

Texas Private Security Board

Fourth Quarter 2013 Board Meeting
9:00 a.m., July 17, 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 Albert Black
Honorable Charles Crenshaw
Honorable Brian England
Honorable D. Wade Hayden

Staff present:

RenEarl Bowie, Assistant Director, Regulatory Services Division (RSD);
Texas Department of Public Safety (DPS)
Steve Moninger, Senior Staff Attorney, Office of Regulatory Counsel (ORC)
Sherrie Zgabay, Manager, RSD Licensing and Registration Service (LRS)
Reggie Andrews, Assistant Manager, RSD LRS
Ryan Garcia, Program Supervisor, RSD LRS
Major Jay Alexander, RSD Regulatory Crimes Service (RCS)
Other members of the staff;

Also present:

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 9:07 a.m.

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

Vice-Chairman Johnsen administered the Oath of Office to newly appointed Board member D. Wade Hayden.

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

Agenda Item I: Approval of Minutes for April 15, 2013, Board Meeting

Chairman Chism introduced this agenda item and with a motion made by Secretary Smith and seconded by Vice-Chairman Johnsen, the Board voted unanimously to approve the minutes for the Board meeting of April 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 third quarter of FY2013, from March 1 to May 30, 2013. He stated, for this time period, RSD received:

- 307 original company applications;
- 1,398 renewal company applications;
- 14,466 original individual applications; and
- 9,842 renewal individual applications.

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

- 134 original company licenses (6 online and 47 manual);
- 1,391 renewal company licenses (996 online and 395 manual);
- 10,197 original individual registrations (3,494 online and 6,703 manual);
- 9,165 renewal individual registrations (4,508 online and 4,657 manual); and
- 5,898 employee information updates (1,353 online and 4,657 manual).

Mr. Garcia also stated this time period showed 5,536 active company licenses; 279 active school licenses and 149,114 active individual registrations.

Vice-Chairman Johnsen asked if paper copies of manual applications are archived, wanting a comparison of the online and manual processes.

Mr. Garcia responded by explaining paper copies of manual applications are kept and archived while applications are being processed. Once the application has been completely processed, manual applications are scanned and archived electronically.

Ms. Zgabay responded to Chairman Chism's request for a breakdown of licensing types, stating LRS will be providing a breakdown of licensing types and/or subcategories. She added that LRS would provide those in by the next Board meeting.

Ms. Zgabay also responded to Chairman Chism's request for a report on the delays in processing, stating LRS reviewed statistics and for applications more than 60 days, processing was not as quick as the industry traditionally experiences. However, she cited a contributing factor of a 21 percent increase of individual original applications.

Ms. Zgabay added processing time is very dependent upon the applicant providing all supporting documentation. Vice-Chairman Johnsen requested RSD to promote online processing since this industry is more familiar with the manual process. Ms. Zgabay added this could be done by visiting association meetings and providing additional information on how the online process works and how successful it can be.

Board member Hayden asked if DPS charges the same fees for both the online and manual applications and are those fees enough to cover the cost of processing for both.

Ms. Zgabay responded by explaining the fees for online processing and manual processing are the same and any increases or changes in fees would need to be addressed by the Board.

Board member Hayden asked what the average online processing time is versus the manual process.

Ms. Zgabay responded stating the average processing time is mostly dependent upon the individual who is submitting the supporting documentation. Online applications take significantly less time, such as minutes compared to days from a manual application that may be incomplete.

b) Investigation Activity

Major Jay Alexander presented the investigation statistics for Districts A, B and C to the Board. He stated there were 146 violations investigated for the third quarter of FY2013, from March 1 to May 30, 2013:

- 14 in District A;
- 73 in District B; and
- 59 in District C.

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

- 1 case of operating with an expired license (District B)
- 0 cases of operating with a suspended license
- 5 cases of operating without a license (District B)
- 0 cases of failure to register employees
- 20 criminal cases presented to prosecutors (District A: 1, District B: 14, District C: 5)

Major Alexander stated Case Disposition during this quarter were:

- 116 cases were closed with no action, (District A: 10, District B: 56, District C: 50)
- 0 cases received administrative citation,
- 0 cases were closed with an administrative warning
- 30 cases were closed with other actions

Vice-Chairman Johnsen inquired about the decrease in numbers and Major Alexander cited coverage of six regulatory programs and the decrease was largely because of the good job done by the industry. He added welcoming remarks to Board member Hayden and congratulated Chairman Chism on the birth of his great granddaughter.

Agenda Item III: Reports from Board Committees

- a) No report from the **Advisory Committee**.
- b) Board member Crenshaw reported the **Rules Committee** met on June 26, 2013, with various members of the industry. However, Mr. 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' proposed repeal of Private Security Board administrative rules, Texas Administrative Code, Part 1, Title 37, Chapter 35, and the approval for publication of the proposed new Chapter 35.

Board counsel Steve Moninger highlighted the proposed repeal of the five-day rule and stated it is not authorized by statute. He went on to say it effectively authorizes unlicensed activity during that time period. Mr. Moninger added the Board has discretion to determine what is required within that time period, whether it is a criminal background check, a complete application or an application with fingerprints, etc.

Board member Crenshaw stated he would prefer more input from the industry.

Vice-Chairman Johnsen agreed with Mr. Moninger, stating he was concerned for guard companies not knowing if an employee had criminal background problems for as long as a month. He added that in most cases a background check cannot be completed in five days. He confirmed with Mr. Moninger that statute requires a complete application before employment.

Chairman Chism stated there are two areas of concern: one is due diligence and the second is liability. Mr. Moninger added the Pre-Employment Background Check is to mitigate some of that risk and reduce liability, but it may not work in all cases.

Chairman Chism opened the floor for public comment regarding the agenda item.

Mr. Samulin, Texas Burglar and Fire Alarm Association, stated, the emphasis is for the industry to put people to work. He added the former 14-day rule worked just fine and the industry disagrees with Mr. Moninger on the interpretation of the five-day rule. He went on to say background checks can be done in one day, along with basic due diligence. He concluded, stating the next time our committee meets the industry should have its own representation.

Mr. George Craig, a guard company owner in Corpus Christi, agreed with Mr. Samulin and added the intent of 1702.230, Section 4, which mentions date of employment commenced, is to have employees work non-commissioned during their processing and the registration with the state.

Chairman Chism called for a reference to the Rules Committee for further review.

Agenda Item V: Tarrant County College Security Academy Presentation

Damon Jackson was not present. Tarrant County College has discontinued funding of its Security Academy.

Agenda Item VI: Executive Session

Executive Session began at 9:52 a.m. The Board returned at 10:07 a.m.

Agenda Item VII: Public Comment

- a) Karen Hewitt, University of North Texas, made no comment.
- b) Bonnie Brown Morse, Locksmith Association of San Antonio (LASA), made no comment.
- c) Mark Dawson, Texas Locksmith Association. Mr. Dawson thanked the Board for their support during the most recent Legislative session and for its representation, stating he and his industry are excited to be included.

Board member Crenshaw invited Mr. Dawson and his association members to participate in the future Rules Committee meetings.

- d) Sherrie Zgabay, RSD LRS. Ms. Zgabay reported today's statistics didn't match on printed and visual versions. RSD will work quickly to correct and provide accurate reporting.

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

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

- Pruitt, Douglass. – Docket No. 405-13-2770
- Reber, Leroy – Docket No. 405-13-1284
- Marks, William – Docket No. 405-13-1285
- Carson-Perez, Cynthia – Docket No. 405-13-3354
- Gonzales, Lono Lisa – Docket No. 405-12-3492
- Williams, Charles Lee – Docket No. 405-13-2795

Because the licensees were not in attendance, Board member Crenshaw made a motion to uphold the State Office of Administrative Hearings (SOAH) decision of William Marks, Cynthia Carson-Perez and Charles Lee Williams. The motion was seconded by Secretary Smith. All voted in favor and the motion carried.

Pruitt, Douglass. – Docket No. 405-13-2770

Mr. Pruitt was present to address the Board on his case. He did not have counsel present on his behalf. Ginger Hunter, ORC attorney, stated the basis for DPS' revocation of Mr. Pruitt's registration as a locksmith was based on a Nov. 8, 2012, conviction for State Jail Felony offense of Driving While Intoxicated with a Child Under 15 Years of Age, entered against him in the 439th Judicial District in Rockwall County, Texas. (Case No. 2-12-451)

Ms. Hunter added a hearing was held before the State Office of Administrative Hearings (SOAH) on March 19, 2013. Based on the evidence presented at the hearing, the presiding Administrative Law Judge issued a proposal for decision opposing DPS' revocation of Mr. Pruitt's registration as a locksmith. The proposal for decision was based on the length of time the licensee has been a locksmith, the support necessary to provide for his children and the nature of the crime being unrelated to his position as a locksmith.

Mr. Pruitt addressed the Board, after his swearing, and stated he's thankful for the people in this room who have helped to clean up our industry since the 1970s and 1980s. The economy is in the tank and now is not a good time to be without a job. He has two young children and in his mid- 50s, it would be difficult to go somewhere else and begin an entry-level position.

Chairman Chism asked the Board if anyone had any questions. There being no questions, Secretary Smith made a motion to uphold the SOAH decision opposing DPS' revocation of Mr. Pruitt's registration as a locksmith. The motion was seconded by Board member Black. All were in favor and the motion carried.

Reber, Leroy – Docket No. 405-13-1284

Mr. Reber was present to address the Board on his case. He did not have counsel present on his behalf. Ms. Hunter stated the basis for denial of Mr. Reber's registration as an owner is based on a Feb. 8, 1993, conviction for the First-Degree Felony offense of Burglary of a Habitation in Tarrant County Criminal District Court No. 4, Cause No. 0452211A. A hearing was held before SOAH on March 6, 2013. After a hearing on the merits, the presiding Administrative Law Judge issued a proposal for decision recommending Mr. Reber's application for registration as an owner be approved, based on the time passed since Mr. Reber's conviction.

Mr. Reber addressed the Board, after his swearing, and stated his appreciation of the Board hearing his case. He added he is now older and smarter, and now provides many services to those who frequent his store. He is proud to say he's worked hard for what he has and is thankful.

Chairman Chism asked the Board if anyone had any questions. There being no questions, Secretary Smith made a motion to uphold the SOAH decision to approve Mr. Reber's application as an owner. The motion was seconded by Board member Black. Three members voted in favor with four voting against. The motion failed.

Board member Hayden explained the basis of his opposition was Mr. Reber's 1993 conviction permanently disqualifies Mr. Reber's registration as an owner, citing Texas Occupation Code. He reiterated the Administrative Law Judge stated a conviction for burglary of a habitation "may" criminally disqualify an applicant from becoming a registered security company owner. He went on to state Texas Occupations Code, Chapter 1702, §35.46 and said the Administrative Law

Judge misapplied the rule; there is no reference to the word “may.” He concluded by saying the conviction is permanently disqualifying.

Mr. Moninger made a point of order advising the Board to either accept or overturn the decision made by SOAH.

Board member Hayden made a motion to overturn and reject the Administrative Law Judge’s proposal for a decision recommending Mr. Reber’s application for registration and to deny such application for registration due to his permanent disqualification from registration as a security company owner. The motion was seconded by Vice-Chairman Johnsen. Four members voted in favor and three members voted against. The motion carried.

Gonzales, Lono Lisa – Docket No. 405-12-3492

Ms. Gonzales was present to address the Board on her case. She did not have counsel present on her behalf. Ms. Hunter stated the basis for the denial of Ms. Gonzales’ registration as a non-commissioned security officer is her July 7, 2005, State Jail Felony conviction for Theft (Cause No. 9030566) in the 299th District Court in Travis County, Texas. A hearing was held before SOAH on May 2, 2013. Based on the evidence presented at the hearing, the presiding Administrative Law Judge issued a proposal for decision supporting DPS’ denial of Ms. Gonzales’ registration as a non-commissioned security officer.

Ms. Gonzales addressed the Board, after her swearing, and stated she served a total of 10 years, including a violation of probation. Adding, she has done everything by the law, the only reason she was revoked due to financial burden. Ms. Gonzales said she’s a single mom trying to do it all and sometimes it doesn’t work. She added she has completed her time and she’s an upstanding citizen. She enjoys her job and it’s a job she thoroughly enjoys.

Chairman Chism asked the Board if anyone had any questions. There being no questions, Secretary Smith made a motion to uphold the SOAH decision to deny Ms. Gonzales’ registration as a non-commissioned security officer. The motion was seconded by Board member England. All voted in favor and the motion carried.

Agenda Item VII: Adjournment

With there being no further business for the Texas Private Security Board for the July 17, 2013, Board Meeting, Chairman Chism asked for a motion to adjourn at 10:35 a.m. Secretary Smith made a motion to adjourn and it was seconded by Board member Hayden. All were in favor and the motion carried.