

**MINUTES
PUBLIC SAFETY COMMISSION
February 24, 2005
Austin, Texas**

The Public Safety Commission met in Austin, Texas on February 24, 2005. Attending the meeting were Chairman Colleen McHugh and Commissioners Carlos Cascos and Ernest Angelo, Jr.

DPS Staff members present:

Tommy Davis, Director
David McEathron, Assistant Director
Oscar Ybarra, Accounting & Budget Control
Randy Elliston, Lamar Beckworth, Mark Rogers & Danny Knauth, Highway Patrol Division
Gary Stone, Criminal Law Enforcement
Burt Christian, Administration
Judy Brown & Greg Gloria, Driver License
Earl Pearson & Ray Coffman, Texas Rangers
Farrell Walker, Jack Allen, Michael Bradberry & John Wise, Office of Audit & Inspection
Mary Ann Courter, General Counsel
Ed Kelly & Bryan Lane, Information Management Service
Rick Kautz, Information Resource Section
David Outon & K. B. Wilke, Internal Affairs
Jack Reichert & Steve Powell, Aircraft
Cliff Grumbles, Private Security License Bureau
Dorothy Wright, Secretary

Guests present:

Mike Samulin & George Craig, Texas Private Security Bureau
Jim Barnes, Chevron Texaco
John Brady, Conoco Phillips
Charlie Hutchinson, Crescent Real Estate
Deborah Allen, citizen

The meeting was called to order by Chairman McHugh. Proper notice had been posted.

- I. **Minutes.** Upon motion by Commissioner Angelo and seconded by Commissioner Cascos, the minutes of the January 12, 2005 meeting were approved.
- II. **Public comment.** There was no public comment.
- III. **Discharge appeal hearing of DPS employee Granver L. Tolliver, Jr.** Commissioner McHugh announced the discharge appeal hearing had been postponed until a later date.

- IV. **Budget matters.** Oscar Ybarra gave the budget report including an update on recent legislative budget hearings.
- V. **Audit & Inspection report.** Farrell Walker gave the audit & inspection report.
- VI. **Reappointment of Inspection & Maintenance Advisory Committee member.** Danny Knauth briefed the Commission on the Inspection & Maintenance Advisory Committee and the need to reappoint one of its committee members. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, Belinda Griffin was reappointed to the Inspection & Maintenance Advisory Committee for a term ending December 31, 2007.
- VII. **Division reports.** Burt Christian gave the Administration Division report. There was some discussion on resolution of the sex offender notification mailing backlog and ongoing building projects. The Texas Highway Patrol Division report was given by Randy Elliston. There was some discussion on traffic contacts, THP drug interdiction efforts and the recent trooper shooting incident. Judy Brown gave the Driver License Division report, including an update on ongoing projects and the recent driver license mismeiling incident. The Criminal Law Enforcement Division report was given by Gary Stone. There was some discussion on ongoing activities of the various services. Earl Pearson gave the Ranger Division report. The Information Management Service report was given by Ed Kelly.
- VIII. **For publication for public comment**
 - A. **Proposed amendment to Rule 4.36, 37 TAC Sec. 4.36, relating to Commercial Motor Vehicle Compulsory Inspection Program.** Mark Rogers briefed the Commission on the proposed amendment. Upon motion by Commissioner Angelo and seconded by Commissioner Cascos, the attached amendment was unanimously approved for publication for public comment.
 - B. **Proposed amendment to Rule 21.1, 37 TAC Sec. 21.1, relating to Standards for Vehicle Equipment**
 - C. **Proposed amendments to Rule 23.73, 37 TAC Sec. 23.73, relating to Vehicle Inspection Fees**
 - D. **Proposed amendments to Rule 23.80, 37 TAC Sec. 23.80, relating to procedures for the Vehicle Identification Number Verification performed during the first-time state inspection for out-of-state vehicles**
 - E. **Proposed amendments to Rule 23.93, 37 TAC Sec. 23.93, relating to Vehicle Emissions Inspections Requirements**

Danny Knauth briefed the Commission on the above proposed amendments. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the attached amendments were unanimously approved for publication for public comment.
 - F. **Proposed amendment to Rule 27.1, 37 TAC Sec. 27.1, relating to the new location in Austin where a person may personally appear to request the individual's criminal history record.** Burt Christian briefed the Commission on

the proposed amendment. Upon motion by Commissioner Angelo and seconded by Commissioner Cascos, the attached amendment was unanimously approved for publication for public comment.

IX. For adoption.

- A. Proposed amendments to Rules 29.11, 29.24, 29.27 & 29.29, 37 TAC Secs. 29.11, 29.24, 29.27 & 29.29, relating to practice and procedure for appeals of administrative rulings, as published in 29 TexReg 11561, Dec. 17, 2004.** Mary Ann Courter briefed the Commission on the above proposed amendments. Upon motion by Commissioner Angelo and seconded by Commissioner Cascos, the attached amendments were unanimously approved for final adoption.
- B. Proposed New Rule 35.76, 37 TAC Sec. 35.76, relating to licensing requirements of private businesses conducting investigations involving persons or the affairs of persons who are not their employees, as published in 29 TexReg 11561, Dec. 17, 2004.** Burt Christian briefed the Commission on the proposed new rule. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the attached new rule was unanimously approved for final adoption.
- C. Proposed New Rule 35.313, 37 TAC Sec. 35.313, relating to exceptions for Locksmiths installing electronic access control devices, as published in 29 TexReg 11460, Dec. 10, 2004.** Mary Ann Courter briefed the Commission on the proposed new rule. Upon motion by Commissioner Angelo and seconded by Commissioner Cascos, the attached new rule was unanimously approved for final adoption.

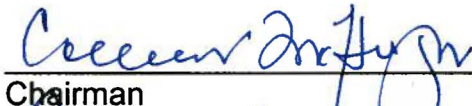
- X. Personnel matters, pending and contemplated litigation, ongoing criminal investigations, status of purchase of real property.** The Commission went into Executive Session pursuant to Tex. Gov. Code Secs. 551.071, 551.074, 551.072 & 411.0041 to discuss personnel matters; Special Ranger and Special Texas Ranger commissions; pending and contemplated litigation; status of purchase of real property; and ongoing criminal investigations. Upon reconvening Regular Session, Commissioner McHugh announced that the Commission had discussed personnel matters, including consent to discharge probationary employee Leticia A. Garcia; pending litigation and ongoing criminal investigations. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, unanimous consent was given to discharge probationary employee Leticia A. Garcia. Special Ranger commissions had been considered for DPS retirees David T. Davis, Reuben D. Madison, Jr., Robert E. Martin, Jr., David L. Morgan, David L. Nesbitt, Raynaldo M. Perez, James M. Ratliff, Jr., Billy E. Rowles and James D. Weaver; and Special Texas Ranger commissions were considered for Charles R. Brune, DPS retiree, and Hal Dumas, Benjamin Eggleston and Tommy Johnson of the Texas & Southwestern Cattle Raisers Association. Upon motion by Commissioner Angelo and seconded by Commissioner Cascos, Special Ranger and Special Texas Ranger commissioners were respectively approved for the above named individuals.

Deborah Allen addressed the Commission reference background checks done by our troopers on persons applying for DPS jobs.

The Commission discussed proposed legislation regarding the Texas Building & Procurement Commission (TBPC) and concerns by DPS relating to TBPC's control of our building projects.

A motion was made by Commissioner Cascos and seconded by Commissioner Angelo adjourning the meeting.

Read and approved this 15th day of April, 2005.


Chairman


Member


Member

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On February 24, 2005, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Practice and Procedure
Title 37 T.A.C. Part I, Chapter 29
Section Numbers 29.11, 29.24, 29.27 and 29.29

The Texas Department of Public Safety adopts amendments to Sections 29.11, 29.24, 29.27, and 29.29, concerning Practice And Procedure, without changes to the proposed text as published in the December 17, 2004, issue of the Texas Register (29 TexReg 11561).

The amendment to Section 29.11 is necessary in order to make the department's rule on the deadline for answers to pleadings in cases transferred to the State Office of Administrative Hearings (SOAH) consistent with discovery deadlines.

The amendment to Section 29.24 is necessary in order to clarify that Requests for Disclosure, authorized by the Texas Rules of Civil Procedure and SOAH rules are also authorized under Department Discovery Rules.

A second amendment to Section 29.24 is necessary in order to make the department discovery deadline rule for cases referred to SOAH consistent with SOAH discovery deadline rule.

A third amendment to Section 29.24 is necessary in order to make the department rules on filing discovery with SOAH consistent with SOAH rules on filing discovery.

The amendment to Section 29.27 is necessary in order to streamline the process of issuing a final order of the director when a party fails to appear at a contested case hearing scheduled at SOAH.

The amendment to Section 29.29 is necessary in order to clarify that partial payments received against an order assessing an administrative penalty as well as costs and fees will be applied first to the costs and fees before being applied to the administrative penalty.

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.



Colleen McHugh, Chairman
Public Safety Commission



TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On February 24, 2005, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Private Security
Title 37 T.A.C. Part I, Chapter 35
Subchapter E
Section Number 35.76

The Texas Department of Public Safety adopts new Section 35.76, concerning General Administration and Examinations, with changes to the proposed text as published in the December 10, 2004, issue of the Texas Register (29 TexReg 11460) and will be republished.

Adoption of the new section is necessary in order to provide for private businesses investigating persons or the affairs of a person, not an employee of the private business to be licensed as an investigations company or hire a licensed investigations company to conduct the investigations.

The department received numerous comments from private businesses regarding proposed Section 35.76. A summary of the comments as well as the department's response follows:

Comment: The comments received indicate that Section 35.76 expands on the statutory requirements of Occupations Code, Section 1702.323(e) because the rule does not contain the statutory language regarding the requirement that the investigation occur off the premises of the business. The comments also indicate that Section 35.76 will have a fiscal impact on the department and on private businesses.

Response: Section 35.76 was not intended to repeat the statutory requirements of Occupations Code, Section 1702.323(e), which are clearly stated in statute. Rather, the purpose of Section 35.76 is to clarify that affected businesses may comply with the statutory requirements of Section 1702.323(e) either by licensing their investigators or by hiring a licensed investigator to perform investigations for which licensing is required by Section 1702.323(e). The department agrees that the rule as written could cause confusion by private businesses as to when licensing is required by Section 1702.323(e), and has therefore amended the rule from that which was previously proposed.

With regard to the comments concerning the fiscal impact of the rule, the department notes that any fiscal impact on the department or private businesses is a direct result of the statutory requirements of Section 1702.323(e), and not of the proposed rule, which does not impose any additional requirements.

The new section is 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.


Colleen McHugh, Chairman
Public Safety Commission

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TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On February 24, 2005, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Private Security
Title 37 T.A.C. Part I, Chapter 35
Subchapter U
Section Number 35.313

The Texas Department of Public Safety adopts new Section 35.313, concerning Locksmith, without changes to the proposed text as published in the December 10, 2004, issue of the Texas Register (29 TexReg 11460).

Adoption of the section is necessary in order to provide an exception for companies and individuals that install electronic access control devices intended only for the unrestricted access and convenience to the general public such as automatic pedestrian doors.

No comments were received regarding adoption of the new section.

The new section is 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.


Colleen McHugh, Chairman
Public Safety Commission

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IN THE MATTER OF § BEFORE THE

THE DISCHARGE OF § PUBLIC SAFETY COMMISSION

LETICIA A. GARCIA,
A PROBATIONARY EMPLOYEE § IN AUSTIN, TRAVIS COUNTY, TX

Advice and Consent

In accordance with Government Code Section 411.007(f), the Director found that the following named probationary employees were unsuitable for continued employment in the Department of Public Safety. The Public Safety Commission has consented to the discharge of this employee:

Employee Name	Employee Title/Division	Date of Discharge
Leticia A. Garcia	Driver License Examiner/Driver License	01/06/2005

Approved:

Colleen McHugh, Chairman
Public Safety Commission
Date: February 24, 2005

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