

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,
JULY 9, 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;
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;
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 9:04 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 April 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 April 26, 2010 as written.

Agenda Item II: Report from Private Security Bureau.

Reggie Andrews presented the Licensing totals for the third quarter, 3/1/10-5/31/10. He stated, for this time period, the Bureau received 303 original company applications, 1,315 company renewals, 10,190 original individual applications, and 8,865 individual renewals not including online applications. He went on to say that for the same time period the Bureau processed the following licenses/registrations: 190 original company licenses (92 online, 98 manual), 1,268 company renewals (806 online, 462 manual), 9,351 individual registrations (2,002 online, 7,349 manual), 8,346 individual renewals (3,250 online, 5,096 manual), and 5,012 employee information updates (1,152 online, 3,860 manual). He also stated this time period showed 5,621 active company licenses, 224 active school licenses, and 125,251 active individual registrants.

Lieutenant Park presented the Investigation statistics for District A to the Board. He stated there were 477 violations investigated for the third quarter, 3/1/10-5/31/10. He further stated there was 1 case of operating with an expired license, 12 cases of operating with a suspended license, 21 cases of operating without a license, and 14 cases of failure to register employees. He went on to say there were 10 cases presented to prosecutors during this time period. Lieutenant Park then stated that in the El Paso region there has been an increase in activity from illegal aliens crossing the border and gaining employment with locksmith companies. He stated the investigators recently made an arrest of an individual working without a license and investigators are working with border patrol and prosecutors in an effort to curtail some of that activity. He also stated that investigators made an arrest of a courtesy officer at Buckner Village Apartments in the Dallas area, for unlawfully carrying a weapon.

Lieutenant Hunt presented the Investigation statistics for District B to the Board. He stated there were 643 violations investigated for the third quarter, 3/1/10-5/31/10. He further stated there were 9 cases of operating with an expired license, 17 cases of operating with a suspended license, 38 cases of operating without a license, and 36 cases of failure to register employees. He went on to say there were 12 cases presented to prosecutors during this time period. He finished presenting the investigative statistics by stating the entire Bureau's total of cases closed with no action was 959, cases closed with administrative citation was 74, closed with administrative warning was 75, and cases closed with other action was 12. Lieutenant Hunt stated investigators in Laredo executed a two day operation where security guards were checked at flea markets for licensure. He stated one arrest was made for impersonating a commissioned security guard and unlawfully carrying a weapon. He also stated that during the same two day period, investigators set up a business front and solicited companies to do locksmith work. An additional 6 individuals were arrested for unlicensed locksmith activity, 2 of which were in the country illegally who were turned over to proper authorities.

Steve Moninger was the next person to address the Board. He stated that the rules discussed at the January meeting of the Board were being sent to the Public Safety Commission for final

approval at the July 15th meeting and should be effective in August. He stated the rules discussed at the April meeting are awaiting publication in *Texas Register* before being presented to the PSC for approval. He added that he would keep the Bureau's website up to date on the status of the pending rules.

Secretary Smith asked where the line was for determining Districts A and B for investigation purposes. Lieutenant Hunt explained that if a line were drawn midway across the state, just below El Paso and just above Austin, the north half would be district A and the south half would be considered district B. Secretary Smith stated he had not seen an email regarding the arrest in Dallas but was very glad to see such activity being handled there.

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, pursuant to §1702.288 (Occ. Code)

Chairman Chism stated this rule, along with Item VIII on the Agenda, were referred to the Board Advisory Committee at the last meeting. He stated he wished the committee to discuss both rules at this time.

Vice-Chairman Johnsen stated the committee met in June to discuss these two matters. He stated there was a lot of concern regarding how §35.35 was written. He also stated the committee wanted an additional opportunity to clarify with the drafter of legislation, after which the committee could determine if the rule should be re-drafted or seek legislative adjustments during the next session. He went on to say that tabling discussion until information is gained would be preferable as the committee did not wish to see this rule move any further.

On a motion made by Board member Crenshaw and seconded by Secretary Smith, the Board voted unanimously to table discussion of this rule awaiting clarification of the statute by letter of intent from the Legislature or other legislative action.

Agenda Item VIII: Discussion and possible action relating to substitution of locksmith training course completion for experience requirements, pursuant to §1702.105 (Occ. Code).

Vice-Chairman Johnsen stated he and Secretary Smith went to Cothron's school for locksmiths and were quite impressed by what they saw while there. However, he stated, since neither of them are qualified locksmiths; they could not adequately evaluate the curriculum. He went on to say Board member Crenshaw joined them on the second tour of the school and after discussion the committee realized a lot more thought needed to go into coming up with an alternate plan in lieu of two years experience. He stated the committee proposed to be allowed more time to work on this issue and have a group of professionals from the locksmith industry nominated to form an expanded committee on this issue. He also stated that he felt the committee could meet at the national headquarters for locksmiths in Dallas. He stated he had also spoken to the president of TLA and he agreed to put together a committee to assist with this issue.

Chairman Chism stated he thought it was a good idea to bring in members of the locksmith industry for input on this matter. He also stated he wished the committee to come up with criteria that would fit any locksmith school. He went on to say that the criteria should include training on the business operations, Board rules, §1702, and tax regulations, plus perhaps add experience on a probationary period under guidance of licensed locksmith. All further discussion of this item was tabled until a future date.

Agenda Item IV: Discussion and possible action relating to proposed amendment to Rule §35.46, “Guidelines for Disqualifying Convictions”, adding Class A misdemeanor assault to list of offenses related to provision of private security services.

Steve Moninger presented this rule to the Board. He stated additional language was intended to address trouble with interpreting the rule. He stated the current wording was not clear if Class A assaults are related to Private Security or not. He went on to say that the rule listed a couple of different types of assault, but they are at the felony level. As a matter of practice, he stated, the Bureau has taken the position that they are related, but having the Board make this explicit would help give additional authority to that position. He stated he would suggest to the Board that any of the rule amendments passed at this meeting be held until several rules are changed, in an effort to keep from having a constant cycle of rule changes being published in *Texas Register* and presented to the Public Safety Committee. Secretary Smith asked if the only change to the language was the Class A misdemeanor assault, to which Mr. Moninger stated yes.

On a motion made by Secretary Smith and seconded by Vice-Chairman Johnsen, the Board voted unanimously to accept the amendments to this rule as written. Mr. Moninger asked if the Board had any objection to him delaying the rule change until the other rules were discussed and decided at the next meeting, in the interest of consolidation. The Board agreed.

Agenda Item V: Discussion and possible action relating to proposed amendment to Rule §35.142, “Application for a Security Officer Commission”, striking the reference to Level I certificates (which are no longer required).

Steve Moninger presented this rule change to the Board. He stated the Board and Bureau were no longer requiring the Level I exam and therefore the amendment was reflecting that change by striking the language “Level I”.

Secretary Smith stated he would like to completely delete (a) (5) of the rule which reads: “Texas Driver License and or Texas Identification Certificate issued by the Texas Department of Public Safety.” He stated there were several reasons why that language shouldn’t be there. One reason is, for instance, a person working in Texarkana and holding an Arkansas Drivers License. If that person wanted to work in Texarkana, Texas it is saying that they are required to have a Texas I.D. or Texas driver license and that is not required under the Homeland Security I-9 form. He stated that all that is required is any valid state ID and fill out I-9. A second reason, he stated, is the rule seems discriminatory against military personnel who are not required to have a driver license. For these reasons, he would like to see this portion of the rule deleted. He then stated that if the Board did not agree with deleting this section, he did have an alternative. He stated that although he didn’t think it was the best way to go, he thought that just having proof of applying for a Texas I.D. or driver license should be enough rather than forcing a person to wait

up to 60 days to receive the documentation. He went on to say that he spoke with some of the previous Board members who explained that this rule was originally brought in to refer to an expected computer program that never came about. He therefore saw no reason not to change that portion of the rule.

Vice-Chairman Johnsen asked if this rule was statutory, to which Mr. Moninger stated it was not. He also stated this rule preceded both he and Mr. Andrews time with the Bureau. Vice-Chairman Johnsen asked if the language could be changed to reflect “a valid photo ID” instead. Mr. Moninger stated it could be changed or perhaps be changed to say “state or government issued ID”. Mr. Moninger stated he would research this rule and possible changes further.

Secretary Smith stated he thought that the wording of (a) (6) of the rule was changed to read “permanent resident” instead of “alien registration”. Mr. Moninger stated he was not sure if it is the same thing. He stated he knew there was a distinction between the two, but was unsure of the differences and if the Board were to change that without researching it may limit eligibility for some individuals. Chairman Chism stated he was under the impression that if a person did not hold a permanent resident card, but only had an alien registration card, then they were unable to work under federal law. Mr. Moninger stated that some additional clarification would be needed on this issue.

Chairman Chism suggested the Board table the discussion of this rule change until clarification could be received regarding these issues and should be discussed at the next board meeting.

Vice-Chairman Johnsen asked Assistant Director Bowie if he had additional information regarding these possible rule changes. Mr. Bowie stated he thought it was a good idea to give some thought as to the pros and cons of this rule when using photo databases. He stated in the Concealed Handgun bureau applicants currently have to send in a photo. He stated he did think it was wise to table this rule change until it could be investigated further. Secretary Smith stated that when companies send in the applications for their employees’ individual registrations they send in picture photos. A.D. Bowie stated that while that was true, it was a tedious manual process involved in scanning the photo into the DPS computer, then cropping it down manually before sending it to a vendor for printing as opposed to going into a driver license office, having your picture taken and it being sent electronically. He stated these are things to consider when addressing this rule and planning for the eventuality of moving to getting photos on the pocket cards.

Chairman Chism stated that further discussion of this rule and its possible changes would be tabled until the next meeting of the Board.

Agenda Item VI: Discussion and possible action relating to proposed amendments to Rule §35.186, “Registration Applications”, addressing the acceptance of electronic fingerprints and striking the reference to Level I certificates (which are no longer required).

Secretary Smith stated that for the same reasons he expressed in the last rule discussion, he felt the language in (4) and (5) should be amended, and therefore the decision should be tabled. He also stated that in proposed (6) read, “any court documents requested by the Department as part

of its criminal history background check” his original thought on that proposed amendment might have been misunderstood. He stated he had a chance to speak with Mr. Moninger before the meeting began and Mr. Moninger indicated an individual can send in application for processing but the application is not complete until all documentation is received. Mr. Moninger stated that the language of the proposal is “any court documents requested by the Department as part of its criminal history background check”. He went on to say that this is authorized under §1702.282 which is a new provision as of September 1st and, in part, states “the board shall conduct a criminal history check” and “ as part of its criminal history check, the board may request that the applicant provide certified copies of relevant court documents or other records. The failure to provide the requested records within a reasonable time as determined by the board may result in the application being considered incomplete.”

Mr. Moninger stated this is in statute and authorizes the Bureau to reject any application as being incomplete. Chairman Chism stated that he thought the wording of the rule was a bit confusing and asked if it could be reworded a way so that people understood it is any court document when it is requested by the Bureau. Mr. Moninger stated the language could be reviewed and perhaps changed to reflect that. He also stated that on (2) of the proposed amendment, he meant to add the same language on the previous rule regarding commissioned security guards. He stated it was allowing for the option of electronic fingerprints, assuming the Bureau has the technology for that in the future.

Chairman Chism stated the Board needed clarification regarding the difference between an alien registration card and permanent resident card. He further stated that discussion on this rule would be referred to the Advisory committee to be revisited at the next meeting.

Agenda Item VII: Discussion and possible action relating to proposed Rule §35.187, “Renewal Applications”, clarifying the Board’s interpretation of the statutory requirements relating to renewal applications.

Chairman Chism stated he had a problem with (a) (4) portion of this rule, written as: “at each renewal for commissions and licenses, and at each alternate renewal for registrations and endorsements: at least two sets of fingerprints on fingerprint cards approved by the board or electronically through a contactor approved by the Department, and the \$25.00 FBI fingerprint fee”. He stated he did not see a need for this language. Vice-Chairman Johnsen asked if there had been any rules on application renewals before. Mr. Moninger stated there has not been any rule regarding renewals up to this point and he was trying to make the process clear.

Mr. Andrews stated the Bureau’s current way of accepting renewals is by following what is written in statute requiring training requirements such as firearm proficiency, continuing education courses, etc. Mr. Moninger stated the renewal provision in statute stated “a person otherwise eligible may renew” and what he is hinging this change on is the Bureau’s determination of eligibility. He also stated that to date he has seen many people being able to renew their registration when they weren’t eligible to do so due to criminal history. He stated that the only reason the Bureau would come to know that they shouldn’t have been renewed is that either the person’s time lapsed and they submit a new application or because they submit an application with fingerprints when they weren’t required to do so. He further stated the Bureau had no other way to know if they are ineligible as they are not able to re-use fingerprint submissions nor do they have the ability to run an FBI rap sheet. He went on to explain that the

fingerprint cards are sent to the Crime Records Bureau and filed while the second card is sent to the FBI. Vice-Chairman Johnsen asked whether the bureau was able to use the electronic fingerprints a second time. Mr. Moninger explained that the Bureau does not have electronic fingerprinting at this time.

Chairman Chism asked why the Bureau didn't run the applicants through NCIC (National Crime Information Center) first and then if there was a hit, require another set of fingerprints. Mr. Moninger stated he was unsure what authority the Bureau had to do such a thing. Vice-Chairman Johnsen stated the applications could be made with the proper wording to give the Bureau permission to do this. He went on to say that the concern he has is with companies having to send their employees out for new fingerprints every two years. Mr. Moninger stated he would be fine with making conditional language that allows an alternative such as, "in the absence of current fingerprints that can be used or in the absence of the Bureau's ability to check them". He also stated that perhaps this rule's discussion should be tabled until these ideas can be explored.

Mr. Andrews stated that to process the fingerprints two cards are needed, one for the state check and one for the federal check. He further explained that DPS has a state id numbers that will generate a rap sheet, but on the federal check there will be no response unless there is a problem. Chairman Chism stated a fingerprint card was not needed to run a person through NCIC. Mr. Moninger stated that false names and aliases could be used. Chairman Chism stated that his fingerprints were in the database and if he were to be arrested in another state, even in another state, NCIC would pick it up quickly and DPS' TCIC was set the same way.

Mr. Moninger stated the current policy is influx. He stated that Concealed Handgun Licensing had to receive special permission to reuse fingerprint cards. He stated that before the next meeting of the board, clarification can be made.

Vice-Chairman Johnsen asked what happens when a person is pulled over and the officer checks the license, wasn't that going through the database to check for these things? A.D. Bowie stated that the officer checks the drivers license with TCIC and NCIC and that is how officers are able to get hits even when crime is committed out of state. He went on to say in listening to the discussion it sounds as if the Board was already in agreement that the staff needed to be notified in the event that someone has a disqualifying criminal offense. However, he continued, what is the best way to address this? He stated the first concern is that if registrants were made to send in fingerprint cards, the FBI does not process them for free and this would add additional fees to applicants. Mr. Bowie stated the second thing he wanted to address was the thought of running a person through NCIC. The question becomes, who should do that. He asked should it be staff when they receive an application or should it be the managers when they are already doing their due diligence while filling out paperwork for that employee. He stated these were options. He stated that there were avenues of going into the DPS website and running someone's criminal background. Vice-Chairman Johnsen stated that he would rather spend additional \$25 on application fees rather than doing fingerprints a second time.

Chairman Chism stated discussion of this would be sent to the Advisory committee and decided at the next meeting of the board. He appointed Secretary Smith to chair the committee on the issues discussed at this meeting.

Agenda Item IX: Public Comment

Billy Garrett-, president of Texas Locksmith Association, addressed the Board. He stated that all of the topics he wished to speak to the board about were addressed during the meeting.

John Arnold-, representing Key Express Inc., addressed the Board. He stated that he has seen it take as long as a year to get fingerprint approval because locksmiths' fingerprints get worn down with the use of their hands. Because of this, requiring fingerprints during the renewal process would cause a burden to the locksmith industry.

Chuck Foreman-, representing Full Alarm Security, addressed the Board. He stated he wished to bring to the Board's attention that in detention facilities no pocket cards are used by installers of security. He stated that a loop hole had been created where the systems going into the jails are not considered security systems, but in his opinion they are. He stated there were cameras and visitation as well. He stated as a project manager on a job in Henderson County he is being given people to work on this who are trustees, and the person in charge has so many people coming in that they are not able to do background checks on all of these people. He stated he would like to see the Board look into this and help the facilities by making sure that the people doing this work are registered and have pocket cards on them.

Bonnie Brown Morse-, president of Locksmith Association of San Antonio, addressed the Board. She began by saying thank you to the board for keeping the rule regarding education in lieu of experience in the advisory committee's hands for further discussion. She went on to say that many locksmiths feel that the private company who suggested this was doing an end-run around the rules by not being sponsored by TLA. Ms. Morse stated she felt the Board made the right decision in tabling discussion of 35.187 as well. She stated there were multiple concerns with this rule beyond the pocket card issues. One such issue, she stated, was the lack of mentioning education that is required by all areas of the industry. She further stated that in reading the rule changes, she was astounded that fingerprint cards would be required for renewals. She stated she thought this would cause a hardship on the Bureau staff, as DPS is trying to go to a paperless system of processing. Also, she pointed out, it is hard for those in small towns to send any fingerprints electronically. Finally she stated she still had questions regarding the Continuing Education changes. She stated the CEU changes, as it pertains to locksmiths, did not give any topics beyond what is approved by the Bureau. She stated that in the past a person could substitute a rules and regulations credit for the required ethics. She also asked when all of this would take place and how much time will the industry be given before it goes into effect. Another question she had was how many CEU hours will a person who holds an alarm installer license, a locksmith license, and an electronic access control installer license need and what topics. Finally, she asked, will all of these licenses renew at the same time even if applied for at different times?

William Allen-, representing Phoenix Security Academy, addressed the Board. Mr. Allen stated he was currently a Level III and Level IV instructor at Phoenix Security Academy in Houston Texas. He stated that he has spent the majority of his career in law enforcement as an instructor and when he came on board with Phoenix Academy he was given the curriculum for the Level III instruction. He stated he found some inconsistencies with the curriculum as well as the test. He stated that some of the information is out of date and some is wrong. He cited 9.32 of the Texas State Penal Code, use of deadly force in defense of person, as one such inconsistency. He went on to say that changes have not been made to the exams in order to keep up with changes to the rules. He used the current rule changes as an example, saying Level I was no longer being required, yet on the exam it states that it is. Another area needing updating, he stated, is the technology progression that has occurred since the test was written in 2000. He further stated that the Level III exam is no more than a cut and paste of the Level II exam. One change he stated that he would like to see is a time limit on the Level II exam. Another concern he stated he had was if the Level II exam needed to be taught by a licensed instructor or is it permissible to just show a video. Finally he stated he would like to see these topics placed on the next Board meeting agenda, and perhaps see a training committee formed, consisting of representatives of DPS, industry members and perhaps legislators, in an effort to standardize the examinations.

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

There were no cases presented at this meeting.

Agenda Item XI: 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 10:19 am, the July 9, 2010 meeting of the Private Security Board was adjourned.