

APPEAL # 23-626

TAX TYPE : SALESPERSON LICENSE

TAX YEAR : 2020

DATE SIGNED : 07/03/2023

COMMISSIONERS : J. VALENTINE, M. CRAGAN, R. ROCKWELL, J. FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER , Petitioner, v. MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 23-626 Account No: ##### Tax Type: Salesperson License Tax Year: 2022 Judge: Jensen
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Presiding:

Jennifer N. Fresques, Commissioner
Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER'S REP-1, Attorney for the Applicant
PETITIONER , Applicant
For Respondent: RESPONDENT'S REP-1, for the Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on May 8, 2023, in accordance with Utah Code Ann. §59-1-502.5, and §63G-4-201 et seq. Based on the evidence and testimony presented at the hearing, the Tax Commission makes its:

FINDINGS OF FACT

1. At issue is whether the Commission should grant a motor vehicle salesperson's license based on an application filed by PETITIONER ("Petitioner" or "Applicant").
2. On or about DATE, the Applicant submitted a Motor Vehicle Salesperson Application to the Motor Vehicle Enforcement Division ("Respondent" or "Division"), in which he applied for a license to sell motor vehicles at COMPANY - 1.

3. On DATE, the Division issued a letter denying the Applicant's Motor Vehicle Salesperson Application. In the letter, the Division indicated that it was denying the application based on a "violation of state or federal law regarding registerable sex offense(s)."

4. On DATE, the Applicant submitted a Petition for Expedited Hearing ("Petition") to contest the Division's denial of his application. On his Petition, the Applicant indicated that he wanted to waive an Initial Hearing and proceed directly to a Formal Hearing. As a result, this matter was scheduled directly for a Formal Hearing.

5. Question #2 of the Motor Vehicle Salesperson Application asks an applicant if "[d]uring the past 10 years, have you been charged with, found in violation of, or convicted of any misdemeanors or felonies in Utah or any other state" and, if so, to list them. In response to this question, the Applicant checked the "Yes" box and listed "DATE, Felony Rape (charges only)." Question #3 of the application asks an applicant "[a]re you currently on probation or parole, court supervision of any kind, or in a 'plea in abeyance'" and, if so, to state the type and from which event. For this question, the Applicant checked the "Yes" box, and stated "Felony Rape, DATE." Question #3 also asks an applicant "[d]o you still owe restitution," to which the Applicant checked the "No" box.

6. At the hearing, the parties reviewed the Applicant's criminal history, which indicated an DATE filing of a felony rape charge in the COUNTY - 1 Third District Court under Utah Code Ann. §76-5-402. The DATE filing related to an alleged offense date of DATE.

7. On DATE, the Applicant appeared before the COUNTY - 1 Third District Court and entered a plea of "Not Guilty."

8. At the hearing, the Applicant's counsel indicated that the matter before the COUNTY - 1 Third District Court was likely going to go before the court in late DATE and would likely go to trial in DATE.

9. The Division's representative agreed with the underlying facts and procedural history of the Applicant's rape case, including that the matter was a pending charge rather than a conviction as of the date of the hearing before the Commission. However, the Division's position is that due to the serious nature of the charge levied against the Applicant, protection of the automobile buying public required denial of a salesperson license until the charge against the Applicant was adjudicated.

10. The Division contends that the Applicant's felony rape charge constitutes "reasonable cause" to deny his application in accordance with Utah Code Ann. §41-3-209. The Division argued that the specific list of crimes found in Utah Code Ann. §41-3-209(2)(b) is not an exclusive list because of that statute's use of the word "includes." As a result, the Division claims that "reasonable cause" to deny, suspend, or revoke a license can include crimes not specifically listed in Utah Code Ann. §41-3-209(2)(b).

APPLICABLE LAW

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

- (1) If the administrator finds that an applicant is not qualified to receive a license, a license may not be granted.
- (2)
 - (a) If the administrator finds that there is 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, in relation to the applicant or license holder or any of the applicant or license holder's partners, officers, or directors:
 - (i) lack of a principal place of business or authorized service center as required by this chapter;
 - (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 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 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;
 - (xi) a violation of any state or federal law involving a registerable sex offense under Section 77-41-106;
 - (xii) having had a license issued under this chapter revoked within five years from the date of application; or
 - (xiii) failure to comply with any applicable qualification or requirement imposed under this chapter.
 - (c) Any action taken by the administrator under Subsection (2)(b)(ix) shall remain in effect until a final resolution is reached by the court involved or the charges are dropped.
- (3) If the administrator finds that an applicant is not qualified to receive a license under this section, the administrator shall provide the applicant written notice of the reason for the denial.
- (4) If the administrator finds that the license holder has been convicted by a court of competent jurisdiction of violating any of the provisions of this chapter or any rules made by the administrator, or finds other reasonable cause, the administrator may, by complying with the emergency procedures of Title 63G, Chapter 4, Administrative Procedures Act:
 - (a) suspend the license on terms and for a period of time the administrator finds reasonable; or

(b) revoke the license.

Utah Administrative Rule R877-23V-20 provides additional guidance on reasonable cause to deny, suspend, or revoke a motor vehicle salesperson license as follows:

- (1) Subject to Subsection (2), there is a rebuttable presumption that reasonable cause to deny, suspend, or revoke a license under Title 41, Chapter 3 does not include a violation of a state or federal law that otherwise constitutes reasonable cause under Subsection 41-3-209(2) if the licensee or license applicant who has been charged with, found in violation of, or convicted of a state or federal law that constitutes reasonable cause to deny, suspend, or revoke a license under Subsection 41-3-209(2), has:
 - (a) (i) completed any court-ordered probation or parole; or
 - (ii) met any conditions of a plea in abeyance; and
 - (b) paid any required criminal restitution and fines.
- (2) The division may rebut the presumption under Subsection (1) by presenting evidence to the commission establishing that the license should be denied, suspended, or revoked.

For purposes of Utah Code Ann. §41-3-209(2)(b)(xi), those offenses that require registration on the Utah Sex Offender Registry are described in Utah Code Ann. §77-41-106, as follows in pertinent part:

- ...
- (2) a conviction for any of the following offenses, including attempting, soliciting, or conspiring to commit any felony of:
 - ...
 - (b) Section 76-5-402, rape

Utah Code Ann. §59-1-1417(1) provides guidance concerning which party has the burden of proof in actions before the Commission as follows:

- (1) In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:
 - (a) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
 - (b) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
 - (c) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income:
 - (i) required to be reported; and
 - (ii) of which the commission has no notice at the time the commission mails the notice of deficiency.

CONCLUSIONS OF LAW

1. There is no dispute regarding the procedural history of the Applicant's charge for rape under Utah Code Ann. §76-5-402. Specifically, there is no dispute that the Applicant has been charged with, but not convicted of felony rape under Utah Code Ann. §76-5-402. Thus, the issue before the Commission is the statutory interpretation of and the application of Utah Code Ann. §41-3-209(2)(a) to determine whether "reasonable cause" exists to deny, suspend, or revoke a license to the Applicant.

2. When faced with a question of statutory interpretation, Utah courts are "to understand what the Legislature intended," *State v. Hatfield*, 2020 UT 1, 16, 462 P.3d 330 (quotation simplified), and to give effect to that intent, *State v. Rasabout*, 2015 UT 72, 10, 356 P.3d 1258. "The best indicator of legislative intent is the plain language of the statutes themselves." *Hertzke v. Snyder*, 2017 UT 4, 10, 390 P.3d 307. When examining statutory language, Utah courts are to "presume that the legislature used each word advisedly." *Colosimo v. Gateway Cmty. Church*, 2018 UT 26, 46, 424 P.3d 866 (quotation simplified). Omissions are assumed to be purposeful. *Colosimo*, 2018 UT 26, 46. Courts should not "infer substantive terms into the text that are not already there. Rather, the interpretation must be based on the language used." *Arredondo v. Avis Rent A Car System, Inc.*, 2001 UT 29, 12, 24 P.3d 928 (quotation simplified). In examining statutory language, courts are to consider the relevant statute in its entirety, construing "each part or section . . . in connection with every other part or section so as to produce a harmonious whole." *See State v. Stewart*, 2018 UT 24, 13, 438 P.3d 515 (quotation simplified). Wherever possible, courts are to "give effect to every word of a statute, avoiding any interpretation which renders parts or words in a statute inoperative or superfluous." *Id.* 12 (quotation simplified).

3. Applying accepted principles of statutory interpretation, the Commission notes that under Utah Code Ann. §41-3-209(2)(b)(xi), good cause to "deny, suspend, or revoke" a salesperson license includes "a violation of any state or federal law involving a registerable sex offense under Section 77-41-106." The Commission contrasts this language with Utah Code Ann. §41-3-209(2)(b)(ix), which predicates good cause to "deny, suspend, or revoke" a salesperson license upon "*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." (emphasis added). Considering these subsections of Utah Code Ann. §41-3-209(2)(b) in harmony, it is clear that the plain language of the statute makes a distinction between a violation of law and charges filed for a possible violation of law and chose to apply "charges filed" to Subsection (ix), while requiring "a violation of" law for Subsection (xi). The Commission notes relevance in the Legislature's use of "charges filed" in Subsection (ix) of Utah Code Ann. §41-3-209(2)(b) and, more importantly, the omission of this language in Subsection (xi), and

assumes this distinction to be purposeful. *See Colosimo*, 2018 UT 26, 46 (omissions in statutes assumed to be purposeful).

4. The Commission notes that if “charges filed” would suffice to show “a violation of” Utah law for subsections of Utah Code Ann. §41-3-209(2)(b) other than Utah Code Ann. §41-3-209(2)(b)(ix), the Legislature’s use of “charges filed” in Utah Code Ann. §41-3-209(2)(b)(ix) would be rendered superfluous. The Commission declines any invitation to render any part of a statutory provision superfluous. *See State v. Stewart*, 2018 UT 24, 12, 438 P.3d 515 (wherever possible, courts are to “give effect to every word of a statute, avoiding any interpretation which renders parts or words in a statute inoperative or superfluous”).

5. The Division correctly notes that Utah Code Ann. §41-3-209(2)(b) provides a non-exclusive list of circumstances and crimes that constitute “reasonable cause” and that the Commission has previously determined that the Legislature’s use of the word “includes” in Utah Code Ann. §41-3-209(2)(b) means that the list of circumstances and crimes that follow and constitute “reasonable cause” is not an exhaustive list.¹ Accordingly, the Division is correct in its position that violations of crimes other than those specifically listed in Utah Code Ann. §41-3-209(2)(b) can constitute “reasonable cause” to deny, suspend, or revoke a license. However, notwithstanding the correct argument that the list of circumstances and crimes in Utah Code Ann. §41-3-209(2)(b) is not an exhaustive list, there is not good cause for the Commission to rely on this principle to infer substantive terms into the text of Utah Code Ann. §41-3-209(2)(b) that are not already there. *See Arredondo v. Avis Rent A Car System, Inc.*, 2001 UT 29, 12, 24 P.3d 928. Rather, the Commission will attempt “to understand what the Legislature intended,” *See State v. Hatfield*, 2020 UT 1, 16, 462 P.3d 330 (quotation simplified), and to give effect to that intent, *See State v. Rasabout*, 2015 UT 72, ¶ 10, 356 P.3d 1258.

6. Under the circumstances of this case, the Commission finds that “charges filed” for rape under Utah Code Ann. §76-5-402 do not, without more, show “a violation of any state or federal law involving a registerable sex offense under Section 77-41-106” to support a finding of good cause to “deny, suspend, or revoke” a salesperson license to the Applicant under Utah Code Ann. §41-3-209(2)(b)(xi) at this time.

Clinton Jensen
Administrative Law Judge

¹ *See USTC Appeal No. 12-2892* (Initial Hearing Order Jan. 10, 2013), in which the Commission stated that “the Division is not limited to finding reasonable cause only from the listed violations. The Division could consider other crimes as reasonable cause to deny a license.”

DECISION AND ORDER

Based upon the foregoing, the Commission grants the Applicant's application for a motor vehicle salesperson's license at this time. It is so ordered.

DATED this DATE day of DATE, 2023.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner

Notice of Final Action and Appeal Rights: If you disagree with this order you have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission in accordance with Utah Code Ann. §63G-4-302. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.