Minutes of Public Meeting
ARIZONA BOARD OF FINGERPRINTING
November 17, 1999

A special meeting of the Arizona Board of Fingerprinting was held at the Department of Economic Security, 4th Floor, 1789 W. Jefferson, Phoenix, Arizona. The meeting began at approximately 2:30 p.m.

MEMBERS PRESENT	MEMBERS ABSENT
Mike LeHew	
Corinne Velasquez	
Joe Garcia	
Cheryl Gira	
Kim Pipersburgh	

CALL TO ORDER

ROLL CALL

GENERAL SESSION

CONSIDERATION OF PROCEDURES FOR GOOD CAUSE EXCEPTION HEARINGS

Mr. LeHew introduced the item and relaxed the formal parliamentary procedures in order to conduct an open discussion of this topic. After lengthy discussion, Mr. LeHew directed the Director to modify the application form to request that the applicant also provide a copy of the police report and a copy of the Criminal History Affidavit.

Because of the number of appeals pending, Mr. LeHew directed the Director to schedule two hearings in January with as many as 25 appeals for each hearing.

The Board's legal counsel, Lisa Stelly, indicated that Findings of Fact and Conclusions of Law must still be written if the Board approves a Class 2 but denies a Class 1 card.

ADJOURNMENT

Mr. Lehew adjourned the meeting at approximately 4:40 p.m.

Approved by the Board on the 21 day of March, 1999.

Chair

Basic Administrative Hearing Procedures

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41-1061 . Contested cases; notice; hearing; records

A. In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. Unless otherwise provided by law, the notice shall be given at least twenty days prior to the date set for the hearing.

B. The notice shall include:

1. A statement of the time, place and nature of the hearing.

2. A statement of the legal authority and jurisdiction under which the hearing is to be held.

3. A reference to the particular sections of the statutes and rules involved.

4. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

C. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

D. Unless precluded by law, and except as to claims for compensation and benefits under chapter 6 of title 23, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

E. The record in a contested case shall include:

1. All pleadings, motions, interlocutory rulings.

2. Evidence received or considered.

3. A statement of matters officially noticed.

4. Objections and offers of proof and rulings thereon.

5. Proposed findings and exceptions.

6. Any decision, opinion or report by the officer presiding at the hearing.

7. All staff memoranda, other than privileged communications, or data submitted to the hearing officer or members of the agency in connection with their consideration of the case.

F. Oral proceedings or any part thereof shall be recorded manually or by a recording device and shall be transcribed on request of any party, unless otherwise provided by law. The cost of such transcript

shall be paid by the party making the request, unless otherwise provided by law or unless assessment of the cost is waived by the agency.

G. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

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41-1062 . Hearings; evidence; official notice; power to require testimony and records; rehearing

A. Unless otherwise provided by law, in contested cases the following shall apply:

1. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings shall be grounds for reversing any administrative decision or order providing the evidence supporting such decision or order is substantial, reliable, and probative. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Every person who is a party to such proceedings shall have the right to be represented by counsel, to submit evidence in open hearing and shall have the right of cross-examination. Unless otherwise provided by law, hearings may be held at any place determined by the agency.

2. Copies of documentary evidence may be received in the discretion of the presiding officer. Upon request, parties shall be given an opportunity to compare the copy with the original.

3. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

4. The officer presiding at the hearing may cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence and shall have the power to administer oaths. Unless otherwise provided by law or agency rule, subpoenas so issued shall be served and, upon application to the court by a party or the agency, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action. On application of a party or the agency and for use as evidence, the officer presiding at the hearing may permit a deposition to be taken, in the manner and upon the terms designated by him, of a witness who cannot be subpoenaed or is unable to attend the hearing. Prehearing depositions and subpoenas for the production of documents may be ordered by the officer presiding at the hearing, provided that the party seeking such discovery demonstrates that the party has reasonable need of the deposition testimony or materials being sought. All provisions of law compelling a person under subpoena to

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41-1065 . Hearing on denial of license or permit

Proceedings for licenses or permits on application when not required by law to be preceded by notice and opportunity for hearing shall be governed by the provisions of the law relating to the particular agency, provided that when an application for a license or permit is denied under the provisions of the law relating to a particular agency the applicant shall be entitled to have a hearing before such agency on such denial upon filing within fifteen days after receipt of notice of such refusal a written application for such hearing. Notice shall be given in the manner prescribed by section 41-1061. At such hearing such applicant shall be the moving party and have the burden of proof. Such hearing shall be conducted in accordance with this article for hearing of a contested case before an agency. Such hearing before such agency shall be limited to those matters originally presented to the agency for its determination on such application.

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41-1066 . Compulsory testimony; privilege against self-incrimination

A. A person may not refuse to attend and testify or produce evidence sought by an agency in an action, proceeding or investigation instituted by or before the agency on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture unless it constitutes the compelled testimony or the private papers of the person which would be privileged evidence either pursuant to the fifth amendment of the Constitution of the United States or article II, section 10, Constitution of Arizona, and the person claims the privilege prior to the production of the testimony or papers.

B. If a person asserts his privilege against self- incrimination and the agency seeks to compel production of the testimony or documents sought, it may, with the prior written approval of the attorney general, issue a written order compelling the testimony or production of documents in proceedings and investigations before the agency or apply to the appropriate court for such an order in other actions or proceedings.

C. Evidence produced pursuant to subsection B is not admissible in evidence or usable in any manner in a criminal prosecution, except for perjury, false swearing, tampering with physical evidence or any other offense committed in connection with the appearance made pursuant to this section against the person testifying or the person producing his private papers.

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