

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,
APRIL 26, 2010**

**TEXAS DEPARTMENT OF PUBLIC SAFETY
6100 GUADALUPE ST. BUILDING E
CRIMINAL LAW ENFORCEMENT BUILDING
AUSTIN, TX 78752**

BOARD MEMBERS PRESENT:

Honorable John Chism, Chairman
Honorable Howard Johnsen, Vice-Chairman
Honorable Mark Smith, Secretary
Honorable Charles Crenshaw

BOARD MEMBERS NOT PRESENT:

Honorable Doris Washington
Honorable Stella Caldera

STAFF PRESENT:

RenEarl Bowie, Assistant Director, Regulatory Services Division,
Texas Department of Public Safety;
Steve Moninger, Senior Staff Attorney, Regulatory Services Division,
Texas Department of Public Safety;
Jean O'Shaw, Staff Attorney, Regulatory Services Division,
Texas Department of Public Safety;
Reggie Andrews, Program Supervisor II – Licensing and Registration Service,
Regulatory Services Division;
Adam Park, Lieutenant – Compliance and Enforcement Service, Regulatory Services
Division;
Tommy Hunt, Lieutenant- Compliance and Enforcement Service, Regulatory Services
Division;
Jo Jo Heselmeyer, Senior Manager- Licensing and Registration Service, Regulatory
Services Division;
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 video DVD on file at the Board's office.

The Board meeting was called to order at 9:02a.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.

Reggie Andrews addressed the Board and introduced new staff members to the Board. He introduced Tommy Hunt, Lieutenant, stating he and Lieutenant Park were now part of the Compliance and Enforcement Service in the Regulatory Services Division. Next, he introduced Jo Jo Heselmeyer stating she was now the Senior Manager of the Licensing and Registration Service of the Regulatory Services Division. He also stated that RenEarl Bowie was officially named as Assistant Director of the Regulatory Services Division.

Chairman Chism announced that Board member Patrick Patterson recently resigned from the Private Security Board. He went on to say that Mr. Patterson stated his resignation was due to family health issues that were to move his family out of the state.

Agenda Item I: Approval of Minutes for Board Meeting from January 26, 2010.

Chairman Chism introduced this agenda item. On a motion made by Secretary Smith and seconded by Board member Crenshaw, the Board voted unanimously to approve the Minutes for the Board meeting of January 26, 2010 as written.

Agenda Item II: Report from Private Security Bureau.

Assistant Director RenEarl Bowie was first to address the Board. He explained there were recently many changes made to the Private Security Bureau, the first of which was that it was now part of the Regulatory Services Division. He also stated Mr. Andrews was now the acting Manager and involved in the reorganization of the division. He went on to say the new organization of the division would soon be posted on the PSB website to help everyone understand the new changes. Next Mr. Bowie stated that the Private Security Investigations section had been divided into two Districts. He explained that Lieutenant Park was over the North Texas District, while Lieutenant Hunt was over the South Texas District. He went on to say Lieutenant Hunt came to the Bureau with a vast amount of experience in the Highway Patrol as a Sergeant and that the Bureau was very excited to have him as their new lieutenant. Mr. Bowie then went on to say Major Robert Burroughs, who was unable to attend the meeting, was now the Senior Manager of the Compliance and Enforcement Service as a whole, bringing with him over 25 years of service. Finally, he introduced Jo Jo Heselmeyer, who is the Senior Manager of the Licensing and Registration Service. He stated that Jo Jo came to the division from Vehicle Inspection and was now tasked with bringing together all of the division's licensing issues, including Private Security, and Concealed Handguns.

Chairman Chism asked if the Lieutenants' offices were with the rest of Private Security. Assistant Director Bowie stated their offices were located close by at the District office on Rundberg and IH-35. Secretary Smith asked if Reggie Andrews is the head of the PSB, to which Mr. Bowie stated Mr. Andrews is the interim Bureau Manager, but that the Lieutenants are over the enforcement side. Vice-Chairman Johnsen asked about an organizational chart explaining all of the recent changes happening within the Bureau. Mr. Bowie stated that the Board received an exclusive update of the organization, but the public organization chart would be posted at a later date.

Reggie Andrews presented the Licensing totals for the second quarter, 12/1/09-2/28/10. He stated, for this time period, the Bureau received 119 original company applications, 1,302 company renewals, 7,376 original individual applications, and 6,942 individual renewals not including online applications. He went on to say that for the same time period the Bureau processed the following licenses/registrations: 149 original company licenses (70 online, 79 manual), 1,276 company renewals (841 online, 435 manual), 8,099 individual registrations (1,584 online, 6,515 manual), 6,654 individual renewals (2,522 online, 4,132 manual), and 4,520 employee information updates (840 online, 3,680 manual). He also stated this time period showed 5,346 active company licenses, 204 active school licenses, and 124,211 active individual registrants. Mr. Andrews also stated that along with the changes taking place in the division there have also been legislative changes implemented as well. He stated one such change was an online continuing education program. Other changes implemented were changing individual security consultant registrations to security consultant companies and electronic access licenses being changed from class C to class B licenses.

Lieutenant Park presented the Investigation statistics to the Board. He stated there were 1,627 violations investigated for the second quarter, 12/1/09-2/28/10. He further stated there were 19 cases of operating with an expired license, 46 cases of operating with a suspended license, 72 cases of operating without a license, and 241 cases of failure to register employees. He went on to say there were 37 cases presented to prosecutors during this time period. He also stated that for the same time period there were 1,186 cases closed with no action, 57 cases resulting in administrative citations, 87 cases closed with an administrative warning, and 297 cases closed with some other type of administrative or criminal action being taken.

Secretary Smith stated that the Board routinely receives information regarding criminal arrests from Houston and other areas such as El Paso. He asked why the Board doesn't receive any arrest information from the Dallas area. Lieutenant Park stated he has made several trips to that area and there is a positive relationship between PSB and the prosecutors. He stated he would look into the inquiry. Vice-Chairman Johnsen asked if there was a way to look at violations by entities, such as guard companies versus locksmiths, etc. Lieutenant Park stated that it was something that he would investigate; violations by license type. Chairman Chism stated the Board would find this information helpful and if Lieutenant Park would provide the Board with the number of complaints by license. Vice-Chairman Johnsen stated he felt the information would help to get a handle on areas of those not abiding by the rules or help those who may not have a clear understanding of them. Lieutenant Park stated that there was already a spreadsheet that reflected some of the information the Board was seeking and agreed to get it to the Board members.

Steve Moninger was the next person to address the Board. He stated that the rules discussed at the previous meeting have been approved by the Office of General Counsel and are almost ready to be published. He went on to say that he is now waiting for the OGC to get everything in the correct form and ready for public comments. He finally stated that within a few weeks, it was possible for the rule changes to be ready for implementation.

Agenda Item III: Discussion and possible action relating to proposed amendment to Rule §35.35, “Standards of Service”, amending notice requirements for alarm system company and monitoring services.

Steve Moninger presented this item to the Board. He stated it had been pointed out to him that this is a requirement in Statute and had not been satisfied. He stated section 1702.288 requires that the Board adopt a rule which specifically addresses the situation where an alarm system company has to give notice to the recipients of its services including stickers indicating the company’s telephone number. He went on to say this had not been amended in several years and was pointed out to him by a member of the Locksmith profession.

Board member Crenshaw proposed that this rule amendment be referred to the Board’s Advisory Committee for discussion. Secretary Smith asked why it was necessary to put it in the rules if it was already a part of statute. Mr. Moninger stated that the statute states the board is to adopt a rule reflecting these requirements. He went on to say that until such time as it is put into place in the rules, it is not an enforceable statute. He further stated that subsection (e) of 1702.288 reads: “The rules shall require that notice provide to a recipient of services under Subsection (d) shall:

- (1) Be mailed to the recipient in a written form that emphasizes the required information; and
- (2) Include stickers or other materials to be affixed to an alarm system indicating the alarm systems company’s or alarm systems monitor’s new telephone number.”

Mr. Moninger stated that he did adopt the language from the statute into the version of the proposed rule before them. He also stated there is nothing to enforce statutorily until the Board has a Rule in place.

Board member Crenshaw stated he would like this rule to be looked at in the advisory committee. He asked, taking the legal standing away, should the Bureau be enforcing putting stickers on keypads and telephones. He then stated he recently saw roughly two-thirds of the open cases dismissed and felt this rule would only open things up for more cases of people turning each other in because of not getting a sticker to a customer. He stated he felt the locksmith industry should also look at this rule and give opinion on it as well. Chairman Chism pointed out that a Rule regarding this situation was required to be adopted by statute.

On a motion made by Board member Crenshaw and seconded by Secretary Smith, the Board voted unanimously to table discussion of this matter and have it discussed by the advisory committee. Chairman Chism charged the committee to have this matter ready by the next board meeting.

Vice-Chairman Johnsen asked Mr. Moninger if it were a problem for the bureau to operate without having this rule in place until a later date. Mr. Moninger stated he felt it would be fine if the adoption of the rule waited a little longer. He stated this statute and rule preceded him and there had only been one question regarding it in several years.

Agenda Item IV: Discussion and possible action relating to proposed amendment to Rule §35.93, “Penalty Range”, amending Board’s guidelines for administrative fines.

Secretary Smith stated this version of the amended rule was the work done by the advisory committee, after consulting all of the trade associations. Steve Moninger stated that the version the Board had in their meeting books was a slightly different version than he had published on the Bureau’s website. He stated that he modified the sentence: “Troopers are encouraged to use discretion in assessing fines, in light of the circumstances surrounding the case, such as the number of previous and similar violations, the length of time the individual has been licensed, the violator’s remorse, sophistication and resources, any benefit obtained from the violation, etc.” and changed it to state: “In assessing fines, Department personnel are encouraged to consider the factors provided in Section 1702.402.”. He proposed the Board use this change in language as 1702.402 already has discretionary criteria that the Troopers use when writing tickets. Secretary Smith asked to what the criteria referred. Mr. Moninger stated 1702.402 provided criteria to be considered as: 1. The seriousness of the offense, 2. The economic harm resulting to the other party or public, 3. The history of violations, 4. What is needed to deter future violations, and 5. Efforts made to correct the violation. He further stated that the new language keeps it simpler.

On a motion made by Secretary Smith and seconded by Vice-Chairman Johnsen, the Board voted unanimously to accept this rule as written and amended by Mr. Moninger.

Agenda Item V: Discussion and possible action relating to proposed amendment to Rule §35.181, “Employment Requirements”, relating to nature of regulated employment relationship and insurance coverage.

Steve Moninger presented this item to the Board, stating the current language of the statute indicated an employer could hire someone as either an employee or contract laborer who may not be covered with their company insurance. He stated this would be a violation if the employee provided a regulated service for which there was no insurance. He went on to say that this was putting the client and public at risk. He stated the modification made to the rule would make a clarification to the employment relationship such that there is insurance coverage on that employee, no matter what they may be called.

Vice-Chairman Johnsen asked if he meant they would need to be a named insurer, to which Mr. Moninger replied that he was not sure what would need to be done on a contractual level between the carrier and company, but it needed to be sure to be done in order to cover the employee. Secretary Smith stated it seemed that the rule was stating that if a person had a guard business, they would need to have guard-type insurance, if an investigations business, then investigation-type insurance. He stated that you couldn’t put guards on post without having the proper insurance. Chairman Chism stated companies should also make sure that if their company is paying an individual on a 1099 they should be sure those individuals are covered on the insurance policy. Vice-Chairman Johnsen stated that the only concern would be finding someone to write the policy. Secretary Smith stated that if it can’t be written, then they cannot do the work. Chairman Chism stated there is already some problems like this happening. He stated some guard companies have employees out on a job where the place serves primarily alcoholic beverages, and insurance companies will not cover that employee and therefore they

are in violation. Their contention is that the insurance is too expensive to purchase, but that employee is out there without any insurance and working for a company without insurance. He went on to say the insurance companies are then stepping back saying it is a violation of the contract and the company would have to stand in court on their own. Board member Crenshaw stated that a company has to have insurance in order to do business. Vice-Chairman Johnsen asked Mr. Crenshaw and Mr. Smith if their companies had insurance policies written where they cover contract labor as well. Mr. Crenshaw stated that he did, and that a businessman would be taking a huge risk by putting people to work on a jobsite without being sure they either had insurance or were covered by their company's insurance. Mr. Smith stated that he always makes sure contract laborers have the proper insurance or he adds them to his policy.

On a motion made by Secretary Smith and seconded by Board member Crenshaw, the Board voted unanimously to accept modifications to this rule as written.

Agenda Item VI: Discussion and possible action relating to proposed amendments to Rule §35.292, "Requirements for Continuing Education Courses", reconciling the annual licensing fee for continuing education schools to reflect previous changes to Rule §35.70 on "Fees".

Steve Moninger presented this item to the Board. He stated the changes to this rule were reflecting a change made by the Board in a previous meeting regarding the annual fee for Continuing Education Schools. He stated the Board approved adopting a fee change from \$300 to \$350, but this was a second occurrence of the fee that has been overlooked. The changes to this rule would put everything concerning this change in line. Chairman Chism stated the rule read "the school director shall pay an annual licensing fee of \$350". He asked if this fee was for the school, and not a separate license fee for a school director. Mr. Andrews stated this fee was, indeed, for the school itself.

Secretary Smith stated he was concerned with TALI, TBFAA, and ASSIST. He stated the professions do a good job on continuing education. He went on to say Dave Scepanski was in charge of Continuing Education for ASSIST. He stated that last Wednesday he attended a class and the usual set up is a person comes in, signs themselves in giving their social security number, which stays with the school, and attends the class. He stated Dave Scepanski is not in attendance at these classes, but has given his approval. He stated he was concerned that the wording in the rules would make it such that the instructor had to be present at each class, which wasn't feasible as these are going on all over the state. Mr. Moninger stated that that particular problem with wording was beyond the scope of this present rule being discussed, but that part of the rule could be placed on the next meeting's agenda for discussion. Chairman Chism stated that when the total rule was developed it does not keep any organization from doing its instructing as they all are doing. He stated the rule was such that as long as the course was approved by the school director and the instructor was qualified in what they are teaching there was no problem. He also stated that 2 to 3 day seminars did require the attendance of the director or instructor.

On a motion made by Secretary Smith, and seconded by Board member Crenshaw, the Board voted unanimously to accept the changes to the rule as written.

Agenda Item VII: Jim Hancock with Cothron's Safe and Lock regarding locksmith training course completion as substitute for experience requirements.

Steve Monroe, acting Assistant Director of Cothron's School of Professional Locksmithing, addressed the Board, stating Jim Hancock was unable to attend the meeting. Mr. Monroe stated the licensing requirements were unclear. He stated the TLA website showed, as of 2004, the locksmithing requirements as either experience or schooling. He went on to say the PSB site doesn't state anything regarding school in lieu of experience for locksmiths. He also stated that his experience in Cothron's training was far more than anything he received previously in over 25 years. He asked the Board to consider proceeding on the basis that students attending their school on Locksmithing be able to receive licensure without experience.

Vice-Chairman Johnsen stated that for clarification he wanted Mr. Monroe to elaborate on what the school actually taught, and how long the course was. He also stated it sounded similar to what the North Texas University people presented recently for Private Investigators.

Mr. Monroe stated the course offered by Cothron's was a 14 week course that offered a variety of experiences in all aspects of the locksmithing business. He stated it consisted of 2 weeks in the classroom followed by 12 weeks of internship in the field. He stated it covered everything from cutting keys to service calls, residential, commercial and auto. He also stated that when compared to 2 years of experience one might receive where all they do is cut keys; this school far exceeds the experience requirement.

Grey Woodyear also addressed the Board. He stated he is an instructor for the Cothron's school. He also stated that although he didn't take their school, when he came to Cothron's he began teaching. He stated what impressed him the most about the course was that the students learn what it took him over half his career to achieve. He stated it is a very comprehensive course that taught a wide-range of items including solid basic information. He confirmed the course was 560 hours long, providing students with a well-rounded education in locksmithing.

Assistant Director Bowie also addressed the board stating that several months ago he was approached by Mr. Hancock regarding this request and he suggested he take it to the Board for opinion. He went on to give the Board a brief history of where Cothron's was coming from with this idea. He stated that several years ago there was a working agreement with a previous Bureau Manager that allowed schooling in lieu of experience. He suggested that the Board have the advisory committee, bureau staff, as well as members of the profession, look over the school and give an opinion at the next board meeting. It was decided the advisory committee would look into this matter with the help of bureau staff and members of the profession, and report back to the Board at the next meeting.

Agenda Item VIII: Public Comment

George Craig-, on behalf of himself, addressed the Board. He stated he had been hired as a consultant by S.A.F.E. management, who has contracted to provide security at the upcoming 2011 Super Bowl. He also stated his role with this company was strictly in a licensing capacity. He went on to say John McEnroe, who is one of the principals of the company, was to be in

attendance but was unable to attend. He also stated he wanted to report that several of the primary principals in the company have submitted their fingerprints and one person was attending the manager's exam presently.

Billy Garrett-, president of Texas Locksmith Association, addressed the Board. He stated that the association did welcome the opportunity to have some members sit with the advisory committee regarding the Cothron's school proposal. He stated that he had spoken to the TLA board and over 90% feel that education can only take a potential locksmith so far and then they have to rely on experience. He also stated that they welcomed the decision of the committee, but hoped the committee would come back with a recommendation that some experience is necessary.

Bonnie Brown Morse-, president of Locksmith Association of San Antonio, addressed the Board. She stated that the first thing she wanted to comment on was Rule 35.181. She stated that the change in wording may not have closed the gap it was intending to. What constitutes an employee? If you hire a contract laborer to do a job, that person should be licensed as the state requires and may or may not have insurance. The real concern, she stated, is how does someone know that the person they called for is really from that company. The next thing she wished to discuss was her concern regarding Rule 35.291 (14) concerning continuing education. She stated the Board increased the required hours to 16 for locksmiths. She stated that as a employee of a class B license in security contractor, she has a pocket card as an alarm installer, which requires 7 hours continuing education in alarm related, and 1 hour in low voltage. She stated that in having a pocket card in electronic access she is required to take 7 hours related continuing education hours and one in ethics. She stated her question as, is she now required to take 7 hours for alarm installer, 7 hours as electronic access, 16 hours as locksmith, 1 hour low voltage, and 1 hour ethics for a total of 32 hours of continuing education or is it 16 hours in any of those related fields plus one hour of ethics and 1 hour of low voltage? She stated that her final topic to remark on was a concern brought to her attention regarding a new product. She stated it was called a Schlage Link and made by Ingersol-Rand Security Technologies. She stated this product is being sold to the end users but often installed by handymen, contractors, or locksmiths. She further stated the user is required to pay a monthly monitoring fee to a third party. As such, she felt it would be required to be installed by licensed alarm installers unless the end user could install it themselves. She further stated the product comes with locks and dead bolts, and a wireless bridge to plug and play into your computer. She stated that with an internet enabled computer or cell phone the product receives a signal from the wireless network and sends a signal to the lockset to unlock. She stated additional items include web cams, and lights. She stated it also records a history of who enters the building. She stated the industry needed some clarification from the board as to whether this is considered an alarm or hardware.

Debra Ulmer-, with TBFAA, addressed the Board. She stated that on behalf of the product Ms. Morse spoke about, it does meet the requirements for the alarm industry, the lock industry and the access control industry. She stated it could be considered a mechanical device, an electronic access device or an alarm device, which would have to be monitored by a licensed company. She stated that it would depend on which component of the lock system was activated.

Chairman Chism stated he would like to meet with staff after the meeting to discuss this product.

Chairman Chism called for a 15 minute break at 10:10am.

Chairman Chism called the meeting back to order at 10:30am.

Agenda Item IX: Administrative Hearings on Licensing and Disciplinary Contested Cases

Jean O'Shaw presented the following cases to the Board.

James Mayo- Docket No. 000242010

Mr. Mayo was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. O'Shaw stated Mr. Mayo applied under the old statute for registration as a non-commissioned security officer. She stated the Bureau's denial of his application was based in part on his conviction for Felony Conspiracy to Commit Bank Fraud in 1999, and he was originally sentenced to five years probation and restitution in the amount of \$11,517.82. His probation was subsequently revoked in 2001, at which time he was sentenced to three years supervised release. She also stated that his conviction was statutorily disqualifying for twenty years from the date of conviction. She further stated that a secondary basis for denial of his application is his failure to disclose the above felony conviction on his application for registration.

Secretary Smith made a motion to uphold SOAH's decision and deny Mr. Mayo's application for registration as a non-commissioned security officer. Board member Crenshaw seconded the motion, and the Board voted unanimously in favor of the motion.

Jerome Nelson- Docket No. 001292010

Mr. Nelson was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. O'Shaw stated the Bureau was seeking to suspend Mr. Nelson's license as a commissioned security guard based on his pending charge for the class A misdemeanor offense of "public lewdness". She stated the charge is statutorily disqualifying.

Secretary Smith made a motion to uphold SOAH's decision and suspend Mr. Nelson's license as a commissioned security guard. Board member Crenshaw seconded the motion, and the Board voted unanimously in favor of the motion.

Sarah Carnes-Lemp presented the following case to the Board.

Sandy Green- Docket No. 002392010

Mr. Green was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Carnes-Lemp stated the Bureau was seeking to summarily suspend the registration of Mr. Green as a manager of a locksmith company based on his pending Class A misdemeanor. She stated the pending charge is statutorily disqualifying.

Vice-Chairman Johnsen made a motion to uphold SOAH's decision and summarily suspend Mr. Green's registration as a manager of a locksmith company. Board member Crenshaw seconded the motion, and the Board voted unanimously in favor of the motion.

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

The Board did not take Executive Session at this time.

Agenda Item XI: Adjournment

Chairman Chism introduced this agenda item. Secretary Smith made a motion for adjournment. Board member Crenshaw seconded the motion, and the Board voted unanimously in favor of the motion. At 10:41 am, the April 26, 2010 meeting of the Private Security Board was adjourned.