

Texas Private Security Board

Regularly scheduled Board Meeting
at 9:00 a.m., April 15, 2013

Texas Department of Public Safety
6100 Guadalupe St., Bldg. E
Criminal Law Enforcement Building
Austin, Texas 78752

Board members present:

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

Board members not present:

Honorable Albert Black

Staff present:

RenEarl Bowie, Assistant Director, Regulatory Services Division (RSD);
Texas Department of Public Safety (DPS)
Oscar Ybarra, Deputy Assistant Director, RSD
Steve Moninger, Senior Staff Attorney, Office of Regulatory Counsel (ORC)
Reggie Andrews, Assistant Manager, RSD LRS
Ryan Garcia, Program Supervisor, RSD LRS
Major Jay Alexander, RSD Regulatory Crimes Service (RCS)
Capt. Aaron Grigsby, RSD RCS
Other members of the staff;
Members of the industry;
and members of the general public.

These minutes are a summary record of the Board's public meeting. The 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 DVD on file at the Board's office.

The board meeting was called to order at 9:05 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.

Mr. Garcia, LRS Program Supervisor, called the roll and a quorum was established.

Agenda Item I: Approval of Minutes for Board Meeting held Jan. 15, 2013

Chairman Chism introduced this agenda item and with 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 Jan. 15, 2013, as written.

Agenda Item II: Reports from Regulatory Services Division

a) Licensing Activity

Ryan Garcia, Program Supervisor, presented the LRS totals to the Board for the second quarter of FY2013, from Dec. 1, 2012, to Feb. 28, 2013. He stated, for this time period, RSD received:

- 265 original company applications;
- 1,429 renewal company applications;
- 11,135 original individual applications; and
- 8,726 renewal individual applications.

Mr. Garcia went on to report, for the same time period, RSD processed the following licenses and registrations:

- 151 original company licenses (86 online and 65 manual);
- 1,348 renewal company licenses (969 online and 379 manual);
- 8,034 original individual registrations (4,340 online and 3,694 manual);
- 8,085 renewal individual registrations (4,315 online and 4,770 manual); and
- 5,126 employee information updates (1,202 online and 3,924 manual).

Mr. Garcia also stated this time period showed 5,564 active company licenses; 278 active school licenses and 148,033 active individual registrations.

Chairman Chism requested a breakdown on the number of active companies by license type. Reggie Andrews, LRS Assistant Manager, stated the current database doesn't provide such measures. He added they would contact DPS' Information Technology (IT) Division and the vendor to see if that can be done.

b) Investigation Activity

Major Jay Alexander informed the Board of the expansion of RCS and introduced Capt. Aaron Grigsby, including his credentials and experience. Capt. Grigsby presented the investigation statistics for Districts A, B and C to the Board. He stated there were 169 violations investigated for the second quarter of FY2013, from Dec. 1, 2012, to Feb. 28, 2013:

- 16 in District A;
- 82 in District B; and
- 71 in District C.

He further stated Unlicensed Activity cases during this time period were:

- 2 cases of operating with an expired license (District C)
- 1 case of operating with a suspended license (District A)
- 16 cases of operating without a license (District A: 4, District B: 9, District C: 3)
- 0 cases of failure to register employees
- 15 criminal cases presented to prosecutors (District A: 2, District B: 5, District C: 8)

Capt. Grigsby stated Case Disposition during this quarter were:

- 138 cases were closed with no action, (District A: 9, District B: 73, District C: 56)
- 0 cases received administrative citation,
- 0 cases were closed with an administrative warning
- 31 cases were closed with other actions

c) Legislative Activity

ORC Attorney Steve Moninger reported there are several bills relative to the Private Security Board, such as:

- HB 1093 relating to the composition of the Texas Private Security Board;
- HB 75 relating to the regulation of private security companies;
- HB 2135 relating to the issuance reciprocity of private security;

- HB 2535 relating to the security licensure volunteer at schools and churches;
- SB 1324 relating to the authority to organize volunteer safety groups; and
- SB 406 relating to the exemption of alarm installers being licensed as HVAC installers.

Agenda Item III: Reports from Board Committees

a) Advisory Committee

Secretary Smith stated he had recently visited the Capitol and was asked to draft a 30-second sound bite regarding the Private Security Board and its functions. Chairman Chism reviewed prior to the Board meeting.

<read the following insert>

The Private Security Board

The Private Security Board licenses and regulates the commercial sector portion of the public safety in the state. It sets policies and procedures that oversee the bureaucracy used to carry out that task. It interprets statutes and makes rules for the more than 153,000 business licensees and individual registrants under its occupation code. Private investigators, security guards, alarm companies, locksmiths, armored car services, couriers, guard dog companies and access control services are some of the businesses it regulates.

The Legislature saw to it that the Board use its considerable powers wisely, so the Legislature requires the Board to include not only members of the general public who speak for the interests of the citizenry, but also representatives of the various businesses whose activities are affected by the Board's rules. Therefore, the Private Security Board consists of seven members, appointed by the Governor – four public and three industry members. The three industry seats are reserved one each for representatives from the private investigations, security office and alarm industries. Structured in this way, the Board's decisions are noteworthy for being workable in a business environment while establishing a high standard of professionalism within the security industry for protection of the citizens of Texas.

The Board promotes policies and procedures so that the public can rest assured that licensed companies provide trustworthy employees while at the same time, removing obstacles to job creation and encouraging economic growth in the state. In addition, the Legislature has provided the Private Security Board with the discretionary powers to be the final arbiter of appeal or individuals who have been denied licensing by the preliminary administrative process, ensuring that any denials of licensing and employment in the security industry are just and in the best interest of the citizens of Texas.

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Chairman Chism added the appeal to District Courts regarding licensing problems by stating the rules we pass go through two-to-three steps:

DPS attorneys > Budget Review > Public Safety Commission

Chairman Chism went on to add there is also a public review before pending rules go to the Public Safety Commission. He also commended Secretary Smith for his efforts.

b) Rules Committee

Board member Crenshaw requested permission to table since the committee is still gathering information from the industry and associations.

Agenda Item IV: Discussion and possible action regarding DPS' recommended amendments to Private Security Board administrative rules, Texas Administrative Code, Part 1, Title 37, Chapter 35

Upon request from the Board, Board Attorney Steve Moninger added the pending rules look like a completely new document, but it is very similar to the prior version. However, this version is more user-friendly and with less redundancies. Mr. Moninger added that subcommittees and public input is pending. No action taken.

Agenda Item VI: Public Comment

- a) Jim Barnett Jr. with Group Services Inc. (*Fort Worth*), stated he has concerns about length of time to register their employees. He added it has taken six weeks to sometimes four-to-five months for employees to become licensed, which is a significant delay in putting them to work while they're on payroll. Mr. Barnett also added electronic fingerprinting hasn't made a difference. Chairman Chism advised Mr. Barnett to connect with RSD LRS staff present.
- b) Susan Griswold with Security Professionals of Texas (*Houston*), reported difficulties with the licensing renewal process in regard to the exclusion of "place of birth" on the *Texas Online* non-commission application and the request to submit a PSB-03A; not understanding why this would be omitted on the online application. Ms. Griswold also submitted a PSB-17 for renewal update and received a confirmation saying to submit the same form. She suggested an internal audit and including companies' email address to prevent extraneous unnecessary letters from DPS.
- c) David Scepanski with Sun City Security Service Inc. (*El Paso*), extending appreciation to Gov. Rick Perry and the Private Security Board for their representation of the industry.

Agenda Item VI: No Executive Session.

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

Chairman Chism stated he would call roll and asked if any of the following were present to present their cases, they should indicate their attendance:

- Bermudez, Carlos M. – Docket No. 405-13-0885
- Berry, Theodore – Docket No. 405-13-2408
- Garrett, Christopher Todd – Docket No. 405-13-1431
- Lacey, Sidney – Docket No. 405-13-1329
- Montalvo, Jaidiane – Docket No. 405-12-6528
- Watson, Adam Earl – Docket No. 405-13-1326

Without the defendants in attendance, nor with counsel present on their behalf, Chairman Chism suggested the Board make a group motion to uphold decisions made by the State Office of Administrative Hearings (SOAH) on Garrett, Lacey, Montalvo and Waters. Motion made by Secretary Smith and seconded by Board member England. The Board voted unanimously in favor of the motion.

Bermudez, Carlos M. – Docket No. 405-13-0885

Mr. Bermudez was present to address the Board on his case. However, did not have counsel present on his behalf. Ginger Hunter, ORC attorney, stated the basis for DPS' denial of Mr.

Bermudez' application as a commissioned security officer is three felony convictions; one Burglary of a Habitation on Nov. 27, 1996, in Harris County and two counts of Burglary of a Habitation on May 27, 1997, in Fort Bend County.

Ms. Hunter explained since the applicant was convicted of a crime punishable by imprisonment for a term exceeding one year, he is not qualified to possess a handgun under applicable federal law. Therefore, he is ineligible to receive a commission as a security officer under Texas Occupations Code, §1702.163(b)(1).

Mr. Bermudez addressed the Board. He stated felony convictions are prior him turning 21, almost 18 years ago. He apologized for his actions and stated he has turned his life around by earning his Graduate Equivalency Degree (GED) since his release. He stated his intentions are to work to provide for his family. He stated he attends church and counseling. He added he has been working as a bouncer. He requested the Board approve him to work as a non-commissioned security officer. He also stated he is applying for clemency and a full pardon from the Texas Board of Pardons and Paroles (TBPP).

Board member England stated the Private Security Board has no authority to do as Mr. Bermudez is requesting.

Mr. Moninger and Ms. Hunter advised Mr. Bermudez of his ineligibility for a non-commissioned registration. Ms. Hunter reminded the Board that the only presentation to the Board is the commission of his security license.

Secretary Smith explained the PSB has discretionary powers dictated by the Texas Legislature under certain circumstances, but this doesn't fall under that purview.

Mr. Moninger added the PSB has no discretion with regards to Mr. Bermudez' request and the federal statute calls for disqualification.

Secretary Smith made a motion to uphold the SOAH decision to deny Mr. Bermudez' application for registration as a security officer. Vice-chairman Johnsen seconded the motion and the Board voted unanimously in favor of the motion.

Berry, Theodore – Docket No. 405-13-2408

Mr. Berry was present to address the Board on his case. However, did not have counsel present on his behalf. Steve Shuffer, ORC attorney, reported DPS is seeking to deny the application of Mr. Berry as a commissioned security officer. This denial is based on the Second-Degree Felony Burglary of a Building conviction on Aug. 8, 1990 in Johnson County. He received five years probation.

Mr. Shuffer explained that since the applicant was convicted of a crime punishable by imprisonment for a term exceeding one year, he is not qualified to possess a handgun under applicable federal law. Therefore, he is ineligible to receive a commission as a security officer under Texas Occupations Code, §1702.163(b)(1).

Mr. Berry addressed the Board. He stated his convictions resulted in probation in Johnson County and he thought he never was convicted. He presented letters of recommendation from pastor of his church and a police officer friend. He added he has been working security for 23 schools. Leaving the lectern / podium, he approached the Board on the stage and was unable to be heard on the microphone. He requested to have a non-commission license.

Mr. Moninger asked Mr. Berry to return to the lectern / podium so that his statements can be included in the meeting's official records.

Board member England explained the Board is not allowed to consider any other requests. Because of Federal law regarding felonies and possessing a firearm, we have limited options today.

Board member England made the motion to uphold the SOAH decision to deny the registration of Theodore Berry as a commissioned security officer. Secretary Smith seconded the motion. The Board voted unanimously in favor of the motion.

Agenda Item VII: Adjournment

With there being no further business for the Texas Private Security Board for the April 15, 2013, Board Meeting, Chairman Chism asked for a motion to adjourn at 10:05 a.m. Secretary Smith made a motion to adjourn and it was seconded by Board member Crenshaw. All were in favor.