

07-0539  
SALES PERSON LICENSE  
TAX YEAR: 2007  
DATE SIGNED: 10-1-2007  
COMMISSIONERS: B. JOHNSON, M. JOHNSON  
DISSENT: P. HENDRICKSON, D. DIXON  
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	
	)	<b>ORDER</b>
Petitioner,	)	
	)	<b>Appeal No.    <del>07-0464</del> 07-0539</b>
v.	)	
	)	Tax Type:       Sales Person License
MOTOR VEHICLE ENFORCEMENT	)	
DIVISION, UTAH STATE TAX	)	Judge:           Phan
COMMISSION,	)	
	)	
Respondent.	)	

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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner:       PETITIONER  
For Respondent:     RESPONDENT, Assistant Director MVED

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5, on May 31, 2007. Petitioner is appealing the denial of his application for motor vehicle salesperson licenses. The license was denied by letter dates April 13, 2007.

APPLICABLE LAW

(2)(a) If the administrator finds that there is a personable cause to deny, suspend, or revoke a license issued under this chapter, the administrator shall deny, suspend or revoke the license. (b) Reasonable cause for denial, suspension, or revocation of a license includes . . . (vi) making a

false statement on any application for a license under this chapter or for special license plates; (vii) a violation of any state or federal law involving motor vehicles; (viii) a violation of any state or federal law regarding controlled substances; (ix) charges filed with any county attorney, district attorney, or U.S. attorney in any court of competent jurisdiction for a violation of any state or federal law involving motor vehicles; (x) a violation of any state or federal law involving fraud; or (xi) a violation of any state or federal law involving a registerable sex offense under Section 77-27-21.5 . . . . (Utah Code Sec. 41-3-209(2))

### DISCUSSION

Respondent denied issuance of the motor vehicle salesperson license to Petitioner based on the fact that Petitioner had been convicted of a violation of law involving a registerable sex offense under Section 77-27-21.5. Petitioner is currently listed on the Utah Sex Offender Registry and it was Respondent's interpretation of Utah Code Sec. 41-3-209(2) that as long as Petitioner was listed on the registry the law precluded Respondent from issuing the license to him.

Petitioner had disclosed the conviction on the Motor Vehicle Salesperson Application. He had been convicted on May 20, 2002, of a Class A Misdemeanor. Petitioner explained that the original charge had been a felony, but the prosecutor had allowed him to plead to a Class A Misdemeanor because the victim and her parents had supported him in the matter. Petitioner did not provide a letter from the parents, prosecutor or court transcripts to support this contention. However, court records indicate that he was correct that it had been reduced to the Class A Misdemeanor.

Petitioner states that he had successfully completed probation in 2004. He thought that he would be unable to apply to have his name removed from the registry until 2010. It was his position that protecting children is a good thing. He felt that the laws in the past had been insufficient to do so, but now the pendulum had swung too far in the other direction. He indicates that he had made this one mistake and

he is trying to move on with his life, provide for his family as well as become a productive citizen. He points out that he has teenage daughters and they currently live with him. He states that being on the registry does not prohibit him from attending his daughters' high school port events and other school functions.

Prior to issuing its decision in this matter the Commission requested that the Division obtain Petitioner's full criminal history report. The report does indicate one other incident nearly ten years prior to the Petitioner's application from the license. This incident involved a felony and misdemeanor assault conviction. The sate of arrest was May 23, 1997. There were no other incidents indicated on the report.

Utah Code Sec. 41-3-209(2) specifically provides that a violation of any state of federal law involving a registerable sex offense under Section 77-27-21.5 is cause for denial or suspension of a salesperson licenses. There is no question in this matter that such a violation occurred. However, the date of the incident was November 21, 2001. The charge was reduced from a felony to a Class A Misdemeanor. Petitioner was sentenced to, and has since been released from, probation. There are no subsequent convictions indicated on his criminal history report. Petitioner disclosed the conviction when he applied from the license.

In considering the facts and applicable law in this matter, the Commission reviews the statutory provisions regarding the Sec Offender's Registry. Utah Code Ann., Chapter 77 governs pardons and paroles and Sec. 77-27-21.5 governs sex offender registration. Subsection (12) provides the following:

(12) A sex offender shall provide the department with the following information:

. . .

(f) each educational institution in Utah at which the sex offender is employed, carries on a vocation, or is a student, and any change of enrollment or employment status of the sex offender at any educational institution.

Subsection (13) provides that:

(13) The department shall:

. . .

(b) ensure that the registration information collected regarding a sex offender's enrollment or employment at an educational institution is:

(i) (A) promptly made available to any law enforcement agency that has jurisdiction where the institution is located if the educational institution is an institution of higher education; or

(ii) (B) promptly made available to the district superintendent of the school district where the offender is enrolled if the educational institution is an institution of primary education

. . .

These statutes provide that the registered sex offenders may be enrolled or employed at educational institutions as long as the required registration information is reported by the Department of Corrections to law enforcement agencies under whose jurisdiction the educational institution resides.

Petitioner cleared probation in 2004, has been on the registry since 2002, and indicates that he may not apply to be removed from the registry until 2010. In the past, the Commission has consistently used clearing parole or probation as a general guideline to allow salesperson licenses to individuals who are no longer on parole or probation. The undersigned Commissioners are not aware of anything in the statute or Commission policy that requires a person to be removed from the sex offender registry before being allowed to sell cars. Nor is it clear why the state would allow a registered sex offender to work at a school, but not be allowed to sell cars. In this case petitioner would have disclosed this conviction to his employer, as it was on the salesperson license application, which the employer is required to sign.

DECISION AND ORDER<sup>1</sup>

Based on the foregoing, the Commission finds for the Petitioner in this matter and orders Respondents to issue the salesperson license to Petitioner.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission  
Appeals Division  
210 North 1950 West  
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter

BY ORDER OF THE UTAH STATE TAX COMMISSION;

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

To

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

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<sup>1</sup> In the instance of a tie vote between the Commissioners, the decision is deemed to be in favor of the Petitioner.  
See Utah Code Sec. 59-1-205

DISSENT

We respectfully dissent from our colleagues. In making its decision in this matter the Tax Commission must apply the law, which has been adopted by the legislature. The applicable statute, Utah Code Sec. 41-3-209(2)(xi), makes it clear that Petitioner's offense, despite that it was only a Class A misdemeanor, is cause of denial of the license, as the statute says "any violation". The legislature has not given the Commission authority to consider mitigating factors and certainly the Commission does not have jurisdiction to review or reconsider the court's decision that places Petitioner on the registry in the first place. The undersigned Commissioners conclude that respondent's interpretation of the statute is correct. It is our position that as long as Petitioner remains on the Utah Sex Offender Registry, Respondent should deny issuance of a salesperson license.

Pam Hendrickson  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner