is something that is in the works. She stated that it was in the Sunset Commission Report as well and it was their recommendation that any legislative changes that need to happen in order to carry multiple endorsements on one card go through. She further stated that it is the Bureau's hope that these changes do happen during the next Legislative session.

Agenda Item XX: Administrative Hearings

A. Proposals for Decision:

Steve Moninger, Attorney, presented all PFD cases to the Board.

Javier Smith- Docket No. 024452007

Mr. Smith was not present to address the Board in this case, nor did he have counsel in attendance. Mr. Moninger, attorney for the Bureau, stated that based on Mr. Smith's 2003 charges for desertion the Bureau was seeking to suspend the commission and non-commission registration of Mr. Smith. He asked the Board to uphold the SOAH proposal to dismiss this case on the basis of a lack of jurisdiction.

Vice-Chairman Johnsen made a motion to affirm the SOAH proposal to dismiss Mr. Smith's case based on a lack of jurisdiction and to suspend his commission and non-commissioned registration. Secretary Smith seconded the motion, and the Board voted unanimously in favor of affirming SOAH's proposal.

Monique Riles- Docket No. 024622007

Ms. Riles was not present to address the Board on this case. She was, however, represented by George Korbel, attorney with Texas Rio Grande Legal Aide, who did elect to address the Board on her behalf. Mr. Moninger addressed the Board on this case as well. He stated that Ms. Riles was denied based on a felony conviction from Louisiana; that the conviction remains disqualifying under Texas law. He stated that even under Louisiana law, Ms. Riles would be denied licensure by the state of Louisiana. He also stated that it remained a conviction regardless of the completion of probation. Mr. Korbel stated that there was no credible evidence that there was ever a conviction. He stated that he called the clerk's office in New Orleans and was told that there is no file on Ms. Riles regarding this conviction. He further stated that in Texas, after a person completes probationary period, the charge would be dismissed. He stated that in Louisiana, after a person completes their probationary period, they are acquitted. He stated that even if she were convicted of this crime, of which there is no evidence that she was, she would have been acquitted now anyway. He stated that he felt she should be granted her license based on her acquittal and a lack of proof that she was ever convicted.

Secretary Smith made a motion to uphold SOAH's proposal and grant Ms. Riles' registration as a non-commissioned security officer based on the question over whether she

actually had a conviction in Louisiana. Vice-Chairman Johnsen seconded the motion, and the Board voted unanimously in favor of affirming SOAH's proposal.

Dion Drake- Docket No. 024762007

Mr. Drake was present to address the Board on this case. He was not represented by counsel. Mr. Moninger stated that the Bureau was seeking to revoke Mr. Drake's registration as an Alarm Installer based on a Class B misdemeanor offense of harassment. He further stated that the Bureau was asking that the Board reject SOAH's proposal to not revoke Mr. Drake's registration. Mr. Drake addressed the Board and stated that this charge stemmed from trouble he was having with his ex-wife. He stated that she had a restraining order against him and he violated that order. Vice-Chairman Johnsen asked why he felt that he should get his license back. He responded that he was not a danger to the public, that he liked alarm work, was good at it and has been doing this work for 19 years. Board member Warren asked if he had any other convictions. Mr. Drake responded no. Board member Warren then asked if he had any other arrests, to which Mr. Drake responded that he had 2 other arrests. He stated that one was for public intoxication and the other was because someone was threatening his life and he pulled out a knife to show him and get the person to back off.

Vice-Chairman Johnsen made a motion to reject SOAH's proposal and revoke Mr. Drake's license as an alarm installer. Board member Crenshaw seconded the motion, and the Board voted unanimously in favor of revoking Mr. Drake's license.

Lisa Broadwater- Docket No. 000062008

Ms. Broadwater was not present to address the Board on this case, nor did she have counsel in attendance. Mr. Moninger stated that the Bureau was seeking for the Board to affirm SOAH's proposal and deny Ms. Broadwater's application as an alarm system monitor based on Ms. Broadwater's pending charge in Maryland for "Possession of Controlled Substance – not Marijuana".

Vice-Chairman Johnsen made a motion to affirm SOAH's proposal and deny Ms. Broadwater's application as an alarm system monitor. Secretary Smith seconded the motion, and the Board voted unanimously in favor of affirming SOAH's proposal and denying Ms. Broadwater's application.

Steven Johnson- Docket No. 000272008

Mr. Moninger stated that this case did not need to be presented to the Board, as the Bureau had reached an agreement with Mr. Johnson.

Freddy Swain- Docket No. 003662008

Mr. Swain was present to address the Board on this case, but did not have counsel in attendance. Mr. Moninger stated that Mr. Swain has been registered as a non-commissioned officer for many years, however he did let his registration lapse. While under the 1 year grace period, when he could have sent in his renewal application, he was led to believe that he needed to send in a new application. As a result of the new fingerprint submission, the Bureau reviewed his criminal history and became aware of two felony convictions from the 1970s. Mr. Moninger further stated that it appeared that Mr. Swain had previously been before the Board and that the Board had approved his

application based on the over 20 year statute. Mr. Moninger stated that it was the Bureau's recommendation that Mr. Swain be granted his license as a non-commissioned officer, pursuant to the discretionary provision of Section 1702.3615(d). Mr. Swain addressed the Board and stated that he had met with the Board in 2005 for approval of his renewal and was granted the renewal at that time. He further stated that he had been doing this work for 16 years and would like to continue with this line of work.

Secretary Smith made a motion to approve Mr. Swain's registration as a non-commissioned security officer. Vice-Chairman Johnsen seconded the motion, and the Board voted unanimously in favor of granting Mr. Swain's license.

David Lambert- Docket No. 005592008

Mr. Lambert was not present to address the Board on this case, nor did he have counsel in attendance. Mr. Moninger stated that the Bureau was seeking that the Board deny Mr. Lambert's registration as a locksmith based on his 2002 felony conviction for aggravated assault and his 1999 class A misdemeanor conviction for criminal trespass. Mr. Moninger also asked that the Board uphold SOAH's proposal but to reject its basis, relying as it does on the application of Chapter 53.

Vice-Chairman Johnsen made a motion to deny Mr. Lambert's registration as a locksmith and to also uphold SOAH's proposal while denying their argument. Secretary Smith seconded the motion, and the Board voted unanimously to deny Mr. Lambert's registration as well as upholding SOAH's proposal while rejecting its conclusions of law that rely on Chapter 53.

Hector Garcia- Docket No. 006762008

Mr. Garcia was present to address the Board on this case, but did not have counsel in attendance. Mr. Moninger stated that the Bureau was seeking that the Board reject SOAH's proposal and deny Mr. Garcia's application for registration as a non-commissioned security officer based on his 2004 Class A misdemeanor conviction for driving while intoxicated – 2nd offense. Mr. Garcia addressed the Board and stated that he needed his license in order to make a living. He further stated that he had been doing this work for over 10 years. He also stated that he recently had his right leg amputated due to diabetes and cannot do work that requires standing. Vice-Chairman Johnsen asked Mr. Garcia what he did for work before applying for a license as a non-commissioned security officer. Mr. Garcia stated that he had done odd jobs. Vice-Chairman Johnsen stated that the law under which the Board operates states that a class A misdemeanor disqualifies an applicant for 10 years.

Vice-Chairman Johnsen made a motion to reject SOAH's proposal and deny Mr. Garcia's application for a non-commissioned security officer. Secretary Smith seconded the motion and the Board voted unanimously to reject SOAH's proposal and deny Mr. Garcia's application.

David Greiner- Docket No. 007602008

Mr. Greiner was not present to address the Board on this case, nor did he have counsel in attendance. Mr. Moninger stated that the Bureau was seeking for the Board to uphold SOAH's proposal and revoke Mr. Greiner's license based on his inability to exercise sound judgment in the proper use and storage of a handgun, and the fact that he is federally disqualified from owning or possessing a firearm.

Secretary Smith made a motion to uphold SOAH's proposal and revoke Mr. Smith's license as a commissioned security officer. Board member Crenshaw seconded the motion and the Board voted unanimously to uphold SOAH's proposal and revoke Mr. Smith's license.

B. Motion for Rehearing:

Steve Moninger, Attorney, presented all Motion for Rehearing cases to the Board.

Brian Gibb- Docket No. 024752007

Mr. Gibb was not present to address the Board on this case, but he did have counsel in attendance. Mr. Moninger stated that Mr. Gibb's application as an alarm installer had been denied based on the Class A misdemeanor of Driving While License Suspended-Enhanced. He further stated that on March 6, 2008, the Board rejected SOAH's recommendation and voted to deny Mr. Gibb's application. He stated that on April 9, 2008 Mr. Gibb served his Motion for Rehearing and on April 29, 2008, the Board issued its Order Extending Time to Rule on Motion for Rehearing. He stated that this case was now before the Board to decide whether or not to rehear the case. Chairman Chism stated to the Board that they did not have to re-hear the case, but could let their previous decision stand. The Board asked if Mr. Muse, attorney for Mr. Gibb (standing in for Mr. Bledsoe) wished to speak before the Board. Mr. Muse stated that they were asking for relief for Mr. Gibb to return to work. He stated that Mr. Gibb had a conviction of DWI and did not know that he had his license suspended. He further stated that they were asking that the Board take the ALJ's proposal into account and rehear the case.

Board member Crenshaw made the motion that Mr. Gibb be granted a 2 year provisional license with the condition that if at any time Mr. Gibb is caught driving without a license his Alarm Installer license would be revoked. Mr. Gibb is to reapply for licensure in August 2010. Secretary Smith seconded the motion and the Board voted unanimously to grant Mr. Gibb a provisional license.

C. Stays of Summary Suspension:

Steve Moninger, attorney, presented all Summary Suspension cases to the Board.

Ramiro Ramirez- Docket No. 007152008

Mr. Ramirez was present to address the Board in this case, but did not have counsel in attendance. Mr. Moninger stated that Mr. Ramirez is currently licensed as a commissioned security officer. He also stated that Mr. Ramirez' commission was summarily suspended on November 19, 2007 based on two felony indictments for tampering with government documents and a Class A misdemeanor charge of violation of the Private Security Act. He

further stated that the felony indictments were dismissed and the Class A misdemeanor charge was reduced to a Class B, and Mr. Ramirez was placed on pre-trial intervention for one year. He stated that on March 9, 2008, the Board granted Mr. Ramirez' request for a stay of the summary suspension. He further stated that the Bureau was asking that the Board rule on whether or not to continue the stay until the next Board meeting.

Vice-Chairman Johnsen made a motion to continue the stay of suspension until Mr. Ramirez' probation is successfully completed. Secretary Smith seconded the motion, and the Board voted unanimously to continue the stay of suspension until the completion of Mr. Ramirez' probationary period.

D. Review of Probationary Compliance:

Steve Moninger, Attorney, presented all Review of Probationary Compliance to the Board.

Stanley Ramos- Docket No. 010222006

Mr. Ramos was present to address the Board in this case, but did not have counsel in attendance. Mr. Moninger stated that Mr. Ramos is currently licensed as a private investigator. He also stated that Mr. Ramos' license was revoked in 2000 based on two cases involving the provision of investigation services without a license and the failure to provide a requested written report to the client. On March 9, 2006, the Board rescinded the revocation of Mr. Ramos' license, with the stipulation that he be placed on a two year probationary period. He further stated that the Bureau was seeking for the Board to rule on whether Mr. Ramos had complied with the terms of his probation, and on what action, if any, should be taken on his license. Mr. Ramos stated to the Board that he finished his probationary time and had brought his employer and owner of the company to testify on his behalf.

Secretary Smith made a motion to lift the probation on Mr. Ramos' license. Board member Washington seconded the motion, and the Board voted unanimously to lift the probation on Mr. Ramos' license

E. Remand from District Court:

Assistant Chief Fulmer stated that there was no need to hear the case of Gary Wilson, as the Bureau had settled the matter.

Agenda Item XXI: Executive session (consultation with attorney) as authorized under §551.071, if necessary.

The Board elected not to go into executive session at this time.

Agenda Item XIII: Adjournment.

Chairman Chism introduced Agenda Item XXII, Adjournment. On a motion made by Secretary Smith, and seconded by Vice-Chairman Johnsen, the Board voted unanimously to adjourn. At 3:03 p.m., the July 23, 2008 Board meeting was adjourned.

Respectfully submitted,

Mark Smith, Secretary

This is a true and correct copy of the Commission Minutes of the July 23, 2008 Meeting.

RenEarl Bowie, Captain
Private Security Bureau

STATE OF TEXAS §

COUNTY OF TRAVIS §

Subscribed and sworn to before me, a Notary Public, on this _____ day of _____, 2008.

Notary Public in and for
Travis County, Texas

My commission expires:
