

MINUTES
PUBLIC SAFETY COMMISSION
August 21, 2009
Austin, Texas

Call to order

The Public Safety Commission met in Austin, Texas on August 21, 2009. Attending the meeting were Chairman Allan Polunsky, Commissioners Tom Clowe, Carin Barth and John Steen. Commissioner Ada Brown was absent. DPS staff members and guests were also present. The meeting was called to order by Chairman Polunsky at 10:36 a.m. Proper notice had been posted.

Approval of Minutes

A motion was made by Commissioner Steen and seconded by Commissioner Barth approving the minutes for the July 16-17, 2009 meeting. Motion carried unanimously.

Chairman Polunsky then announced the August 31st retirement of Dorothy Wright, Executive Assistant to the Director, after 36 years of dedicated service to the State of Texas and the Department. He gave a brief chronology of her DPS career and thanked her on behalf of the Commission and everyone at the DPS wishing her the best in retirement. Dorothy was given a round of applause and standing ovation.

Public comment

Scott Henson, author of "Grits for Breakfast" Criminal Justice blog, stated he had submitted a petition requesting a public hearing be held on changes to the rules of the Driver Responsibility Program. He urged the Commission to consider a scaled back version of the program and establish an indigence and amnesty program. Chairman Polunsky thanked him for bringing this issue to the forefront.

Senator Eliot Shapleigh, El Paso County, and Judge Elizabeth Earle, Travis County Court, individually provided their comments and suggestions on possible changes to the Driver Responsibility Program. The Senator focused on the effects in El Paso stating 11% (one in nine) were affected by the program. Commissioner Barth requested information on percentage having surcharges resulting from DWI. Judge Earle commented on the spiral affect the fees had impacting county courts with backups and confusing people that will "never get out of the hole". She expressed her concerns for the people on the roads and urged a revision of the program. Commissioner Barth inquired of Judge Earle if she thought in lieu of the surcharges, did she think classes might fix the problem. Both agreed that might be an option worth trying.

Pamela Sheeran Lopez, a Freer resident spoke requesting help from the DPS to assist with harassment she has been enduring and her inability to find local resolution in a civil matter. The matter was turned over to the Director's office.

Director's Report

Colonel Steven McCraw gave report, stating Trooper John David Cox had recently been awarded a Medal of Valor. He provided status of a recent hostage rescue situation in Katy involving two ISD police officers. The Director commented he would explore Senator Shapleigh's concerns and work with his office to bring the program back into compliance. He mentioned briefly a letter with regards to fire safety at the training academy. He informed the Commission of the leadership team discussions and changes in structure to be recommended

later in the agenda. He announced Michael Kelley as new, permanent Division Chief of the Drivers License Division.

He then introduced Amanda Arriaga who will be the Chief of Government Relations. Amanda gave a quick introduction of her career and how pleased she was to be coming on board with DPS. She was welcomed by the Chairman.

Colonel McCraw then presented a letter to the Chairman from the Governor and First Lady Anita Perry thanking Dorothy Wright, Executive Assistant to the Director, for her service to the State of Texas, which Chairman Polunsky presented.

Colonel McCraw spoke on the equipment issue, specifically flak jackets in order to "armor up" the troopers. \$2.5 million in stimulus money would go towards the replacement program. A proposal will be on the next agenda for additional equipment. PRT and field readiness tests were recapped including the disproportional effect time factors were having on the female and older individuals. Commissioner Clowe asked for assurance no delays would occur in identifying and resolving the fire hazards at the training academy.

Chairman Polunsky informed everyone that he just received a copy of a letter from Senator Juan Hinojosa sent to Colonel McCraw stating concerns about the safety and structural conditions at the DPS training academy. He requested all issues addressed in Senator Hinojosa's letter be looked into expeditiously. Commissioner Steen requested the Colonel provide an update in his next monthly letter to the Commissioner's on this matter. Commissioner Steen complimented the Director on his recent update letter he sent to the Commissioners. He then asked the Director what his three largest challenges were. Colonel McCraw stated: License/Regulatory fee backlogs; need for high caliber people, retention of individuals plus appraisal and promotional processes; the technology systems and accountability of people.

New Business

Jack Colley introduced Julie Harris-Lawrence, Texas Education Agency Deputy Associate Commissioner, and Dr. David Lakey, Commissioner of Department of State Health Services. They reported on the states preparedness response to the H1N1 virus with regards to school closures and vaccine program. Decisions on school shutdown would depend on capacity factors such as student absenteeism, staffing levels and student-teacher ratios. The vaccine will be available October 15 to the private sector. Chairman Polunsky requested Tela Mange, DPS Public Information Officer, place an immediate media release with summary of the information from the discussion at the meeting today for the public.

Jack Colley commented the generators at the coastal DPS locations which Commissioner Barth requested at the July meeting would be done by September 15. This will be done collectively with the efforts of the Texas Facilities Commission.

Due to Commissioner Browns absence, the update discussion and possible action regarding the recruitment policy committee, and the discussion and possible action regarding the overtime and compensatory time agenda items were deferred to the September 17th Commission meeting. Chairman Polunsky stated Commission Brown may generate a letter in the next few days on these topics.

Colonel McCraw brought up discipline standardizing punishment across the division. He stated lies would be grounds for termination under the discipline policy. Chairman Polunsky stated he and the Commission were in support of that policy.

Oscar Ybarra discussed the 81st Legislature approval to increase the Director's salary. He requested the Commission approve an increase from the current \$157,500 to \$162,000 annually. He explained the formal statutory requirement procedures. **A motion was made by Commissioner Steen and seconded by Commissioner Barth to move forward with the request for increase of the Director's salary. Motion carried unanimously.** Chairman Polunsky stated, for the record, that he had requested this agenda item; the Director had recused himself from this issue. Chief Ybarra confirmed to Commissioner Clowe the increase would be effective September 1.

Oscar Ybarra asked permission to discuss an agenda item out of order since Dwight D. Burns and John Hernandez, Executive Director and Deputy Director respectively of the Texas Public Finance Board were present. He provided an update regarding pending issuance of approximately \$110,625,000, pursuant to previous approval from the Texas bond Review Board, the Legislative Budget Board and the Public Safety Commission. A short discussion with the Commission ensued about how well the State of Texas Bonds had done in the market and ratings. Chief Ybarra requested approval for issuance of these bonds.

Chief Ybarra gave an update of the bad check debt accounting, which Commissioner Barth had requested at the July meeting. He stated in three years the agency had collected revenues of \$623 million in bad debt, \$510 million in Drivers License; with .11% (\$224,565) outstanding return check amount to date. Chief Michael Kelley joined Chief Ybarra stating that the Drivers License division could revoke license over "hot checks". Commissioner Barth suggested we act proactively and get away from taking checks and accept cash or money orders only. Chairman Polunsky stated since Colonel McCraw had not been briefed, they should come back at the next Commission meeting on this topic and discuss revoking license over NSF checks and recommendations to eliminate the problem.

Commissioner Barth updated the Commission on employment of the Inspector General. She stated we have a job description for the Inspector General to be posted. Selection is anticipated by the middle of October. Colonel McCraw stated they had no suitable candidates for the Chief of Finance position and suggested going with Korn/Ferry in the selection process for both positions. He added that due to Internal Affairs going away on September 1st that the functions would roll over to the Inspector General responsibilities, but that in the interim the current Internal Affairs would stay in place. Further discussion on the item was taken up in Executive Session.

Colonel Lamar Beckworth discussed the asset forfeiture procedure. The new policy was provided for discussion to the Commission. With regards to the seized funds, during the 81st Legislation the TDEx was given to the DPS but not funds to run the program. Colonel Beckworth requested \$4.1 million from the seized/forfeited assets for the agency to pay for the TDEx and balance the budget. **A motion was made by Commissioner Steen and seconded by Commissioner Clowe approving \$4,151,550 from federal seized assets to be utilized to pay for the TDEx and for the agency to balance the budget. Motion carried unanimously.** Commissioner Barth asked to see the running total for seized assets.

David Gavin joined Colonel Beckworth with discussion on the TDEx 2010-11 funding. **A motion**

was made by Commissioner Clowe and seconded by Commissioner Barth to approve the 2010-11 TDEx funding. Motion passed unanimously.

Sandra Fulenwider appeared before the Commission and stated David Gavin would retire from the Department at the end of the month. Chairman Polunsky thanked him for his years of service at the DPS. Chief Fulenwider continued with a discussion on the energy saving improvements and performance contract with TAC America. She informed the Commission the contract expired at the end of the month and a decision to renew the contract needed to be made. Chairman Polunsky asked why this was coming up 10 days before expiration of the contract. Stuart Platt informed that the State stressed the contract upon us under government requirement. Commissioner Barth suggested some form of contract triggering method be established in order that deadlines and key dates not come to the Commissioners attention on this short of notice. The item was deferred until later in the meeting. Chairman Polunsky stated this sort of situation needed to be addressed and some restructuring and safeguards put into place.

Commissioner Steen gave a status on the work done by Stuart Platt, OGC, regarding the expense, use and need of the transcriptions of the Public Safety Commission meetings and if it was a good use of DPS funds. Stuart Platt commented we had the agenda, audio with capability to index, abridged minutes and transcription on the website and stated he was not opposed to doing away with the transcript. Commissioner Clowe noted we used no witness affirmation form for individuals who appear before the Commission with testimony or statements. He commented that he was not in favor, nor comfortable with the summary of minutes; but if the transcriptions were inaccurate, they were not worth anything and verified the audio was certifiable. **A motion was made by Commissioner Steen and seconded by Commissioner Barth to cancel the contract for transcription of the meetings. Commissioner Clowe voted no, the others voted yes. The motion passed.**

Executive Session

The Commission went into Executive Session to discuss security issues, to consult with legal counsel regarding pending or contemplated litigation or settlement offers or to receive legal advice on items posted on this agenda; deliberation regarding real estate matters; consideration of any other items authorized by law, including personnel matters, the Director's action of discharging employees as identified in this agenda; and ongoing criminal investigations. Interview and deliberate regarding applicants for position of Department Director. Executive Session began at 2:17 p.m. and ended at 3:40 p.m.

Ongoing Business

Upon reconvening regular session, **a motion was made by Commissioner Barth and seconded by Commissioner Clowe to approve extending a three month energy saving improvements and performance contract with TAC America while staff reviewed, with option to terminate or extend at end of the 90 days. Motion passed unanimously.**

Chief Michael Kelley gave an update on the implementation of driver license reengineering, the new driver license system and options regarding implementation. He addressed Commissioner Barth's inquiry about the timing on production of licenses at the counter. The effort will be to address the time it takes with the new system and streamline the process. Chief Kelley also stressed the need for a new mailing machine, examiners and technicians. Audit and Inspection is assisting in consolidation of DPS offices. Chief Kelley is working with Chief Baker in order to

address scheduling teen driving tests and process time. Chairman Polunsky asked Chief Kelley to look at other states.

Chief Kelley continued with discussion on the transformation of the administration of the Driver License Division to a civilian model.

Chief Michael Kelley addressed the Drivers License Division – Driver Responsibility – Vendor Management HQ-08-37, and the prior public comments about the program and an indigence/amnesty program. He recapped proposed rule changes including implementing the indigence program. Stuart Platt joined the discussion and stated he recommended not terminating the current vendor, Municipal Services Bureau, due to their sound performance. He suggested continuing the contract and re-examining the vendor's performance in September of 2010. He did not believe it would be wise to change vendors while incorporating a new DRP fee schedule. At the end of a year of changes in DRP indigency program implementation, then examine performance of the vendor.

A motion was made by Commissioner Clowe and seconded by Commissioner Steen. Motion passed unanimously as follows:

“The provisions of Sunset Legislation of DPS during the 81st Legislative Session encourage DPS to adopt an indigence program for the Driver Responsibility Program. After hearing from persons such as Mr. Scott Henson who has petitioned the Commission to adopt an indigence program, hearing from the Department's Driver's License Chief, program manager for the Driver Responsibility Program, General Counsel, and specifically hearing from Honorable members of the Legislature, it appears sound and beneficial to the citizens of Texas to adopt a rule authorizing an indigence program.

The program presented to the Commission by Chief Kelley appears to create an incentive for good behavior, to include providing a reasonable means for citizens with driving issues to pay appropriately as a consequence of their driving practices, but it also creates an incentive for assuring Texas driver's maintain insurance and a Driver's License. Both goals are important.

I formally move the rule and program proposed by Chief Kelley be approved for publication, that the preamble and efforts to assess fiscal costs be attached to the rule proposal, and that the Commission consider formal adoption of the rule after publication. This would most likely be during the September meeting; therefore I ask that it be listed as an agenda item for the September 2009 meeting.

I also formally move that the rule go into effect at the earliest possible date after publication and formal approval. This rule would be prospective in its application.

I want to thank Mr. Henson for his petition filed with the Department on August 5, 2009. His actions assisted in sparking the discussion and hopefully the action of the Commission today. However I do believe the Department's proposed program is the one that should be adopted. So I would respectfully ask that as a part of this motion the Commission note that Mr. Henson's petition is denied. I would ask our General Counsel to notify Mr. Henson under Government Code 2001.021 of the denial in writing, and that the reason for the denial be described to include, but not be limited to the fact the Commission is adopting a different rule it believes addresses indigence concerns, that

does not run the risk of creating a retroactive violation of the Texas Constitution of any contract supporting the Driver Responsibility Program, and in comparing the proposals found Chief Kelley's proposal to be the appropriate means of initially approaching this issue.

That is the motion."

A second motion was made by Commissioner Clowe and seconded by Commissioner Barth. However, the second motion was to apply the same indigency program proposed by Chief Kelley, but retroactively. This meant two separate motions were placed before the Commission, on proposing publication of a proposed indigency program prospectively and the second motion proposed an indigency program to be applied retroactively. Commissioner Steen expressed concern about the second motion and its retroactive impact. General Counsel Stuart Platt stated he did have a need to further research the Constitutional nature of the retrospective application of the rule proposed by the second motion. He suggested the motions contain language that both proposed rules be published, however that the second motion include language to only publish if retroactive application is legally acceptable. Commissioner Clowe amended his second motion to include "authorization to publish the retroactive program only if General Counsel finds it legally accepted." Commissioner Steen stated he agreed the amendment was sound and should be adopted.

As a part of the overall consideration of both motions, it was moved and seconded that after the initial publication of both proposed rules in the Texas Register the Department hold a public hearing and that accommodations for Commissioners to be able to be present and hear the comments of citizens be provided. Both motions passed unanimously.

Chairman Polunsky asked for a fiscal impact report based on DRP proposed rules. Commissioner Clowe requested in addition to the Texas Register posting to place notices in the Drivers License offices, notify the Legislature and media release to the public by our Public Information Officer. Chairman Polunsky stated any and all Commissioners can attend the public hearing.

A recommendation was made by Commissioner Barth to continue the current contract with Municipal Services Bureau with option to renew year-to-year for four years after based on performance. Chairman Polunsky suggested waiting until after Public Hearing and stay with the current contract. Commissioner Steen thanked Chief Kelley and Stuart Platt for the tremendous time spent working on this issue.

Commissioner Clowe commented Director McCraw had comments on the procurement of a project management contract for the purpose of implementing organization changes and possible next steps in planning regarding the development and administration of the project management plan and project management office for reorganization of the Department. Director McCraw stated we had the skills within the organization to do this. Commissioner Clowe stated he had been a proponent of the PMO and workshop, but based on what he has seen since Director McCraw had come on board, he had changed his recommendation. He remarked what the Colonel was doing satisfied goals he had, and all the Commissioners agreed there would be no need for a project management contract, workshop or office.

Colonel McCraw presented the regional map and reasons for the new boundaries. He announced that the Office of Homeland Security would be transferred on Monday to the Department of Public Safety. He detailed the organization chart associating the names he appointed to date, reasons for changing Chiefs to Assistant Directors and asked the Commissioners for their consideration and approval. **Commissioner Barth made a motion seconded by Commissioner Clowe to approve and adopt the organization chart, subject to receiving the financial implications, and include two Assistant Directors, one for License Regulation and one for Drivers License Regulation. Commissioner Barth made an amended motion seconded by Commissioner Steen to adopt the organizational structure as presented and amended by the Director and adopt the regional boundary structure. Both motions passed unanimously.**

Commission Clowe asked Director McCraw how he wished to be addressed - Director, Colonel, or Steve? The Director responded the troops preferred Colonel and it was department tradition. Commissioner Clowe then asked what to call the Assistant Directors, and Colonel replied Assistant Director or AD. Commissioner Steen asked today's revision be updated on the chart.

Commissioner Barth made a motion seconded by Commissioner Steen to move that the office of Inspector General be established and supported by the Department and the personnel functions of the Internal Affairs division move on September 1st to the Inspector General. Until the Commission appoints a permanent Inspector General, Ranger Capt. Hank Whitman will temporarily fill the office of Inspector General. Motion passed unanimously.

There was no discussion on the 75th Diamond Jubilee Anniversary of the Department. Chairman Polunsky stated he would receive recommendations for people to serve on a committee in coordinating the event.

Farrell Walker reported on projects in various stages of completion, including follow up audits with emphasis on IT and OGC's record retention compliance. He mentioned the more major report was conducted by Deloitte on the Internal Performance Audit of the Federal Grant Administration Processes which detailed how grants are handled. Commissioner Barth asked with regards to the reorganization he get with the Colonel and look at the risk assessment.

In response to the request of Commissioner Steen at the July meeting, Wayne Mueller presented a report on the increase in Concealed Handgun license applications and processing. He showed slides with metrics indicating the average quantity received throughout the program and quantities being processed. Commissioner Clowe asked he provide information on how far behind CHL is in processing license. Chief Mueller stated within 45 days he believed they would be current.

Chief Baker showed pictures of the new recruiting vehicle. He stated the "wrap" on the vehicle was the brain-child of Trooper William Able. Don Silvas, Graphic Designer, General Services Bureau, Austin and Charlie Goble, Sergeant, THP HQ, Austin took care of the graphics. Chairman Polunsky commented he liked the innovation and concept and we should do everything possible to use the vehicle as a recruiting tool. Commissioner Barth thanked Chief Baker for staying on top of the crash report.

Consent items

- A. Discussion and possible action to authorize the Department to accept the donation of the following: Economic Development Corporation of Weslaco (proposed donation of approximately 21.29 acres in Hidalgo County on which the Department can build a regional office); Colorado County (proposed donation of a radio tower, a communication shelter, and a generator); Mainline Information System (proposed donation of resources to convert mainframe devices to newer technology); Deloitte Consulting Services LLC (proposed donation of services for the Driver License Reengineering project). Donations are authorized by Government Code Section 411.013.
- B. Discussion and possible action to acknowledge the following entities that donated information technology resources for the purposes of responding to the Conflicker virus: AT&T; Cisco Systems. Acknowledgement of donations is required by Government Code Section 575.003
- C. Discussion and possible action on the Director's action of discharging probationary employees: Frevelander Fredricks and Leigh Ann Erwin (Tx Gov Code 551.074)
- D. Discussion and possible action on appointments of Special Rangers and Special Texas Rangers pursuant to Government Code chapter 411, Secs. 411.023 & 411.024: David C. Sandlin, Jimmy L. Willey and Thelbert Millsap
- E. Discussion and possible action to advise and consent to appointment of members of the Department's management team pursuant to Government Code 411.0071 and 411.006
- F. Discussion and possible action to appoint Vehicle Inspection Advisory members: Kathryn T. Pingsterhaus, John Kenneth Long, Roy David Baird

Commissioner Barth requested that one comment be added to consent items with regards to all donations giving \$1.00 for the donation. Commissioner Steen asked Colonel Beckworth if there was anything in these items over which they should be concerned. Colonel Beckworth stated there was not. **A motion was made by Commissioner Clowe and seconded by Commissioner Barth to approve Consent Items A-F. Motion carried unanimously.**

Future meeting date

The next regular meeting will be Thursday, September 17, 2009.

There being no further business, the meeting was adjourned at 6:12 p.m.

Read and approved this 17th day of September, 2009.


Chairman

IN THE MATTER OF § **BEFORE THE**

THE DISCHARGE OF § **PUBLIC SAFETY COMMISSION**

PROBATIONARY EMPLOYEES § **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 these employees:

Employee Name	Employee Title/Division	Date of Discharge
Frevelander Fredricks	Administrative Asst. II, Highway Patrol Division	07/13/09
Leigh Ann Erwin	Administrative Asst. I, Driver License Division	07/16/09

Approved:

Allan B. Polunsky, Chairman
Public Safety Commission
Date: August 21, 2009