

07-0840
Salesperson License
Signed 10/10/2007

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioners,</p> <p>vs.</p> <p>MOTOR VEHICLE ENFORCEMENT DIVISION, UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>ORDER</p> <p>Appeal No. 07-0840</p> <p>Tax Type: Salesperson License</p> <p>Judge: Jensen</p>
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Presiding:

Clinton D. Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE, from the Motor Vehicle Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on August 2, 2007 in accordance with Utah Code Sec. 59-1-502.5. Petitioner is appealing the suspension of his motor vehicle salesperson license. The Division suspended Petitioner's license by a letter dated May 30, 2007.

APPLICABLE LAW

(2)(a) If the administrator finds that there is a reasonable 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

Petitioner applied for a motor vehicle salesperson license on April 13, 2007. In making his application, Petitioner disclosed a February 1, 1999 conviction for attempted forcible sex abuse, a class A misdemeanor. The Division initially granted a license to Petitioner, but suspended that license when a routine background check disclosed that the previously described conviction was 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 explained that the original charge had been two counts of forcible sex abuse, both second-degree felonies. In a plea agreement, the prosecutor allowed Petitioner to plead to a single third degree felony. Following successful completion of the terms of his probation, Petitioner received a further reduction to attempted forcible sex abuse, a Class A Misdemeanor. He thought that he would be able to apply to have his name removed from the registry in 2008. Petitioner has paid all restitution and has completed counseling to deal with the issues that led to his criminal charges. He is now married and has two children. He made full disclosure of his criminal history to his current wife and to his employer.

As part of the Division's background check for Petitioner's licensure, the Division obtained Petitioner's full criminal history report. There were no incidents indicated on the report in addition to the

conviction as disclosed by Petitioner on his application. Petitioner's criminal history report also confirms completion of probation on October 11, 2001.

Utah Code Sec. 41-3-209(2) specifically provides that a violation of any state or 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 incident at issue took place in 1998. 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 for the license.

In considering the facts and applicable law in this matter, the Commission reviews the statutory provisions regarding the Sex 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

(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 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 2001, has been on the registry since 1999, and indicates that he may not apply to be removed from the registry until 2008. 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 ORDER¹

Based on the foregoing, the Commission finds for Petitioner in this matter and orders the Division to issue the salesperson license to Petitioner. At the next renewal of Petitioner's license, the Commission orders the Division to perform a full criminal background check.

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

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¹ 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.

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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.

DATED this _____ day of _____, 2006.

Clinton D. Jensen
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2007.

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

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 for 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 placed 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