

10-2958  
SALESPERSON LICENSE  
TAX YEAR: 2010  
SIGNED: 01-11-2011  
COMMISSIONERS: R. JOHNSON, M. JOHNSON, M. CRAGUN  
DISSENT: D. DIXON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,  Petitioner,  v.  MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 10-2958</p> <p>Tax Type: Salesperson License Tax Year: 2010</p> <p>Judge: Marshall</p>
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**Presiding:**

Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: Mr. PETITIONER, *Pro Se*  
Mr. PETITIONER REP., Manager  
For Respondent: Mr. RESPONDENT REP., Assistant Director, Motor Vehicle  
Enforcement

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-205.5 on December 22, 2010. Petitioner is appealing the denial of his salesperson license to sell motor vehicles.

APPLICABLE LAW

The denial, suspension, and revocation of a salesperson license are governed by Utah Code Ann. §41-3-209(2), as follows in relevant part:

- (b) If the administrator finds that there is reasonable cause to deny, suspend, or revoke a license under this chapter, the administrator shall deny, suspend, or revoke the license.
- (c) Reasonable cause for denial, suspension, or revocation of a license includes, in relation to the applicant or license holder or any of its partners, officers, or directors:

- (xi) a violation of any state or federal law involving a registerable sex offense under Section 77-27-21.5...

### DISCUSSION

On or about September 1, 2010, the Applicant submitted a Motor Vehicle Salesperson Application to the Division. In response to question number two on the application, asking if the Petitioner had “been convicted of any misdemeanors or felonies in Utah or any other state” in the past ten years, the Petitioner checked the box indicating “no.” The Division issued the Applicant a license on this application. The Division then received information from the Bureau of Criminal Identification indicating that the Applicant had two convictions within the past ten years. The Applicant submitted a second Motor Vehicle Salesperson Application to the Division, on which he listed two convictions in February 2002 for carnal knowledge and attempted sodomy. The Division issued a letter dated November 18, 2010 denying the Applicant a salesperson license on the second application based on the 2002 convictions.

The Applicant stated he was in the military at the time of the convictions. He testified his actions were not a crime in the state in which he was stationed, but that he was convicted of misdemeanors by the court martial. The Applicant stated he served 10 months in the brig, and was not placed on probation after his release. He further testified that he was told by the military he would not need to register as a sex offender, but later learned that he was required to register. He stated that he is eligible to be released from the sex offender registry in February 2011.

The Division’s representative stated the Applicant was denied a salesperson license because Utah Code Ann. §41-3-209 specifically identifies a violation of state or federal law involving a registerable sex offense as reasonable cause, and mandates the Division suspend, revoke, or deny a license. He noted that had the Applicant listed the convictions on his original application, he would have been denied a license.

Utah Code Ann. §41-3-209 mandates that a license “shall” be denied, revoked, or suspended for reasonable cause, and has identified a violation of any state or federal law involving a registerable sex offense as “reasonable cause.” The Applicant was convicted of both carnal knowledge and attempted sodomy. Although the Division had reasonable cause to deny the Applicant’s license, the Commission may consider other factors, such as the passage of time since the most recent conviction, the payment of restitution, and termination of probation or

parole. It has been more than eight years since Petitioner's convictions, and he is not on probation. In the past, the Commission has used clearing parole or probation as a general guideline to allow salesperson licenses to individuals who are no longer on parole or probation. Although Petitioner is not on probation, he remains on the sex offender registry. 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. Further, in the past, the Commission has granted a salesperson license to other applicants on the Utah Sex Offender Registry.

DECISION AND ORDER

Based on the foregoing the Commission abates the Division's action and grants the Applicant his motor vehicle salesperson license. It is so ordered.

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 either party to this case files a written request within thirty (30) days of the date of this decision to proceed to a formal decision. Such 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.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

Michael J. Cragun  
Commissioner

DISSENT

Appeal No. 10-2958

I respectfully dissent from my 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 Ann. §41-3-209(2)(xi), makes it clear that Petitioner's offense is cause for denial of the license. 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. I conclude that Respondent's interpretation of the statute is correct. It is my position that as long as the Applicant remains on the Utah Sex Offender Registry, Respondent should deny issuance of a salesperson license.

D'Arcy Dixon Pignanelli  
Commissioner

*JM/10-2958.int*