

13-1749

TAX TYPE: SALESPERSON LICENSE

TAX YEAR: 2013

DATE SIGNED: 10-3-2013

COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO

COMMISSIONER DIXON DISSENT

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,

Petitioner,

v.

MOTOR VEHICLE ENFORCEMENT  
DIVISION OF THE UTAH STATE TAX  
COMMISSION,

Respondent.

**INITIAL HEARING ORDER**

Appeal No. 13-1749

Tax Type: Salesperson License

Judge: Marshall

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**Presiding:**

Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER, *Pro Se*

For Respondent: RESPONDENT, Assistant Director, Motor Vehicle Enforcement

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on August 28, 2013 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioner (“Applicant”) is appealing the denial of a salesperson license to sell motor vehicles by the Respondent (“Division”).

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:
  - (i) lack of a principal place of business;

- (ii) lack of a sales tax license required under Title 59, Chapter 12, Sales and use Tax Act;
- (iii) lack of a bond in effect as required by this chapter;
- (iv) current revocation or suspension of a dealer, dismantler, auction, or salesperson license issued in another state;
- (v) nonpayment of required fees;
- (vi) making a false statement on any application of 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 involving 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; or
- (xii) having had a license issued under this chapter revoked within five years from the date of application.

#### DISCUSSION

The Applicant submitted a Motor Vehicle Salesperson Application to the Division on or about July 11, 2013. Question number two of the application asks if the Applicant has “been charged with, found in violation of, or convicted of any misdemeanors or felonies in Utah or any other state,” in the past ten years. In response, the Applicant checked the box indicating “Yes”, and in the space provided, the Applicant wrote, “Simple Assault 10/11? Not Registering Vehicle on Probation 10/11 Attempted Kidnap & Burglary 4/08”.

The Division provided two court docketing statements. The first docketing statement is for Case number ##### and shows that the Applicant was convicted of Attempted Burglary of a Dwelling (Second Degree Felony) and Attempted Kidnapping (Third Degree Felony) on October 23, 2008. The docketing statement also shows that the Applicant’s probation was reinstated for a period of 36 months beginning on March 22, 2012. Further, it shows that the Applicant requested an early termination of probation, which was denied in an order dated July 15, 2013. The second docketing statement is for Case number ##### and shows that the Applicant was convicted of Failure to Register as a Sex Offender (Class A Misdemeanor) on March 8, 2012. Further, it shows that the Applicant was placed on probation for a period of 36 months beginning on March 8, 2012.

The Applicant stated that these events happened in 2008 and that he has held a salesperson license since that time, and does not understand why it is a problem now. The Applicant believes that he was denied a salesperson license because the Division believes that the kidnapping was a sex offense. He stated that he understands the Division’s concerns, but that his

kidnapping charge was not a sexual offense. He explained that the kidnapping registry is the same registry used for sex offenders. He stated that his restitution has been paid, and he believes his probation will be terminated in January.

The Applicant submitted a letter from his probation officer, NAME-1. NAME-1 letter indicated that the Applicant was on the “sex offender/kidnapper registry” for the attempted kidnapping conviction, but that he had never been convicted of a sex related crime. He also noted that the victim of the crime was the Applicant’s girlfriend at the time, and that she was an adult. He also indicated that the Applicant was in good standing, and had satisfied all of the court ordered debts.

The Division’s representative explained that when they received the application, the Division pulled the court docketing statements because of the Applicant’s response to question two on the application. He stated that the conviction for failure to register as a sex offender gave the Division concern; and they looked up to verify that the Applicant was currently registered. He noted that until the charge for failure to register, the Division did not look into whether the kidnapping would be required to be on the sex offender registry. The Division’s representative argued that under Utah Code Ann. §41-3-209(2)(c)(xi), they are mandated to deny, revoke, or suspend a license of “a violation of any state or federal law involving a “registerable sex offense” under Section 77-27-21.5.” It is the Division’s position that kidnapping is a “registerable sex offense”, even though it may not be a “sex offense” *per se*. He argued that conviction for failing to register supports the position that it is a “registerable sex offense.” The Division’s representative noted that if the Applicant is released from probation, there is a statutory rule that would allow the Division to grant a license.

In rebuttal, the Taxpayer stated that unfortunately there is not a separate registry for kidnappers and sex offenders. He acknowledged that he has made mistakes in his past; but argued kidnapping and sex offenses are two different things, and the public will not be put at risk if he is granted a license. He also stated that his convictions will be reduced to misdemeanors after his probation.

Utah Code Ann. §41-3-209 mandates that a license “shall” be denied, revoked, or suspended for reasonable cause, and has identified violations of state or federal law involving a registerable sex offense as “reasonable cause”. The Applicant has been convicted of kidnapping, which is a registerable offense. However, it is not a sex offense. Applying Utah Code Ann. §41-3-209(2), the Commission looks first to the plain language of the statute<sup>1</sup> The Commission gives

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<sup>1</sup> In *Hart v. Salt Lake County Comm’n*, 945 P.2d 125, 138 (Utah 1996) (citations omitted) the Court stated, “the primary rule of statutory interpretation is to give effect to the intent of the legislature in light of the purposes the statute

the terms of the statute their ordinary meaning. When interpreting a statute the Commission must assume that each term included in the statute was used advisedly. See *MacFarlane v. Utah State Tax Comm'n*, 2006 UT 25 (2006). Here, the legislature limited “reasonable cause” under Utah Code Ann. §41-3-209(2) only to violations of state or federal law that constitute a “registerable sex offense” under Utah Code Ann. §77-27-21.5, rather than all registerable offenses. Utah Code Ann. §77-27-21.5 is captioned “sex and kidnap offenders – registration – information system – law enforcement and courts to report – penalty – effect of expungement.” The code separately defines a “kidnap offender” and a “sex offender” in subsections (1)(g) and (1)(n), respectively. The Applicant was convicted of a crime identified in subsection (1)(g), identifying him as a “kidnap offender” not a “sex offender.”

In the past, the Commission has considered factors such as the passage of time since the most recent conviction, the payment of restitution, and termination of probation or parole in determining whether to grant a salesperson license. The Applicant’s most recent conviction was March 8, 2012 for failing to register under Utah Code Ann. §77-27-21.5. His convictions for attempted burglary and attempted kidnapping occurred on October 23, 2008, nearly five years ago. The Applicant included a letter from his probation officer indicating that the conditions of his probation had been complied with and he is in good standing. Given that none of the Applicant’s convictions are those enumerated in Utah Code Ann. §41-3-209(2); that the Division had previously granted a salesperson license having knowledge of the attempted burglary and attempted kidnapping charges; and that the Applicant is in good standing with Adult Probation and Parole, there is reasonable cause to abate the Division’s denial and grant the applicant a salesperson license.

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Jan Marshall  
Administrative Law Judge

#### DECISION AND ORDER

Based on the foregoing the Commission grants the Applicant a salesperson license. The Commission directs that the Applicant furnish to the Division, within fifteen (15) days of the license’s issuance, proof that the Applicant has reported receiving a motor vehicle salesperson

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was meant to achieve, and the best evidence of the legislature’s intent is the plain meaning of the statute. In *Hercules, Inc. v. Utah State Tax Comm’n*, 21 P.3d 231 (Utah Ct. App. 2000) the court indicated that if a statute fails to define a word, one would use the dictionary definition or usual meaning. In *MacFarlane v. Utah State Tax Comm’n*, 2006 UT 25 (2006) the Court stated, “In undertaking statutory construction, “we look first to the plain language of a statute to determine its meaning. Only when there is ambiguity do we look further.” (citation omitted) Moreover, “when examining the plain language we must assume that each term included in the [statute] was used advisedly.” (Citations omitted).

license for inclusion on the Sex and Kidnap Offender Notification and Registration website as required by Utah Code Ann. §77-27-21.5. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. If either party requests a Formal Hearing this decision and order is stayed until the Commission issues its formal decision. 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 \_\_\_\_\_, 2013.

R. Bruce Johnson  
Commission Chair

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

DISSENT

I have consistently ruled to revoke or suspend the salesperson license of a Petitioner who was on the Utah Sex and Kidnap Offender Registry. I believe if a court has placed a petitioner on the Registry, it is for a reason, and the Commission should not exercise its discretion. I would not grant a motor vehicle sales person license.

D'Arcy Dixon Pignanelli  
Commissioner