

MINUTES
PUBLIC SAFETY COMMISSION
April 24, 2008
Austin, Texas

The Public Safety Commission met in Austin, Texas on April 24, 2008. Attending the meeting were Chairman Allan Polunsky and Commissioners Elizabeth Anderson, Carin Barth and Tom Clowe. Colonel Tommy Davis, Director; Lt. Colonel David McEathron, Assistant Director; and other DPS staff members and guests were also present.

- I. **Call to order.** At 9:32 a.m., the meeting was called to order by Chairman Polunsky and role call was taken. All members were present. Proper notice had been posted. Chairman Polunsky extended his appreciation and that of the Commission for the wonderful job performed by DPS personnel in the Eldorado situation involving the Fundamentalist Church of Jesus Christ of Latter Day Saints Yearning for Zion Ranch residents.
- II. **Approval of minutes.** A motion was made by Commissioner Anderson approving the minutes of the March 11, 2008 meeting. Commissioners Barth and Clowe stated they had not seen those minutes, therefore Commissioner Anderson withdrew her motion. Those minutes will be taken up at the next meeting.
- III. **Public comment.** Randall Beaty, on behalf of the DPS Criminalist Association, offered the support of the association to the Public Safety Commission.

A 35 year service certificate was presented to Dorothy Wright, Executive Assistant to the Director and the Public Safety Commission.
- IV. **Procurement of Directors' and Officers' Liability Insurance Coverage.** Sally Becker of the State Office of Risk Management and Gerald Michalak of Arthur Gallagher Risk Management Services briefed the Commission on various options for the liability insurance. There was some discussion on the various proposals (see attached). A motion was made by Commissioner Clowe recommending the agency obtain Option 2. Commissioner Barth asked Chief of Finance Oscar Ybarra if the Department had identified funds to pay for this coverage. There was further discussion on this matter and the possibility of making a stub payment for the remainder of this fiscal year and then a payment for FY 2009. Commissioner Clowe withdrew his motion and Commissioner Barth made a motion recommending the Department purchase Option 3 subject to getting a list of currently approved outside counsel, working through the issue of private counsel getting attorney fees up front, and identifying which covered state agencies have at will employees. Commissioner Anderson seconded the motion. Commissioner Clowe stated when Commissioner Barth is satisfied with the conditions she stated in her motion it can be final. Motion passed unanimously.
- V. **DPS Museum briefing.** B. C. Lyon, Director of the DPS Historical Museum and Research Center, briefed the Commission on the DPS Museum. There was some discussion on the museum.

- VI. Motion for rehearing in the matter of discharged employee Joe Rochelle.** Don Dickson addressed the Commission on the motion for rehearing in the matter of discharged employee Joe Rochelle and the issue of where he felt the Commission should set the bar in the appeal hearings. Commissioner Anderson moved denial of the request for rehearing. Commissioner Clowe requested that the Department's legal representative respond to the motion. Janette Ansolabehere responded on behalf of the Department. There was some discussion on this matter. Commissioner Anderson withdrew her original motion and then moved that the Commission declines to consider the motion for rehearing and that the Order of the Commission dated February 12, 2008 was and remains final. This motion was seconded by Commissioner Clowe and passed unanimously. DPS staff was directed to come up with suggested policy on matters such as this. There was also some discussion on who can petition the Commission for rule changes.
- VII. Discharge appeal hearing of DPS employee Aaron Ragland.** Commissioner Barth brought up the issue of the Commission receiving more background information on appeal hearings before the actual hearing date. There was some discussion on this. Mary Ann Courter will work with Commissioner Barth to resolve this issue. Phil Burleson, appellant's attorney, stated they would be willing to work with DPS Legal staff to stipulate to certain documents that might be presented at a hearing. Chairman Polunsky asked the Commissioners if they were ready to proceed with this hearing. After some discussion, it was agreed the appeal hearing for Aaron Ragland would proceed.
- Aaron Ragland appeared before the Commission to appeal his discharge. He was represented by Attorney Phil Burleson. DPS was represented by Janette Ansolabehere. Court reporter was Janalyn Reeves of Esquire Deposition Services. Opening statements were made by both attorneys. All witnesses were sworn. Witnesses appearing for DPS were Sergeant Robert Strickland and Major Stan Clark, Texas Highway Patrol. DPS exhibits #1, #2 and #3 were submitted and accepted by the Commission. Witnesses appearing for appellant were Aaron Ragland, Kristi Ragland and Coy Lorange. Appellant exhibits #1 and #2 were submitted and accepted by the Commission. Closing statements were made by both attorneys. After some discussion, the Commission decided to defer deliberation on this matter and to make their decision at the next meeting to allow the members time to review the material submitted.
- VIII. Executive session.** The Commission went into Executive Session at 1:32 p.m. pursuant to Section 551.071, Texas Government Code, to receive legal advice from their attorneys reference pending litigation. Regular Session was reconvened at 2:35 p.m.
- IX. Discharge of probationary employee Katherine Veloz.** Colonel Davis advised the Commission of the reason for his discharge of probationary employee Katherine Veloz. A motion was made by Commissioner Clowe and seconded by Commissioner Barth affirming the Director's action of discharging probationary employee Katherine Veloz. Motion passed unanimously.

X. Budget matters

- A. Proposed exceptional items.** Colonel McEathron briefed the Commission on the proposed exceptional items. There was some discussion on the exceptional items and the Commission tabled this agenda item until they receive more detailed information on each item.
- B. Contracting and spending authority within DPS.** Oscar Ybarra requested clarification from the Commission on what information they actually wanted on this agenda item. There was some discussion on this item. Oscar Ybarra will have the desired information prepared for the Commission.
- C. Request for Proposal to solicit proposals from qualified audit consultants to provide governmental auditing/accounting expertise, risk assessment and advice for FY 2007-2008 and FY 2008-2009.** Oscar Ybarra briefed the Commission on his discussions with the State Auditor's and Comptroller's Offices reference this item. There was some discussion on procedures for procuring a service contract versus a consultant contract for external audits and risk assessment. Mr. Ybarra will clarify with the State Auditor's Office and other state agencies on how this item can be handled and will then report back to Commissioner Barth. Commissioner Barth requested Farrell Walker, Director of Internal Audit, work with Accounting staff on expeditiously writing the above referenced Requests for Proposal (RFP).

- XI. Organization assessment.** Commissioner Clowe submitted a report on his assignment by Chairman Polunsky to study the Department's organization. He recommended that DPS go forward with a Request for Proposal to study the Department's organization. There was some discussion on this item, including the authority of the Commission to enter into contracts and the vendor selection and protest processes. Chairman Polunsky requested Commissioner Clowe work with Department personnel on this RFP and Commissioner Barth work on the RFP for risk assessment and audit consultants. Chairman Polunsky will name committees, including Farrell Walker, someone from Legal and someone from Accounting, to generate the RFP's which are to be ready for approval by the Commission at their May meeting.

Chairman Polunsky asked that DPS consider freezing any movement of personnel or filling vacancies. After some discussion, it was decided the freeze should pertain to positions above the Captain level and extend until the Commission takes action on the organizational assessment.

- XII. Audit & Inspection report.** Farrell Walker gave the Audit & Inspection report. There was some discussion on the 1st Quarter Report on Audit Recommendations Requiring Follow-Up that had been provided to the Commissioners. It was stressed by the Commissioners that they care about the audit and inspection functions in the Department and when recommendations are made and agreed to by management, they want them implemented in a timely manner. They expressed their desire to see fewer outstanding recommendation items in the next quarterly report.

- A. Revised FY 2008 Internal Audit Plan.** This item was not considered due to the possible use of outside auditors to complete the original Plan previously approved by the Commission.

At this time, Chairman Polunsky recognized Ranger Captain Barry Caver for the outstanding work he did on behalf of the State of Texas in the Eldorado situation.

- XIII. Performance measures reevaluation.** Colonel McEathron briefed the Commission on the Department's performance measures and our attempts to change some of them in the LAR and strategic planning process. There was some discussion on this item and Commissioner Anderson stressed the need for Commission involvement in the process and that required documents submitted in response to the Governor's Strategic Planning guidelines should also be provided to the Commission.
- XIV. Division reports.** Burt Christian, Chief of Administration, gave an update on TDEX funding. Kent Mawyer, Criminal Law Enforcement Chief, corrected the amount of marijuana seized on the report that had been submitted to the Commission. There was some discussion on the Fusion Center and the importance of getting this fully operational within 60 days. Russ Leckleider, Assistant Chief of Emergency Management, reported on the transfer of children removed from the Yearning for Zion Ranch and the expected closing of the unified command center. Chief Randy Elliston, Texas Highway Patrol, reported on current trooper strength, rural statewide crashes and Operation Border Star. The Commissioners expressed their appreciation to the Texas Highway Patrol officers for their continuing efforts relating to Border Star activities.
- XV. Proposed rules for publication for public comment**
- A. Proposed repeal of Rule 1.261, 37 TAC Sec. 1.261; proposed New Rule 1.261, 37 TAC Sec. 1.261, regarding Historically Underutilized Business Program Policies**
 - B. Proposed amendments to Rules 6.1 and 6.2, 37 TAC Secs. 6.1 and 6.2, regarding General Provisions – License to Carry Handguns**
 - C. Proposed repeal of Rules 6.3-6.5, 37 TAC Secs. 6.3-6.5, regarding General Provisions – License to Carry Handguns**
 - D. Proposed repeal of Rules 6.11-6.21, 37 TAC Secs. 6.11-6.21; proposed New Rules 6.11-6.15, 37 TAC Secs. 6.11-6.15, regarding Eligibility and Application Procedures – License to Carry Handguns**
 - E. Proposed repeal of Rules 6.31 and 6.32, 37 TAC Secs. 6.31 and 6.32, regarding Procedures on Denial of License – License to Carry Handguns**
 - F. Proposed repeal of Rules 6.51-6.54, 37 TAC Secs. 6.51-6.54, regarding Enforcement Procedures – License to Carry Handguns**
 - G. Proposed repeal of Rules 6.61-6.63, 37 TAC Secs. 6.61-6.63, regarding Suspension and Revocation Procedures – License to Carry Handguns**
 - H. Proposed repeal of Rules 6.82-6.96, 37 TAC Secs. 6.82-6.96, regarding Certified Handgun Instructors**
 - I. Proposed amendments to Rules 6.71-6.74, 6.76, 6.77, 6.79-6.81, 37 TAC Secs. 6.71-6.74, 6.76, 6.77, 6.79-6.81; proposed New Rules 6.82-6.92, 37 TAC Secs. 6.82-6.92, regarding Certified Handgun Instructors**
 - J. Proposed repeal of Rules 6.111-6.116, 37 TAC Secs. 6.111-6.116, regarding Information and Reports – License to Carry Handguns**

K. Proposed amendments to Rule 9.22, 37 TAC Sec. 9.22, regarding the Amber Alert Network for Abducted Children

L. Proposed amendments to Rule 9.32, 37 TAC Sec. 9.32, regarding the Silver Alert Network

A motion was made by Commissioner Clowe and seconded by Commissioner Barth approving the above referenced amendments, repeals and new rules (see attached) for publication for public comment. There was some discussion on the rule process. Motion passed unanimously.

XVI. Rules for final adoption

A. Proposed amendments to Rule 1.114, 37 TAC Sec. 1.114, regarding Major Infraction Applicable to Any Member, in order to incorporate an ethics policy consistent with the recently adopted Attorney General model ethics policy, as published in 33 TexReg 922, February 1, 2008

B. Proposed amendments to Rule 15.24, 37 TAC Sec. 15.24, regarding Identification of Applicants for a Driver License or Identification Certificate, as published in 33 TexReg 2011, March 7, 2008

C. Proposed amendments to Rule 15.25, 37 TAC Sec. 15.25, regarding the Address of Applicants for an Original, Renewal or Duplicate Driver License or Identification Certificate, as published in 33 TexReg 2012, March 7, 2008

A motion was made by Commissioner Barth and seconded by Commissioner Clowe approving the above referenced amendments (see attached) for final adoption. Motion passed unanimously.

XVII. Appointments of Special Rangers & Special Texas Rangers. A motion was made by Commissioner Anderson and seconded by Commissioner Clowe approving Special Ranger commissions for DPS retirees Ronnie G. Fikes, Billy M. Ladd and Rosalio P. Zapata and disapproving Alan S. Trevino. There was some discussion on the requirements for Special Ranger and Special Texas Ranger. Motion carried unanimously.

XVIII. Appointment of Honorary Texas Ranger Captain. A motion was made by Commissioner Anderson and seconded by Commissioner Barth approving past Commissioner Ernest Angelo, Jr. as an Honorary Texas Ranger Captain. Motion carried unanimously.

XIX. Meeting dates. After discussion on possible dates, the Commission agreed to set future meetings for Friday, May 16, 2008 and subsequent meetings on the 3rd Thursday of each month beginning in June, 2008.

XX. Future agenda items. No future agenda items were presented. Commissioner Clowe handed material to the Commissioners on the DPS Command One facility currently housed in Garland. Chief Randy Elliston commented on the command center.

There being no further business, the meeting was adjourned at 5:35 p.m.

Read and approved this 16th day of MAY, 2008.


Chairman


Member


Member


Member

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On April 24, 2008, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Organization and Administration
Title 37 T.A.C. Part I, Chapter 1
Subchapter H
Section Number 1.114

The Texas Department of Public Safety adopts amendments to Section 1.114, concerning Major Infraction Applicable to Any Member, without changes to the proposed text as published in the February 1, 2008, issue of the *Texas Register* (33 TexReg 922).

Adoption of amendments to Section 1.114 are necessary in order to incorporate an ethics policy that is consistent with the recently adopted Attorney General model ethics policy promulgated under Government Code, Section 572.051(d).

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

The effective date of the rules is 20 days after the rules are filed with the Texas Register Division, Office of the Secretary of State.

This order constitutes the order of the Commission required by the Administrative Procedures Act, Government Code, Section 2001.033.



Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On April 24, 2008, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Drivers License Rules
Title 37 T.A.C. Part I, Chapter 15
Subchapter B
Section Number 15.24

The Texas Department of Public Safety adopts amendments to Section 15.24, concerning Identification of Applicants, without changes to the proposed text as published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 2011).

Adoption of amendments to the section is necessary in order to prevent circumvention of the Texas identification requirements. Individuals, who cannot meet the current Texas identification requirements, obtain driver licenses and identification certificates issued by other states with identification standards not equal to or greater than those required in Texas. The individuals then use the out of state driver licenses and identification certificates, issued under inferior identification requirements, as a form of secondary identification to obtain Texas driver licenses and identification certificates.

Additionally, individuals attempt to use traffic citations completed with unverified identifying information to obtain Texas driver licenses and identification certificates. These individuals contend that the citation is an original court order and should be considered as a form of secondary identification under the current rule. Adoption of amendments to the section would restrict the acceptable court orders to official name and gender changes, and would eliminate this circumvention of the Texas identification requirements.

Lastly, the department adopts amendments which would provide necessary uniformity regarding the validity period of acceptable federal documentation. Adoption of this amendment would require United States Bureau of Citizenship and Immigration Services documents to be issued for at least one year and with at least six months of validity remaining at the time of application.


No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Transportation Code, Section 521.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

The effective date of the rules is 20 days after the rules are filed with the Texas Register Division, Office of the Secretary of State.

This order constitutes the order of the Commission required by the Administrative Procedures Act, Government Code, Section 2001.033.


Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On April 24, 2008, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Drivers License Rules
Title 37 T.A.C. Part I, Chapter 15
Subchapter B
Section Number 15.25

The Texas Department of Public Safety adopts amendments to Section 15.25, concerning Address of Applicants for an Original, Renewal or Duplicate Driver License or Identification Certificate, without changes to the proposed text as published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 2012).

Adoption of the amendments to Section 15.25 is necessary in order to prevent circumvention of the Texas application and residence requirements.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Transportation Code, Section 521.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

The effective date of the rules is 20 days after the rules are filed with the Texas Register Division, Office of the Secretary of State.

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Allan B. Polunsky, Chair
Public Safety Commission