



SWORN STATEMENT SUPPORTING CLOSURE OF BOARD MEETING

DOPL-FM-010 05/02/2006

I, JACK GARONNE as the presiding member of the SECURITY Board,
which met on the 8 day of DECEMBER, 2016 LICENSING

Appropriate notice was given of the Board's meeting as required by Utah Code Annotated § 52-4-202.

A quorum of the Board was present at the meeting and **voted by at least a two-thirds vote**, as detailed in the minutes of the open meeting, to close a portion of the meeting to discuss the following:

- The character, professional competence, or physical or mental health of an individual (§ 52-4-205(1)(a))
- Strategy regarding pending or reasonably imminent litigation (§ 52-4-205(1)(c))
- Deployment of security personnel, devices, or systems (§ 52-4-205(1)(f))
- Investigative proceedings regarding allegations of criminal misconduct (§ 52-4-205(1)(g))

The content of the closed portion of the Board meeting was restricted to a discussion of the matter(s) for which the meeting was closed.

With regard to the closed meeting, the following was publically announced and recorded, and entered on the minutes of the open meeting at which the closed meeting was approved:

- (a) The reason or reasons for holding the closed meeting;
- (b) The location where the closed meeting will be held; and
- (c) The vote of each member of the public body either for or against the motion to hold the closed meeting.

If required, and/or kept or maintained, the recording and any minutes of the closed meeting will include:

- (a) The date, time, and place of the meeting;
- (b) The names of members present and absent; and
- (c) The names of all others present except where such disclosure would infringe on the confidentiality necessary to fulfill the original purpose of closing the meeting.

Pursuant to § 52-4-206(5), a sworn statement is required to close a meeting under § 52-4-205 (1)(a) or § 52-4-205(1)(f), but a record by tape recording or detailed minutes is not required.

- A record was not made
- A record was made by: Tape Recording Detailed Written Minutes

Pursuant to § 52-4-206(1), a record by tape recording is required for a meeting closed under § 52-4-205(1)(c) or § 52-4-205(1)(g), and was made.

Detailed written minutes of the content of a closed meeting although not required, are permitted and were kept of the meeting.

I hereby swear or affirm under penalty of perjury that the above information is true and correct to the best of my knowledge.

Jack Garonne
Board Chairman or other Presiding Member

8 Dec 2016
Date

CONTINUING EDUCATION AUDIT 2016 FREQUENTLY ASKED QUESTIONS

- I. General confusion and lack of understand when it comes to continuing education for security.
 - A. Where do I get training?
 - B. How many hours do I need?
 - i. (2) Armed and unarmed private security officers shall complete 16 hours of continuing education every two years consisting of education that includes: (a) company operational procedures manual; (b) applicable state laws and rules; (c) legal powers and limitations of private security officers; (d) observation and reporting techniques; (e) ethics; and (f) emergency techniques.
 - C. Which courses do and do not count?
 - i. (3) Credit for the 16 hours of continuing education shall be recognized in accordance with the following: (a) Unlimited hours shall be recognized for continuing education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences. (b) Unlimited hours shall be recognized for continuing education that is provided via Internet provided the course provider verifies registration and participation in the course by means of a test which demonstrates that the participant has learned the material presented.
 - D. How do I get a certificate?
 - i. (8) The continuing education course provider shall provide course participants who complete the continuing education course with a course completion certificate.
 - E. If I completed basic training to obtain a license two years ago, why do I need to do more training now?
 - F. Does the trainer sign the course form on the renewal or the licensee?
2. General confusion regarding requirements for firearm training.
 - A. When hours need to be completed (4 hours every 6 months)
 - i. (4) In addition to the required 16 hours of continuing education, armed private security officers shall complete not less than 16 additional hours of continuing firearms education and training every two years. The continuing firearms education and training shall be completed in four-hour blocks every six months and shall not include any hours for the continuing education requirement in Subsection R156-63a-304(2). The continuing firearms education and training shall include as a minimum: (a) live classroom instruction concerning the restrictions in the use of deadly force and firearms safety on duty, at home and on the range; and (b) a recognized practical pistol recertification course on which the licensee achieves a minimum score of 80% using regular or low light conditions.
 - B. Penalty Hours
 - i. (5) An individual holding a current armed private security officer license in Utah who fails to complete the required four hours of continuing firearms education within the appropriate six month period will be required to complete one and one half times the number of continuing firearms education hours the licensee was deficient for the reporting period (this requirement is hereafter referred to as penalty hours). The penalty hours shall

not be considered to satisfy in whole or in part any of the continuing firearms education hours required for subsequent renewal of the license.

C. All of the questions asked in section 1 are also asked with regards to firearm training as well.

3. Trainer Confusion

A. What information needs to be on the certificate?

- i. (8) The continuing education course provider shall provide course participants who complete the continuing education course with a course completion certificate. (9) The course certificate shall contain: (a) the name of the participant; (b) the date the course was taken; (c) the location where the course was taken; (d) the title of the course; (e) the name of the course provider and instructor; and (f) the number of continuing education hours completed.

B. How do I submit my hours of teaching for CE credit?

- i. (9) Instructors, who present continuing education hours and are licensed armed or unarmed private security officers, shall receive credit for actual preparation time for up to two times the number of hours to which participants would be entitled. For example, for learning activities in which participants receive four continuing education hours, instructors may receive up to eight continuing education hours (four hours for preparation plus four hours for presentation).

MEMORANDUM

TO: MARK B. STEINAGEL, DOPL DIRECTOR

FROM: KEVIN M. MCDONOUGH, ASSISTANT ATTORNEY GENERAL

DATE: AUGUST 30, 2016

RE: INFORMAL LEGAL OPINION REGARDING QUALIFICATIONS OF
QUALIFYING AGENTS FOR CONTRACT SECURITY COMPANIES

BACKGROUND

During a meeting of the Security Services Licensing Board on August 11, 2016, a certain individual (name withheld for confidentiality), sought approval of his application to become the designated “qualifying agent” for a certain contract security company. The applicant owns a consulting firm; he is not currently an employee of the security company for which he seeks the “qualifying agent” designation. DOPL Bureau Manager, Jana Johansen, who was in attendance at the August 11th meeting, reports that the Board is adamant that any “qualifying agent” must be an employee of the contract security company for which “qualifying agent” status is sought.

As a result of the position taken by the Board, you have requested that we provide you with an informal legal opinion concerning this issue, including whether or not the Division of Occupational and Professional Licensing (the “Division” or “DOPL”) has authority to promulgate a rule that requires a “qualifying agent” to be an employee of the security company.

ISSUE PRESENTED

Is it necessary for an individual to be an employee of a contract security company in order to act as that company's "qualifying agent?"

INFORMAL LEGAL OPINION

Consistent with the analysis set forth herein below, it is our informal legal opinion that it is **not** necessary for an individual to be an employee of a contract security company in order to act as that company's "qualifying agent."

ADJUNCT ISSUE

Does the Division have authority to promulgate a rule that requires a "qualifying agent" to be an employee of the contract security company for which he acts as the "qualifying agent?"

INFORMAL LEGAL OPINION

Consistent with the analysis set forth herein below, it is our informal legal opinion that the Division does **not** have legal authority to promulgate a rule that requires a "qualifying agent" to be an employee of the contract security company for which he acts as the "qualifying agent?"

APPLICABLE CASE LAW

Well-established principles of statutory construction provide that, "[w]hen interpreting statutes, we first look to the statute's plain language with the primary objective of giving effect to the legislature's intent." *Martinez v. Media-Paymaster Plus/Church of Jesus Christ of Latter-Day Saints*, 164 P. 3d 384, 396 (Utah 2007) (citation omitted). There is a presumption that the legislature used each word in a statute advisedly and in accordance with its ordinary and accepted meaning. *State v. Barrett*, 2005 UT 88, ¶ 29, 127 P.3d 682. Additionally, statutes should be read as a whole, and their provisions interpreted in harmony with related provisions and statutes. *Miller v. Weaver*, 2003 UT 12, ¶ 17, 66 P.3d 592.

When the language of the statute is plain, other interpretive tools are not needed. *Adams v. Swensen*, 2005 UT 8, ¶ 8, 108 P.3d 725. However, if the language is ambiguous, the court may look beyond the statute to legislative history and public policy to ascertain the statute's intent. *Utah Pub. Employees Ass'n v. State*, 2006 UT 9, ¶ 59, 131 P.3d 208 (Parrish, J., concurring).

Further, the omission of a certain word or term in a statute can be significant in discerning the legislative intent of a statute. *Flowell Elec. Ass'n, Inc. v. Rhodes Pump, LLC*, 361 P.3d 91 (Utah 2015) is instructive. Citing *Biddle v Wash. Terrace City*, 1999 UT 110, 993 P.2d 875, the Utah Supreme Court stated, "In evaluating the language of a statute, we have long held that omissions in statutory language should be taken note of and given effect." *Flowell Elec. Ass'n*, at p. 103; accord *Riggs v. Georgia-Pacific LLC*, 2015 UT 17, ¶ 10, 345 P.3d 1219 ("[W]e seek to give effect to omissions in statutory language by presuming [them] purposeful.")

It is well recognized and a long-standing principle of administrative law that "an agency's rules must be consistent with its governing statutes." *Sanders Brine Shrimp v. Utah State Tax Commission*, 846 P.2d 1304, 1306 (Utah 1993); accord *Rocky Mountain Energy v. Utah State Tax Commission*, 852 P.2d 284, 287 (Utah 1993) (holding that "[r]ules are subordinate to statutes and cannot confer greater rights or disabilities"). See also *Manhattan General Equipment Co. v. Commissioner of Internal Revenue*, 297 U.S. 129, 134, 56 S. Ct. 397, 399, 80 L. Ed. 528 (1936) (administrative bodies have the power to prescribe rules in order to carry into effect the will of the legislature as expressed by statute. In order for a rule to be valid, it must be in harmony with the governing statute.) *Draughon v. Department of Financial Institutions, State of Utah*, 975 P.2d 935 (Utah 1999) is also instructive. (The authority of an administrative agency to promulgate rules or regulations is limited to those which are consonant

with the statutory framework, and neither contrary to the statute nor beyond its scope. A rule or regulation that conflicts with the design of a statute should be invalidated.) *See also Crowther v. Nationwide Mut. Ins. Co.*, 762 P.2d 1119, 1122 (Utah Ct. App. 1988) (“agency regulations may not abridge, enlarge, extend or modify [a] statute . . .”). These basic tenets of law have recently been reaffirmed by the Utah Supreme Court in the case of *Dorsey v. Department of Workforce Services*, 330 P.3d 91, 94 (Utah 2014).

GOVERNING STATUTE

The Utah Legislature’s enactment of the *Security Personnel Licensing Act* (Utah Code Ann. § 58-63-101 et seq.) contains the “governing statute” relative to the issues presented. More specifically, Utah Code Ann. § 58-63-302 provides, in pertinent part, as follows:

58-63-302 Qualifications for licensure.

- (1) Each applicant for licensure as an armored car company or a contract security company shall:
 - (a) submit an application in a form prescribed by the division;
 - (b) pay a fee determined by the department under Section 63J-504;
 - (c) have a qualifying agent who:
 - (i) is a resident of the state and an officer, director, partner, proprietor or manager of the applicant;
 - (ii) passes an examination component established by rule by the division in collaboration with the board; and
 - (iii)(A) demonstrates 6,000 hours of compensated experience as a manager, supervisor, or administrator of an armored car company or a contract security company; or
 - (B) demonstrates 6,000 hours of supervisory experience acceptable to the division in collaboration with the board with a federal, United States military, state, country, or municipal law enforcement agency[.]

58-63-102 Definitions.¹

In addition to the definitions in Section 58-1-102, as used in this chapter:

¹ The Definitions section of the *Security Personnel Licensing Act* is helpful for a better understanding of the analysis set forth in this informal legal opinion.

...

- (2) "Armed private security officer" means an individual:
 - (a) employed by a contract security company;

...

- (4) "Armored car security officer" means an individual:
 - (a) employed by an armored car company;

...

- (6) "Contract security company" means a person engaged in business to provide security or guard services to another person on a contractual basis by assignment of an armed or unarmed private security officer.

...

- (12) (a) "Security officer" means an individual who is licensed as an armed or unarmed private security officer under this chapter and who:
 - (i) is employed by a contract security company securing, guarding, or otherwise protecting tangible personal property, real property, or the life and well being of human or animal life against:

...

- (16) "Unarmed private security officer" means an individual:
 - (a) employed by a contract security company[.]

ADMINISTRATIVE RULE²

The administrative rule that corresponds to the governing statute is the *Security Personnel Licensing Act Contract Security Rule* (Utah Admin. Code R156-63a), which sets forth, in pertinent part, as follows:

²The Utah Legislature's enactment of Utah Code Ann. § 58-1-106 expressly grants the Division rulemaking authority, such that it may prescribe and adopt rules for the purpose of administering Title 58 of the Utah Code.

58-1-106 Division - - Duties, functions, and responsibilities.

- (1) The duties, functions, and responsibilities of the division include the following:
 - (a) prescribing, adopting, and enforcing rules to administer this title[.]

R156-63a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 63, as used in Title 58, Chapters 1 and 63 or this rule:

...

(11) "Qualifying agent" means an individual who is an officer, director, partner, proprietor or manager of a contract security company who exercises material authority in the conduct of the contract security company's business by making substantive technical and administrative decisions relating to the work performed for which a license is required under this chapter and who is not involved in any other employment or activity which conflicts with his duties and responsibilities to ensure the licensee's performance of work regulated under this chapter does not jeopardize the public health, safety, and welfare.

LEGAL ANALYSIS

An analysis of the issue presented begins with an examination of the *Security Personnel Licensing Act* (Utah Code Ann. § 58-63-101 et seq.), and more particularly, Part 3 thereof, which addresses licensing issues. Section 301 of the *Act* provides that "[a] license is required to engage in the practice of a contract security company," and the "[D]ivision shall issue [such a license] to a person who qualifies under this chapter[.]" The threshold qualifications for licensure as a contract security company are established in the governing statute, Utah Code Ann. § 58-63-302, which provides, in pertinent part, as follows:

58-63-302 Qualifications for licensure.

- (1) Each applicant for licensure as an armored car company or a contract security company shall:
 - (a) submit an application in a form prescribed by the division;
 - (b) pay a fee determined by the department under Section 63J-504;
 - (c) have a qualifying agent who:
 - (i) is a resident of the state and an officer, director, partner, proprietor or manager of the applicant;
 - (ii) passes an examination component established by rule by the division in collaboration with the board; and
 - (iii)(A) demonstrates 6,000 hours of compensated experience as a manager, supervisor, or administrator of an armored car company or a contract security company; or

(B) demonstrates 6,000 hours of supervisory experience acceptable to the division in collaboration with the board with a federal, United States military, state, country, or municipal law enforcement agency[.] (Emphasis added.)³

As is readily apparent, within this legislative enactment that establishes the qualifications for licensure as a contract security company (one of which is “hav[ing] a qualifying agent”), the Utah Legislature has set forth requirements that must be met in order for an individual to be designated as the qualifying agent for a security company. Specifically, in addition to passing an examination and demonstrating 6,000 hours of experience in the field, there is a legislative mandate that a qualifying agent be a resident of the State of Utah, as well as “an officer, director, partner, proprietor or manager” of the security company.

Consistent with the case law set forth hereinabove, in interpreting the governing statute, we first look at the statute’s plain language for the purpose of determining the legislature’s intent. *See Martinez v. Media-Paymaster Plus/Church of Jesus Christ of Latter-Day Saints*, supra at p.2. The plain language of the governing statute mandates that a qualifying agent be “an officer, director, partner, proprietor or manager” of the security company. Significantly, the statute does not mandate that the qualifying agent be an “employee” of the company.

Additionally, and consistent with the holding in *Miller v. Weaver*, supra at p.2, the governing statute should be interpreted in harmony with related sections of the *Security Personnel Licensing Act*. In this regard, when several subsections of the Definitions section of the *Act* are examined, it can be seen that the legislature repeatedly defined specific individuals as those who are “employed by” a contract security company.⁴ If the legislative intent was to

³ Subsections (1)(d) through (k) set forth additional information that must be disclosed by a contract security company applicant, depending upon whether the licensure applicant is a corporation, limited liability company, partnership, or proprietorship. (Attached hereto as Exhibit 1 is a copy of the governing statute in its entirety.)

⁴ UCA § 58-63-102(2) (an armed private security officer is necessarily “employed by a contract security company”); (4) (An armored car security officer is necessarily “employed by” an armored car company.); (12) (A security

require a qualifying agent to be an “employee” of the security company, it certainly could have indicated as much. The omission of the word “employee” from the governing statute must be noted and given effect. See *Biddle v. Wash. Terrace City*, supra at p.3. That is, consistent with the holding in *Riggs v. Georgia-Pacific LLC*, it can be presumed that the omission of the word “employee” from the governing statute was purposeful. Accordingly, under this analysis it appears that it was never the Utah Legislature’s intent that a qualifying agent must be an “employee” of the security company.

Inasmuch as the language of the governing statute is clear, other interpretive tools are not needed. See *Adams v. Swensen*, supra at p.3. Nevertheless, an examination of the legislative history of the governing statute lends further support to the conclusion that a qualifying agent need not be an employee of the security company. More specifically, the governing statute was promulgated in 1995, and the pertinent provision of that statute mandated that a contract security company applicant shall “have a qualifying agent who is an officer, director, partner, or proprietor of the applicant[.]” This provision of the governing statute was amended in 1997, requiring a qualifying agent to be “a resident of the state and an officer, director, partner, proprietor, or manager of the applicant[.]” (Emphasis added.) Accordingly, in 1997 the legislature deemed it appropriate to alter the scope of individuals who may be designated as qualifying agents. Interestingly, the legislature narrowed the scope in one regard by requiring the agent to be a “resident” of the state; however, the scope was enlarged by allowing a “manager” of a security company to act as its qualifying agent. Notably, in amending this statute, the legislature did not set forth any mandate that a qualifying agent be an “employee” of the security company.

officer is necessarily “employed by a contract security company.”); and (16) (An unarmed security officer is necessarily “employed by a contract security company.”).

Finally, inasmuch as the governing statute allows a “director” of a security company to act as a qualifying agent, the legislature clearly contemplated that a qualifying agent need not be an employee of the security company. That is, consistent with the definition of “director” in *Black’s Law Dictionary*, Seventh Edition, there are several subcategories of “director.” One of these subcategories is “affiliated director” or an “outside director.” The definition of an affiliated/outside director is “[a] nonemployee director with little or no direct interest in the corporation.”

Accordingly, although the plain language of the governing statute makes it patently clear that a qualifying agent need not be an employee of the security company, looking beyond the plain meaning of the statute lends further support to this conclusion.

Adjunct Issue

Consistent with the case law cited herein, the powers of the Division are derived from and created by statute. The Division has no inherent regulatory powers and can assert only those which are expressly granted or clearly implied as necessary to discharge the rights, duties, and responsibilities given to it by statute. Moreover, any administrative rule promulgated by the Division must be in harmony with rule’s governing statute. Any rule promulgated by the Division must be consonant with the statutory framework of the *Security Personnel Licensing Act*, and cannot be contrary to the *Act*. See *Draughon v. Department of Financial Institutions, State of Utah*, id. at p. 3. Therefore, the Division’s authority to promulgate a rule requiring a qualifying agent to be an “employee” of the security company is limited by the provisions of the governing statute. Division rules may not confer greater rights or disabilities than that of its governing statute. See *Rocky Mountain Energy v. Utah State Tax Commission*, supra at p. 3.

As discussed above, the plain language of the governing statute is clear. The Utah Legislature has mandated that a qualifying agent be a resident of the State of Utah, as well as “an officer, director, partner, proprietor or manager” of the security company. The statute’s enumeration of each of these titles/positions within a security company, together with the omission of the term “employee,” evinces the legislature’s intent that a qualifying agent need not be an employee of the company. As such, a Division rule requiring a qualifying agent to be an employee of the company would act in a restrictive manner not contemplated by the legislature, and in direct derogation of the governing statute. The Division cannot promulgate such a rule.

Inasmuch as the Division does not have authority to promulgate a rule as desired by the Security Services Licensing Board, the Board’s remedy is to petition the Utah Legislature for an amendment to the governing statute.

CONCLUSION

Based upon the foregoing, it is our informal legal opinion that:

- 1) It is **not** necessary for an individual to be an employee of a contract security company in order to act as that company’s “qualifying agent”; and
- 2) The Division does **not** have legal authority to promulgate a rule that requires a “qualifying agent” to be an employee of the contract security company for which he acts as the “qualifying agent.”