

STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
BOARD FOR LICENSING CONTRACTORS

Transcript of the Proceedings

Board Meeting

July 26th, 2011

APPEARANCES:

For the State: Ms. Jenny Gray, Esquire
 500 James Robertson Pkwy
 Nashville, TN 37243

Board Members: Mr. Keith Whittington, Chairman
 Mr. Ronnie Tickle
 Mr. Jerry Hayes
 Mr. William Mason
 Mr. Mark Brodd
 Ms. Cindy DeBusk
 Mr. Ernest Owens
 Mr. Marvin Sandrell

Briggs & Associates
Brittany Temples, LCR #099
1339 Sydney Terrace
Mt. Juliet, TN 37122
(615) 754-4327

1 (Whereupon, proceedings commenced at 11:07 a.m.
2 as follows:)

3 MR. WHITTINGTON: I would like to call the
4 July 26th, 2011 board for licensing contractors meeting
5 to order. I would like to thank everyone for being here.
6 At this time, we will start off with the roll call of the
7 members, starting at my left.

8 MR. OWENS: Here. Ernest Owens.

9 MR. TICKLE: Ronnie Tickle, Memphis.

10 MR. BRODD: Mark Brodd, Knoxville.

11 MR. WHITTINGTON: Keith Whittington,
12 Johnson City.

13 MS. DEBUSK: Cindy DeBusk, Knoxville.

14 MR. SANDRELL: Marvin Sandrell, Columbia.

15 MR. HAYES: Jerry Hayes, Paris.

16 MR. MASON: Bill Mason, Greenbrier.

17 MR. WHITTINGTON: The first item is to review
18 and adopt the agenda. Has everyone had a chance to look
19 the agenda over? I'll entertain a motion to accept.

20 MS. DEBUSK: Motion to accept.

21 MR. WHITTINGTON: I have a motion.

22 MR. TICKLE: Second.

23 MR. WHITTINGTON: All in favor, say aye, on the
24 agenda.

25 BOARD MEMBERS: Aye.

1 MR. WHITTINGTON: Hardships. It will be behind
2 tab one. Carolyn?

3 MS. LAZENBY: These are the hardships that were
4 reviewed by a board member prior to the board meeting,
5 and we just need you all to ratify by voting for
6 approval.

7 MR. WHITTINGTON: I will entertain a motion to
8 approve the hardships.

9 MR. BRODD: So moved.

10 MR. TICKLE: Second.

11 MR. WHITTINGTON: I have a motion and a second.
12 Any discussion?

13 (No response.)

14 MR. WHITTINGTON: I'm going to ask our
15 attorney, is this a point in time where we need to start
16 doing roll calls? You know, there's been some discussion
17 about doing a roll call for every vote.

18 MS. GRAY: About approving these licenses?

19 MR. WHITTINGTON: Yeah.

20 MS. GRAY: I haven't seen a problem come up
21 with that. I think that if there's any discussion about
22 a particular license, there should be a roll call.

23 MR. WHITTINGTON: Okay. So all in favor, say
24 aye.

25 BOARD MEMBERS: Aye.

1 MR. WHITTINGTON: Opposed likewise.

2 (No response.)

3 MR. WHITTINGTON: Motion carries. Interviewed
4 and waived applicants behind -- I'm sorry. The formal
5 hearing from May, transcripts. Do we need to adopt and
6 approve those? Everyone should have gotten this e-mail a
7 week or so ago. Have you had a chance to look over it?

8 MR. BRODD: I move for approval.

9 MR. SANDRELL: Second.

10 MR. WHITTINGTON: I have a motion and a second.
11 Is there any discussion?

12 (No response.)

13 MR. WHITTINGTON: All in favor of the motion,
14 say aye.

15 BOARD MEMBERS: Aye.

16 MR. WHITTINGTON: Opposed likewise.

17 (No response.)

18 MR. WHITTINGTON: Motion carries. The
19 June 2011 teleconference minutes.

20 MS. LAZENBY: I would like to request that we
21 delay that to the next board meeting because we haven't
22 gotten those completed yet.

23 MR. WHITTINGTON: Okay. Behind tab four. No.
24 I'm looking for interviewed and waived. I guess that is
25 it. Behind tab four, the interviewed and waived

1 applicants.

2 MR. MASON: I have one I want to bring up here,
3 a young man named Andrew Curtis, who has
4 Curtis Construction out of Cleveland. He has passed the
5 business law management exam. He has failed the combined
6 Tennessee BC exam. Let me read his little letter here.
7 I'm writing in regard to ask the board to please accept
8 my scores for the Tennessee BC
9 residential/commercial/industrial contractor exam. I
10 have taken this exam five times and have failed by
11 minimal points. And I will add that -- one time by just
12 one point and another time by just two.

13 Although I passed the business law and
14 project management portion of the exam, I believe my
15 reason for coming short for passing this portion of the
16 exam is because I have a difficult time with test taking.
17 I am very familiar and qualified in the construction
18 industry. I have worked by my father's side, as he has
19 been a commercial and industrial superintendent for 30
20 years. I recently contacted the Tennessee Board of
21 Contractors and was told to submit my application with my
22 current exam for possible approval.

23 Now, this young man has the financial
24 assets. He has the insurance. He has quite a bit of
25 experience. And I'm kind of sympathetic. Some people

1 just don't take tests well. And he has some pretty good
2 letters of recommendation in here.

3 And my first inclination was just to make
4 him take it again until I realized he had tried this over
5 and over again, and he's not missing it by very much.
6 And he's asking for a \$250,000 limit, a BC. And one
7 thing, we could just waive it and give him the \$250,000
8 limit or we could make him take the exam again or we
9 could give him a lesser limit, then after he's done well,
10 assuming he does, he can apply for a higher limit later
11 on.

12 So I hate just to not let him have a
13 license. And -- I really do because it seems like he --
14 you know, every other aspect, everything else, he seems
15 to be getting there. So, you know, I'm a little
16 reluctant not to let him have a license and earn his
17 living and yet I understand when you've got a license
18 exam, you're supposed to pass. So I kind of wanted
19 y'all's opinion about it.

20 MR. WHITTINGTON: I had two that didn't want to
21 take the exam, period.

22 MR. MASON: That's a little different.

23 MR. WHITTINGTON: They had years in the field
24 and didn't want to take the exam. Needless to say,
25 they're not getting a license.

1 MS. DEBUSK: You said one exam he missed by one
2 point?

3 MR. TICKLE: Yes. And another one by two.

4 MR. MASON: He come back five times. He's a
5 persistent young man.

6 MR. TICKLE: Would it be all right with you if
7 we just say maybe \$200,000 now and go ahead and give him
8 his license?

9 MR. MASON: I'm fine with that.

10 MS. DEBUSK: I would like to make a motion we
11 give him his license at 250,000. He missed it by one
12 point.

13 MR. TICKLE: I'll second it.

14 MR. MASON: Okay.

15 MR. WHITTINGTON: I have got a motion and a
16 second. Is there discussion? First thing I'll discuss
17 is, the board needs to remember, you're setting a
18 precedence here. Now, are we going to do one question,
19 five questions, ten questions? Where do we draw the
20 line?

21 MS. DEBUSK: Well, my motion was based on one
22 point. I draw the line at one point.

23 MR. WHITTINGTON: I still say we've got
24 standards set up in the law, and we need legal to talk to
25 us about this.

1 MS. GRAY: Well, I was looking just in the
2 statute, and it says, a board may issue a license to any
3 person who establishes the person's competency in any
4 classification by successfully passing a proficiency test
5 or examination for measurement of industry expertise in
6 such work as administered by the board. You know,
7 successfully passing a proficiency test or examination
8 for measurement of industry expertise in such work, I
9 mean, it seems like there it says, you know, you have got
10 to pass it. I don't --

11 MR. MASON: Does it say "may" or "must"?

12 MS. GRAY: It says, the board may issue a
13 license to any person who establishes the person's
14 competency.

15 MR. TICKLE: May is different than must.

16 MS. GRAY: Well, I mean, right. I mean, but
17 the point is, I think even if they did pass it, you would
18 still maybe have a reason to deny it.

19 MR. MASON: So you interpret that to say that
20 they have to pass the exam?

21 MS. GRAY: I think that the chairman is
22 correct, that it's hard sometimes to modify the
23 requirements for a test. You know, we have another part
24 of the statute that says you can modify the criteria for
25 an applicant if the public safety and welfare clearly

1 require a modification, but I don't know if, you know,
2 this case is, you know, for the public safety and
3 welfare.

4 MR. TICKLE: Can we not then -- there are
5 people that can't take tests, I can tell you that, a lot
6 of people.

7 MR. MASON: That's right.

8 MR. TICKLE: And can you not bring them in and
9 us --

10 MR. WHITTINGTON: We used to do an oral
11 interview, but we can't do that now.

12 MS. GRAY: And then we do have in the rule --
13 you know, in our rule, which is on page 59 of the blue
14 book, in order to obtain a certificate authorizing the
15 applicant to operate as a contractor, the following
16 persons must obtain a successful score on the exam in the
17 appropriate class. And then it goes into, you know, a
18 corporation, a sole proprietorship, a limited liability
19 company. But, you know, in each case somebody has to
20 pass.

21 MR. MASON: Well, this is a sole
22 proprietorship.

23 MS. GRAY: And it just says, the person who is
24 in responsible supervision of the business management and
25 construction practice.

1 MR. WHITTINGTON: I feel for the guy.

2 MS. GRAY: And I wanted to -- you know, PSI,
3 the company that gives these tests, I do think they have
4 got some provisions for people with learning disabilities
5 and things, but I have no idea, you know, how that works
6 or how easy it is to get those things enacted. You know,
7 I don't know.

8 MR. MASON: So your opinion as counsel is that
9 we can't waive this?

10 MS. GRAY: If you made an argument that it's
11 for the public safety and welfare, I think you could.

12 MR. MASON: Well, it would be -- I don't know
13 if it's too convoluted to suggest that the public welfare
14 is not served by a qualified contractor not being able to
15 operate, a qualified, honest, capable contractor, because
16 of, you know, apparently, problems taking written tests,
17 which Ronnie points out, I believe we have all known
18 folks that have that.

19 MS. GRAY: I mean --

20 MR. MASON: People get kept out of college all
21 the time that are very smart, capable people because they
22 can't take their ACT test. You know, there are
23 provisions that mitigate that in education. It seems
24 like there ought to be a provision to mitigate that in
25 this kind of a case. He's come back five times. It's

1 not like he's given up.

2 MR. TICKLE: You know, he's been working with
3 his -- he's been working with his father, hasn't he?

4 MR. MASON: Uh-huh.

5 MR. TICKLE: There's some kind of way that --
6 you know, being in the field, just because you pass a
7 test don't mean you know what you're doing. And the
8 reason why I say that, I had a gentleman that I
9 interviewed this morning, he says that we issued a
10 license to somebody that don't even know what a two by
11 four is. And I believe what he said because I -- and I
12 said, well, how did he get his license? Well, you know,
13 he passed the test and all that stuff.

14 MS. LAZENBY: Look on page 13 where it says --
15 number three.

16 MS. GRAY: Yeah. I just saw that, Carolyn.
17 You know, that may be...

18 MS. LAZENBY: I think that's what -- the
19 board has done this before, because they had done this
20 for years. You know, it's just always been a case by
21 case basis.

22 MR. MASON: So satisfactory to the board would
23 be up to our own judgment.

24 MS. GRAY: Yeah. I think she's right.

25 MR. TICKLE: I think number three solves our

1 problem for us.

2 MR. MASON: And we have got a motion on the
3 table.

4 MR. WHITTINGTON: We've got a motion and a
5 second. Any further discussion? All in favor, say aye.

6 BOARD MEMBERS: Aye.

7 MR. WHITTINGTON: Opposed likewise.

8 (No response.)

9 MR. WHITTINGTON: Motion carries.

10 MR. HAYES: I've got one of those that I need
11 to bring before the board too.

12 MR. WHITTINGTON: Jerry.

13 MR. HAYES: It's a contractor and he -- all his
14 paperwork is in order. His interview went well. He's
15 not asking for anything that's outside what his money
16 will back up. He's got a felony in 2002, and he's still
17 on probation, got a year left on his probation. But
18 during the interview process, he's convinced me that he's
19 turned his life around, headed in the right direction.
20 He's an elder in his church. But I wanted the board
21 to --

22 MS. DEBUSK: What's the felony?

23 MR. HAYES: Drugs.

24 MR. TICKLE: When did that take place, Jerry?

25 MR. HAYES: '02.

1 MR. TICKLE: That's pretty far away.

2 MS. DEBUSK: What type of license?

3 MR. HAYES: BC-A and B and MU.

4 MR. WHITTINGTON: You feel like you want to
5 approve it?

6 MR. HAYES: Yeah.

7 MS. DEBUSK: He's still on probation?

8 MR. HAYES: Yeah. He's got a year left.

9 MR. TICKLE: How old is the gentleman?

10 MR. HAYES: Thirty-eight. He got messed up
11 during his first marriage, divorce.

12 MR. SANDRELL: I don't feel like he ought to be
13 granted it until he's off his probation.

14 MS. DEBUSK: Would it be fair to say he can
15 apply after he completes his probation?

16 MR. HAYES: We have said that in the past,
17 yeah.

18 MR. WHITTINGTON: How much longer does he have
19 on probation?

20 MR. HAYES: A year.

21 MS. DEBUSK: It would just be better if he
22 completed his probation.

23 MR. WHITTINGTON: You don't think nine years
24 is --

25 MS. DEBUSK: Well, it's just if something did

1 happen and he relapsed or drugs, and then he's working
2 for someone in someone's home or whatever and he's still
3 on probation and the board gave him a license, it just
4 wouldn't look favorable on the board.

5 MR. TICKLE: Can we issue a license, and if he
6 does -- back up. Are we having discussion, Mr. Chairman?

7 MR. WHITTINGTON: Yes.

8 MR. TICKLE: If we issued a license --

9 MR. WHITTINGTON: Well, first of all, we don't
10 even have a motion.

11 MR. TICKLE: I know. But I'm trying to get
12 there from here. If we were to issue a license and make
13 it subject to everything is fine, but if he drops off the
14 wagon, we can immediately pull his license --

15 MS. DEBUSK: But who monitors that?

16 MR. TICKLE: Pardon?

17 MS. DEBUSK: Who monitors it?

18 MS. GRAY: I mean, I think he would still have
19 a right to a formal hearing.

20 MR. WHITTINGTON: We would have to initiate the
21 summary suspension of his license, Ronnie, if he -- if in
22 fact it was brought to our attention there was a
23 complaint, and then we can maybe suspend his license and
24 go through the formal hearing process. But once you give
25 him a license, it's kind of hard to say, no, you don't

1 have a license anymore.

2 MS. DEBUSK: I make a motion that we hold it
3 until he completes his probation for one year.

4 MR. SANDRELL: Second.

5 MR. WHITTINGTON: I have a motion and I have a
6 second. Now, is there any other discussion?

7 MR. TICKLE: Has he been working in that field
8 for a long time or is this a brand new deal or...

9 MR. HAYES: No. He's been working in that
10 field according to these letters and all.

11 MR. TICKLE: How long has he been working in
12 the field that he's in? Just curious. Has he been a
13 superintendent or anything?

14 MR. HAYES: Going back to -- the earliest
15 reference was '91.

16 MR. TICKLE: And what was he doing in '91?

17 MR. HAYES: He was doing some Bobcat work
18 around some log home construction.

19 MS. DEBUSK: But if something happens, someone
20 else is responsible for him.

21 MR. TICKLE: I understand. I was just trying
22 to find out whether he's been in construction. I guess,
23 whether he's been a construction foreman. Has he had
24 that title, superintendent, or anything like that?

25 MR. HAYES: I really think he's had a tractor

1 and been renting it out by the hour, is what I think.

2 MR. TICKLE: Okay. I understand.

3 MR. WHITTINGTON: Any other discussion?

4 (No response.)

5 MR. WHITTINGTON: All in favor of the motion,
6 say aye, please.

7 BOARD MEMBERS: Aye.

8 MR. WHITTINGTON: Okay. Let's back up for just
9 a minute. Let's do a roll call, starting at my left.
10 All in favor?

11 MR. OWENS: Aye.

12 MR. WHITTINGTON: Well, no, we will just do a
13 roll call vote, starting at my left with Earnest.

14 MR. OWENS: Aye.

15 MR. WHITTINGTON: Ronnie?

16 MR. TICKLE: Abstain.

17 MR. WHITTINGTON: Mark?

18 MR. BRODD: Aye.

19 MR. WHITTINGTON: Cindy?

20 MS. DEBUSK: Aye.

21 MR. WHITTINGTON: Marvin?

22 MR. SANDRELL: Aye.

23 MR. WHITTINGTON: Jerry?

24 MR. HAYES: Nay.

25 MR. WHITTINGTON: No?

1 MR. HAYES: No.

2 MR. WHITTINGTON: Bill?

3 MR. MASON: Aye.

4 MR. WHITTINGTON: Ayes have it. Motion
5 carries. Does anyone else have any other waived or
6 interviewed?

7 MR. BRODD: I've got one.

8 MR. WHITTINGTON: Mark.

9 MR. BRODD: It's Altura Communication
10 Solutions. They were acquired in March and submitted
11 financial statements for a company -- a previous company
12 and not the new company, so I have just -- I've not
13 approved them. We're going to request additional
14 financial statements for them.

15 MR. WHITTINGTON: With that, I'll accept and --
16 or entertain a motion to approve the interviewed and
17 waived applicants.

18 MR. TICKLE: Motion.

19 MR. BRODD: Second.

20 MR. WHITTINGTON: I have a motion and a second.
21 Any discussion?

22 (No response.)

23 MR. WHITTINGTON: All in favor, say aye.

24 BOARD MEMBERS: Aye.

25 MR. WHITTINGTON: Opposed likewise.

1 (No response.)

2 MR. WHITTINGTON: Revisions. These are your
3 add classes, your combinations, your increases, name
4 changes.

5 MR. SANDRELL: I've got one I wanted to bring
6 up and see what the board thought about it. They're
7 adding -- It's Lubin Enterprises, Incorporated from
8 Memphis. They are wanting to add a CMC-C. They are
9 already a BC and a CE. They're putting a qualifying
10 agent in there, and the qualifying agent has a criminal
11 conviction of rape.

12 MS. DEBUSK: Of what?

13 MR. SANDRELL: Rape.

14 MR. WHITTINGTON: How long ago?

15 MR. SANDRELL: Back in -- it's been a while.
16 '95, I believe. Yeah. July of '95.

17 MR. OWENS: How old is he?

18 MR. SANDRELL: How old is he? Let's see if I
19 can find that.

20 MR. WHITTINGTON: Probably not going to tell
21 you that.

22 MS. DEBUSK: Did his explanation letter say how
23 old he was?

24 MR. SANDRELL: I've not got an explanation
25 letter. I've just got the papers where he was convicted

1 in Memphis.

2 MS. DEBUSK: I thought we had to have an
3 explanation letter. No?

4 MR. SANDRELL: I don't see anything here. No.

5 MR. MASON: Sixteen years ago?

6 MR. SANDRELL: Yeah.

7 MR. MASON: And we don't know -- I think it's
8 relevant how old he was, if it was like a statutory,
9 sweetheart rape type of a deal.

10 MS. DEBUSK: Right. That's what I was
11 thinking.

12 MR. TICKLE: I think it's statutory.

13 MR. MASON: It is a statutory rape?

14 MR. TICKLE: Yeah.

15 MS. DEBUSK: His name has been removed from the
16 Tennessee sex offenders registry.

17 MR. TICKLE: It has been removed?

18 MS. DEBUSK: Uh-huh. I thought that stayed on.

19 MR. TICKLE: No. It --

20 MS. DEBUSK: It can be removed?

21 MR. TICKLE: Yeah. After ten years, or
22 something like that, it can be removed.

23 MR. MASON: Certain circumstances. That's
24 right.

25 MR. TICKLE: If you've been clean and all that

1 stuff, no complaints.

2 MS. LAZENBY: Did he serve time?

3 MS. DEBUSK: I think we need more information,
4 actually.

5 MR. SANDRELL: One year. He got out in less
6 than a year. It didn't seem like a very long time, a
7 year.

8 MS. DEBUSK: I think we need more information.

9 MR. SANDRELL: I would agree.

10 MS. DEBUSK: An explanation.

11 MR. TICKLE: I would like to make a motion that
12 we hold that until we get a letter of explanation as to
13 what happened and what circumstances and what he's done
14 from that point until now.

15 MR. WHITTINGTON: Also, I would like in that
16 explanation what the business plans on doing with the
17 license. If it's a commercial plumbing company, I don't
18 have as much of a problem with him going in and roughing
19 in a restaurant and setting out the fixtures in a
20 restaurant, but if they're planning on doing home
21 repairs, then I might have a little bit of an issue with
22 that.

23 MR. SANDRELL: Right now he's got a building
24 contractors license, a BC, and he's got a CE.

25 MR. WHITTINGTON: BC-A or --

1 MR. SANDRELL: It don't say.

2 MR. WHITTINGTON: Just BC. So they're more
3 than likely commercial, but I would like to know the
4 intent of the company's use of their plumbing license.

5 MS. GRAY: What was he doing? Was he revising?
6 Is that what he was doing?

7 MR. WHITTINGTON: They're adding class.

8 MS. GRAY: Oh, okay.

9 MR. SANDRELL: And getting a new qualifying
10 agent.

11 MR. TICKLE: This is the qualifying agent who
12 we're asking for --

13 MR. WHITTINGTON: For the plumbing. Right.

14 MR. TICKLE: But what I'm saying, the qualified
15 agent is what we need to know more about?

16 MR. WHITTINGTON: Right.

17 MR. TICKLE: Not the company but the qualifying
18 agent?

19 MS. DEBUSK: Second.

20 MR. WHITTINGTON: I don't think we need to take
21 a vote. I just think we need to go ahead and get the
22 rest of the information that's requested. Then we can
23 take a vote.

24 MS. DEBUSK: Okay.

25 MR. WHITTINGTON: Any other questions on the

1 revisions? Can I get a motion to accept the revisions?

2 MR. TICKLE: Motion.

3 MR. BRODD: Second.

4 MR. WHITTINGTON: I have a motion and a second.

5 Any discussion?

6 (No response.)

7 MR. WHITTINGTON: All in favor, say aye.

8 THE BOARD: Aye.

9 MR. WHITTINGTON: Opposed likewise.

10 (No response.)

11 MR. WHITTINGTON: Behind tab six, the home
12 improvement licenses.

13 MR. WHITTINGTON: I've got three.

14 MS. LAZENBY: These are the ones Jerry and Bill
15 looked at.

16 MR. HAYES: I had that first one.

17 MR. MASON: I recommended approval on 2844.

18 This is an old domestic dispute, sister, and she's
19 written a letter saying that they love each other now, so
20 I think they are past all of that. It doesn't seem of
21 the merit of not giving him a license.

22 MR. HAYES: On these other two, we put them off
23 in November because they were on probation. And both of
24 them went off of probation in June, so I recommended
25 approval on that.

1 MR. WHITTINGTON: Can I get a motion from you
2 guys that we approve these?

3 MR. MASON: So moved.

4 MR. HAYES: Second.

5 MR. WHITTINGTON: I have a motion and a second.
6 Is there any discussion on the home improvement
7 applicants?

8 (No response.)

9 MR. WHITTINGTON: All in favor, say aye.

10 BOARD MEMBERS: Aye.

11 MR. WHITTINGTON: Opposed likewise.

12 (No response.)

13 MR. WHITTINGTON: The LLE applicants.

14 MS. DEBUSK: I make a motion that we approve
15 the 12 LLEs listed behind tab seven.

16 MR. BRODD: Second.

17 MR. WHITTINGTON: I have a motion and a second.
18 Any discussion?

19 (No response.)

20 MR. WHITTINGTON: All in favor, say aye.

21 BOARD MEMBERS: Aye.

22 MR. WHITTINGTON: Opposed likewise.

23 (No response.)

24 MR. WHITTINGTON: And LLP applicants.

25 MR. MASON: There are none.

1 MR. WHITTINGTON: There are none. The July
2 legal report.

3 MS. GRAY: Okay. The residential subcommittee
4 for the board has reviewed the residential portion of the
5 legal report, and I'm just going to announce the changes.
6 Item number six was marked for discussion, and the
7 committee recommended to close that complaint. Item
8 number 30 on the report was marked for discussion, and
9 the committee recommended issuing a litigation monitoring
10 consent order, which would leave the complaint open until
11 we see what happens in civil court.

12 Item number 34, the committee recommended
13 that -- as to respondent number two, that the recommended
14 fine of \$500 be increased to \$1,500. On item number 38,
15 the committee recommended that the recommended penalty of
16 \$5,000 be lowered to \$1,000. And on item 46, it was
17 marked for discussion, and the committee recommended to
18 close that complaint.

19 And item number 52, it was marked for
20 discussion, and the committee recommended that we issue a
21 litigation monitoring consent order on that one also.
22 That's regarding two open complaints on that company.

23 Regarding the commercial portion, the
24 commercial subcommittee has reviewed that portion of the
25 legal report, and the following changes were made: On

1 item number ten, it was marked for discussion, and the
2 committee recommended to stay with the status, which was
3 a civil -- authorize a formal hearing with a civil
4 penalty of \$2,000. And then item number 16 was marked
5 for discussion, and the committee recommended a
6 authorization of a formal hearing with settlement of
7 \$1,000 civil penalty plus revocation of license.

8 Those are the only changes on my legal
9 report, but there were -- there was an addendum added,
10 and that's in your notebook behind the legal report.
11 It's just a one page addendum. And this is regarding the
12 home improvement licensee that we performed a summary
13 suspension on. And litigation counsel recommends or
14 requests authorization to settle the matter through
15 revocation of their license, along with payment of the
16 cost of the hearing.

17 The hearing was originally set for today but
18 was continued by the judge based on request from the
19 licensee's counsel. So at this point it will be set for
20 September at our Johnson City meeting, but in the
21 meantime the request is for that -- authorization of that
22 settlement.

23 (Whereupon, the legal report was marked as
24 Exhibit No. 1.)

25 MR. WHITTINGTON: Any questions on the legal

1 report?

2 (No response.)

3 MR. WHITTINGTON: Does everyone understand the
4 addendum to the legal report? I want to do a roll call
5 vote on this. I'll start over here with Ernest. If you
6 will, say your name and yes or no.

7 MS. LAZENBY: I'll do the --

8 MR. WHITTINGTON: Okay. Carolyn, call the
9 names.

10 MS. LAZENBY: Okay. Ernest?

11 MR. OWENS: Ernest Owens, no.

12 MS. LAZENBY: Okay. Ronnie?

13 MR. TICKLE: I'm a little confused.

14 MS. DEBUSK: I am too.

15 MR. WHITTINGTON: We're just accepting the
16 legal report.

17 MR. MASON: The entire legal report?

18 MR. WHITTINGTON: The entire legal report.

19 MR. MASON: Including the addendum?

20 MS. GRAY: I guess they're confused about the
21 addendum.

22 MR. TICKLE: I'm confused about this addendum.
23 If you read the addendum, the respondent is HIC; is that
24 what we're dealing with?

25 MS. GRAY: Right. It's a home improvement

1 licensee. As of right now, their license has been
2 suspended. And what was set for today was the formal
3 hearing, which would be required to do any kind of
4 revocation, and that was continued by the judge. This is
5 something Michael is handling. And the judge continued
6 it based on their -- the other attorney's request to
7 continue it.

8 And in the meantime, if we're able to, we
9 could possibly settle the case with, you know, a
10 voluntary revocation along with payment of cost of the
11 hearing. Because even though the hearing hasn't happened
12 yet, we've already incurred some cost just with filing
13 and everything. So that was the request for the board
14 to -- just like any other case on the legal report, to
15 authorize that if that settlement could be made, that the
16 board approves it now.

17 MR. MASON: So you're wanting to settle this
18 without any civil penalty?

19 MS. GRAY: That's the request, yes. This was
20 the case where the summary suspension, I think, was based
21 mostly on the taking more than a third down and failure
22 to complete work.

23 MR. TICKLE: Who -- I'm kind of like Bill. I
24 don't need to speak for him, but this case is a pretty
25 heavy case. I will be honest with you, I don't want

1 Michael or anybody settling this case without coming
2 before us. I speak personally now. I'm not speaking for
3 the board. My personal deal is, bring these guys in
4 front of the board. If they want to come and have a
5 meeting, come on, and we'll settle it here. I don't want
6 it done behind closed doors. That's my personal opinion.
7 I don't know if it can be done, but that's -- I just want
8 to be on record. That's all I've got to say.

9 MR. MASON: I think so.

10 MR. HAYES: So you're saying no?

11 MR. TICKLE: I'm saying no. I don't want
12 anybody to settle this.

13 MS. GRAY: There's not a motion, I don't think.

14 MR. WHITTINGTON: Let's back up just a minute
15 before we --

16 MR. TICKLE: I don't have a problem with --

17 MR. WHITTINGTON: -- do our roll call vote on
18 the legal report, and let it be known that the legal
19 report needs to be changed to reflect that the board does
20 not accept the request to authorize a settlement.

21 MS. GRAY: Okay.

22 MR. TICKLE: That's fine.

23 MR. WHITTINGTON: Let the legal report reflect
24 that --

25 MR. MASON: Why don't we vote separately?

1 MR. TICKLE: Can we do this separately,
2 Mr. Chairman?

3 MR. WHITTINGTON: Can we?

4 MS. GRAY: Yeah. I think that's fine.

5 MR. TICKLE: We accept that --

6 MR. WHITTINGTON: All items in the legal
7 report, residential and commercial, let's have a motion
8 to accept the residential and commercial aspects of the
9 legal report.

10 MR. MASON: Motion.

11 MR. TICKLE: Agree. Second.

12 MR. WHITTINGTON: I've got a motion and a
13 second.

14 MS. LAZENBY: Ernest?

15 MR. OWENS: Accept.

16 MS. LAZENBY: Ronnie?

17 MR. TICKLE: Yes.

18 MS. LAZENBY: Mark?

19 MR. BRODD: Yes.

20 MS. LAZENBY: Keith Whittington?

21 MR. WHITTINGTON: Yes.

22 MS. LAZENBY: Cindy DeBusk?

23 MS. DEBUSK: Yes.

24 MS. LAZENBY: Marvin Sandrell?

25 MR. SANDRELL: Yes.

1 MS. LAZENBY: Jerry Hayes?

2 MR. HAYES: Yes.

3 MS. LAZENBY: And Bill Mason?

4 MR. MASON: Yes.

5 MR. WHITTINGTON: And a motion as to the
6 addendum.

7 MR. TICKLE: I would like to make a motion we
8 do not accept the addendum as written.

9 MR. MASON: Second.

10 MR. WHITTINGTON: I have a motion and a second.
11 Roll call vote, please.

12 MS. LAZENBY: Okay. Ernest Owens?

13 MR. OWENS: No.

14 MS. LAZENBY: Ronnie Tickle?

15 MR. MASON: Wait, wait, wait.

16 MR. OWENS: No. Yes.

17 MR. MASON: You move not to accept it, right?

18 MR. OWENS: Yes.

19 MR. TICKLE: Yes.

20 MR. MASON: Let's try that again.

21 MS. LAZENBY: Ernest Owens?

22 MR. OWENS: Yes.

23 MS. LAZENBY: Ronnie Tickle?

24 MR. TICKLE: Yes.

25 MS. LAZENBY: Mark Brodd?

1 MR. BRODD: Yes.

2 MS. LAZENBY: Keith Whittington?

3 MR. WHITTINGTON: Yes.

4 MS. LAZENBY: Cindy DeBusk?

5 MS. DEBUSK: Yes.

6 MS. LAZENBY: Marvin Sandrell?

7 MR. SANDRELL: Yes.

8 MS. LAZENBY: Jerry Hayes?

9 MR. HAYES: Yes.

10 MS. LAZENBY: And Bill Mason?

11 MR. MASON: Yes.

12 MR. WHITTINGTON: The next item up is the home
13 improvement statute.

14 MS. GRAY: On one home improvement case, I have
15 open a complaint. We authorized a consent order, and I
16 received some information from an attorney in Shelby
17 County, which is one of the counties where the home
18 improvement law does apply, and he stated that in a
19 general sessions case that's ongoing right now regarding
20 damages to a home by a home improvement contractor, that
21 the judge in that case had found that the home
22 improvement law does not apply in Shelby County. There's
23 no written court order. The case is not resolved yet.
24 This is just an FYI from an attorney in Shelby County.

25 And basically, when I asked an attorney at

1 the attorney general's office, there was -- his opinion
2 was that -- you know, and this is an informal opinion
3 just over e-mail. This isn't anything other than that.
4 Was that the law could be read to apply to all the
5 counties in the state.

6 And basically, when I heard that from him, I
7 just -- I thought that I would ask for board permission
8 to request an attorney general opinion. And the reason
9 is, back in '93 when the law was changed where counties
10 could opt into this law, counties did opt in. And it's
11 pretty much remained the same as today. There's maybe a
12 couple of counties that have changed, but Shelby,
13 Davidson, Hamilton, among others, opted in.

14 That law was repealed in 2007 and was moved
15 to a whole different part of the law. It wasn't
16 substantially changed or anything, but, in essence, it
17 was repealed. And the question I think -- I think what
18 was presented to the judge in Shelby County was that
19 Shelby County had not opted in to the 2007 law and
20 beyond, that they had only opted into the '93. And so
21 their opinion was that the law did not apply in
22 Shelby County.

23 I think the way the board had viewed it is
24 that -- and the way -- it's not written -- it's written
25 poorly, but it says if you are -- let me read it.

1 MR. WHITTINGTON: I think what happened in that
2 2007 legislative session was, was that the legislature
3 basically did away with the home improvement board and
4 put home improvement licensing underneath the
5 contractor's board. That was the purpose of moving it
6 around in the statute.

7 MS. LAZENBY: Right. They merged it with the
8 board because it was -- the home improvement commission
9 by itself wasn't self-sufficient. So the intent was to
10 change nothing except to put it under the direction of
11 the contractor's board.

12 MS. GRAY: And the way it reads is, if home
13 improvement contractors in a county are exempted from
14 licensure under this chapter on July 1st, 2007, comma,
15 due to a county exclusion, comma, the legislative body of
16 the county may elect to make this part applicable. And I
17 think the way the board viewed it was, if you were one of
18 the counties that had opted in way back in '93, that it
19 still applied to you, and that if you were one of these
20 other counties that, in their mind, were excluded, then
21 you could still opt in.

22 I think that the confusion, I assume, is
23 with the term "county exclusion." I mean, it's an opt-in
24 law, so I don't know if that necessarily means that if
25 you didn't opt in, that you're automatically excluded.

1 All I was really presenting to the board is that there is
2 some confusion, and I would like to request an AG
3 opinion. And that's basically all I was going to ask for
4 today.

5 MR. WHITTINGTON: I think we need it -- for
6 clarification, we probably need to go ahead with it.
7 I --

8 MS. GRAY: I'm not saying --

9 MR. WHITTINGTON: I think this is -- I still,
10 what I -- I'll repeat myself. I think it's an attorney
11 trying to create a defense, and therefore he has made the
12 defense that they didn't adopt the rule. But I don't
13 think that the intent of the legislature was to ever --
14 what am I trying to say?

15 MR. TICKLE: Exclude.

16 MR. WHITTINGTON: Opt out the counties that had
17 already elected to opt in. I don't think that was
18 ever -- and I don't know the --

19 MS. GRAY: I mean, I think with a closer look
20 you might find that their intent was exactly what you're
21 saying, but I don't know -- I mean, legislative intent
22 can only be taken so far. That's why I would like to --

23 MR. WHITTINGTON: Is Shelby County saying they
24 do not belong under the home improvement?

25 MS. GRAY: I mean, I know that there is a

1 pending court case where the judge is basing his decision
2 on damages, which I don't -- some of the case law, your
3 damages are different based on the fact whether you had
4 to be licensed or not. And that part of his
5 interpretation of law, was that it didn't apply; this law
6 did not apply in Shelby County. And the damages in the
7 case were going to be a little bit different because of
8 that. So it's sort of a collateral issue in the case,
9 but it was just something that I thought was important.

10 MR. MASON: So Shelby County was exempt at the
11 time of the adoption, correct?

12 MS. GRAY: In '93 they opted in.

13 MR. MASON: They did opt in?

14 MS. GRAY: Right.

15 MR. MASON: Well, then they're opted in.

16 MS. GRAY: But the law's been repealed, the law
17 that they opted in on, whether it's substantially changed
18 or not. And I -- the number -- before it was in title
19 62, chapter 37, so a completely different part of the
20 law. That was all repealed, and it's now in a new law.
21 You know, not much changed with it, but some did, and,
22 you know, it's hard -- it may be a hazy or gray area to
23 say that your opt-in on a law that's been repealed
24 applies with the new law.

25 I mean, again, I don't know if the board --

1 you know, I think what the board has been doing is
2 reasonable, but I just thought sought some clarification
3 and thought --

4 MR. MASON: What's the need for clarification?

5 MS. GRAY: Just a gray area of the law.

6 MR. MASON: Some specific case?

7 MS. GRAY: Well, I have an open complaint where
8 they're not -- you know, it's going to -- you know, their
9 stance on it is the home improvement law does not apply
10 in Shelby County.

11 MR. TICKLE: We have to give permits and stuff
12 when we do our work. Why would we have to get a permit
13 to do home improvement if it's -- I don't understand why.

14 MS. GRAY: I mean, I haven't heard anything
15 from the Shelby County mayor's office or the Shelby
16 County legislature.

17 MR. WHITTINGTON: I still think this has to
18 deal with your case that you're speaking of and the
19 defense in the other case. I don't --

20 MS. GRAY: Carolyn has received inquiry maybe a
21 little bit before I got here. And this was --

22 MS. LAZENBY: This was the same law -- case. I
23 think it was the same attorney.

24 MS. GRAY: Well, it's not the same case. This
25 case has been open since I have been here. But it is

1 something that's come up before, something that Michael
2 had done a memo before. I --

3 MR. TICKLE: Get ahold of the Shelby County
4 codes enforcement down there in Shelby County, and you
5 all get it worked out.

6 MS. GRAY: I mean, is there a reason we don't
7 want an AG opinion on it?

8 MR. TICKLE: No. I'm just trying to figure
9 out -- I mean, I'm just trying to figure out how come
10 they didn't say anything, because Allen's the head of
11 code enforcement down there. I'm sure he thinks
12 everything -- that you have got to have your license. I
13 served on that committee for 12 years. This is the first
14 I have ever heard anything.

15 MS. GRAY: Right. And I haven't gotten
16 information that the codes is doing anything differently
17 or anything. It was just a request to get an AG opinion.
18 If the board doesn't want to --

19 MR. WHITTINGTON: I just don't want to put
20 somebody through a whole lot of trouble if there's no
21 need in it.

22 MR. MASON: Or open any cans or worms either.

23 MS. GRAY: Well, that's the only reason I
24 brought it in front of you all. If that's how you feel,
25 then that's fine.

1 MR. WHITTINGTON: Any thoughts?

2 MR. OWENS: Ronnie and I are on the board, so
3 maybe one of us should talk to Allen Medlock.

4 MR. TICKLE: My time just ran out last week,
5 but I'll talk to Allen. I don't have a problem talking
6 to him.

7 MR. MASON: Mr. Chairman, why don't we postpone
8 the decision on this.

9 MR. WHITTINGTON: Let's just hold it off until
10 September. If they can't come up with a good answer or
11 Carolyn can't get a good answer, then we will do
12 something different.

13 MS. GRAY: And I just had one more issue --
14 well, you know, both huge issues, I guess, about the home
15 improvement law. It's come to my attention that the way
16 the home improvement licensing process has worked is that
17 the ones -- some are presented to the board when there's
18 some questionable thing about their application, whether
19 it be conduct or financial stability or something like
20 that, but that if there is no question about their
21 application, it's good on its face, that the executive
22 director is going ahead and issuing the licenses and that
23 the board had given that power to her maybe in the past
24 through a policy or a vote.

25 And I don't see anything in the statute

1 allowing for that, you know, for the board to give that
2 power to the executive director. So I just am
3 questioning that process and whether the applications
4 should be just like, I guess, the contractors -- the
5 general contractors application and be brought in front
6 of the board just like everything else.

7 MS. LAZENBY: We only get about 15 a week as
8 compared to, you know, contractors. There's a big
9 difference. And we do have -- it does give us -- she
10 said we can issue a temporary license, she thinks.

11 MS. GRAY: Yeah. We have a very clear rule in
12 the rules for the home improvement statute that allows
13 her to issue a temporary license, but it's not made
14 permanent until it's brought in front of you all. And it
15 can be taken back even before the time that it's approved
16 by you all. I mean, it's sort of -- it's a clear rule,
17 but it's got several little...

18 MR. WHITTINGTON: Can we not just incorporate
19 those applications into the process that we do now, just
20 e-mail them to one of the board members and let them look
21 it over? And I don't want to give the appearance of
22 any -- of improprieties. If it's only 15, divide that up
23 amongst the board. That's just a couple extra.

24 MS. GRAY: And it's not anything that's been a
25 problem up until now.

1 MR. WHITTINGTON: I don't think it's been a
2 problem, but at the same time, I kind of wished we would
3 do away with the home improvement license all together
4 and bring them in underneath the residential licensing
5 and give them a limit. That would be my wish. But we
6 might as well just let the board look them over.

7 MS. GRAY: I mean, but is it okay in the
8 meantime for her to use that rule that I mentioned that's
9 very specific about issuing temporary licenses?

10 MR. WHITTINGTON: If we get them, we should
11 have them back to her within a day. I don't see any
12 holdup there. I mean, if it's a hardship, then she can
13 probably issue a temporary, but if it's just a general
14 license request, let it go through the normal channel.

15 MS. LAZENBY: That would be fine.

16 MS. GRAY: Okay.

17 MR. WHITTINGTON: Carolyn? Have you got
18 anymore legal?

19 MS. GRAY: No. I don't.

20 MR. WHITTINGTON: Energy efficient school
21 initiative.

22 MS. LAZENBY: Yes. Okay. We did this three
23 years ago, and it's time to reappoint someone else to the
24 council. I've received one nomination from Mark, but I
25 don't have that name with me.

1 MR. BRODD: David Doane. I asked him for a
2 resume, but he has not sent that to me.

3 MS. LAZENBY: That's okay. All I need to
4 submit now is names. So what was the --

5 MR. BRODD: David Doane, D-O-A-N-E.

6 MS. LAZENBY: And then I've received also from
7 Ronnie, Dave Tucker of D & D Custom Homes, Brighton,
8 Tennessee, and also John Ruch of Ruch Builders out of
9 Arlington, Tennessee.

10 MR. MASON: Is that Brutch, B-R-U-T-C-H?

11 MS. LAZENBY: R-U-C-H. And then Reese Smith
12 had nominated Denny Hastings, who currently sits on the
13 council. So all I need from you all, I guess, is to
14 ratify that request, and I can go ahead and submit that
15 list, I can go ahead and submit with four names.

16 MR. MASON: I have a little experience with
17 this. The governor or the speaker, I'm sure, would
18 appreciate if those are ranked in order of preference if
19 we want to do that. If we want to just submit them
20 otherwise, I would suggest that we do it in alphabetical
21 order and tell the speaker that's what we've done.

22 MS. LAZENBY: Okay.

23 MR. MASON: You know, because they like to
24 know -- the nominating -- the persons making the
25 appointment wants to know who you're nominating and,

1 basically, who you prefer. It doesn't mean they will do
2 that. I can tell you that they won't necessarily do
3 that, but they like to know that. And if you don't
4 really want to make one a preference, then you just say,
5 these are submitted in alphabetical order with no
6 preference, and just leave the judgment to, you know,
7 whatever you think. So that's the way I would suggest
8 doing it.

9 MS. LAZENBY: That makes sense.

10 MR. MASON: I don't know any of those folks, so
11 I would rely on whoever is nominating them to tell me or
12 figure out how we want to do that. Hastings is an
13 incumbent, isn't he?

14 MS. LAZENBY: Yes. It's my understanding he
15 wants to be reappointed as well.

16 MR. TICKLE: Ruch and Tucker are both out of
17 Memphis. They are green builders, certified green
18 builders and certified Energy Star. They have been in
19 business for a pretty good while. I have not -- I did
20 not get any resume or anything, like Mark said. I didn't
21 know if we were supposed to do that.

22 Either -- I have no problem with either one.
23 They are both good boys, good guys, and they know what's
24 going on. I would like to submit, in relation to what
25 you said, Bill, in alphabetical order with no preference,

1 as far as my part is concerned.

2 MR. BRODD: Just to give you a little
3 information on David Doane, he works for Shoffner
4 Mechanical Electrical Contractors. He's in charge of
5 their energy efficient program. They do energy efficient
6 studies for those buildings and make recommendations to
7 the owners as to how to save energy and save money at the
8 same time. I know he's been with Shoffner for about two
9 years.

10 He also was with the utility company for a
11 number of years and was with the University of Tennessee
12 for a number of years, both in energy savings capacities.
13 He's done a lot of work in that. And the only thing I
14 would say about Ronnie's two guys, if they've got any
15 school experience, because this is basically for schools,
16 not houses.

17 MR. TICKLE: I don't know. To be quite honest,
18 in my opinion, it's strictly residential. To be a lead
19 builder, and such as they said, we do not have a lead
20 builder in our area at all that I know of. The cost of
21 completing a project under lead -- a residential house, I
22 can tell you this right now, is about 15- or \$20,000, to
23 put a lead, minimum. So -- but they do -- they're both
24 certified under National Home Builders and under -- like
25 I said, as a green builder out of our area and MLGW,

1 which is our energy program down there. But I don't
2 know. I feel like either one of them can do that, but I
3 don't know. I guess you will probably see that in their
4 resume.

5 MR. WHITTINGTON: Is it the consensus of the
6 board then that we just submit the names alphabetically?

7 MR. MASON: And indicate in the cover letter
8 that there is no preference. And, Carolyn, will you
9 provide the speaker's office with contact information so
10 that they can get resumes if they want?

11 MS. LAZENBY: Yeah. I sure will. I think
12 maybe that last time I was able to get a lot of
13 information off their website, the ones that were
14 nominated. So if I can't find anything on the website, I
15 might contact you all.

16 MR. TICKLE: I wrote their names and telephone
17 numbers down. I figured you probably wanted that.

18 MS. LAZENBY: Yeah. I can do that.

19 MR. MASON: Mr. Chairman, I move that we submit
20 these four names in alphabetical order with an indication
21 of no preference and contact information or supporting
22 information to be able to make a decision.

23 MR. TICKLE: I second that.

24 MR. WHITTINGTON: I have a motion and a second.
25 Any discussion?

1 (No response.)

2 MR. WHITTINGTON: All in favor, signify by
3 saying aye.

4 BOARD MEMBERS: Aye.

5 MR. WHITTINGTON: Opposed likewise.

6 (No response.)

7 MR. WHITTINGTON: The motion carries.
8 Legal/Financial investigation data reports.

9 MS. LAZENBY: Okay. This is asking you all for
10 your input on us subscribing to some type of service in
11 June. It might help a little bit on some of these. I've
12 never used them. I know some other states use them, but
13 you can actually have them do like a background check,
14 especially, you know, with all the roofing scams that
15 we've had lately. We have been researching the -- some
16 of the home improvement contractors because there are so
17 many that go state to state, and the information can be
18 obtained from getting a background report.

19 MS. GRAY: Right now we don't -- what we have
20 now is not nationwide, so I don't know if this might
21 provide more than what we have now. I think there's some
22 type of prohibition about doing a nationwide search, but,
23 I mean, I just don't think it could hurt to be able to do
24 a little more background checks because I know a lot of
25 times Carolyn is limited to a Google search, you know, on

1 people, which is not always the most reliable.

2 But, you know, this would come out of board
3 money, and today I heard just a comment by a board member
4 about needing more public education about giving your
5 money to unlicensed contractors. So when I heard that I
6 thought, you know, I don't know if we need to be weighing
7 what we're doing. You know, I don't know if it would be
8 better -- you know, is it -- what would, you know,
9 protect the consumers more, this type of search or maybe
10 putting our money into more education for consumers. And
11 it was just a thought.

12 MR. WHITTINGTON: They won't let us spend it.

13 MS. GRAY: Well, I think Carolyn thought we
14 would be able to maybe get this if we voted on it, but I
15 don't know about --

16 MR. WHITTINGTON: We voted on consumer
17 awareness campaigns before, and before we could get the
18 billboards up, we were turned down. We've tried to be
19 proactive in that.

20 MS. GRAY: Well, then this may be the way to
21 go, you know, to do a little bit more.

22 MR. WHITTINGTON: I think if we can do anything
23 at all, if we need a little more detailed search -- and I
24 think we do need a little more detailed search. If it's
25 legal, that we do that.

1 MS. GRAY: Do we know the cost of it, Carolyn?

2 MS. LAZENBY: I've contacted LexisNexis and
3 another company called Axium (phonetic), and I haven't
4 got a bid back. So I'm curious of what these usually --
5 there's nothing out there that tell you what it costs.

6 MS. GRAY: Yeah. It's expensive usually.

7 MR. WHITTINGTON: It's probably going to run
8 you, I would say --

9 MS. LAZENBY: It's monthly.

10 MR. WHITTINGTON: -- \$25 a report.

11 MS. GRAY: A lot of times it's monthly.

12 MR. MASON: Let me ask this: What -- if we do
13 background checks like this, would we legally have to do
14 them on everybody? Can we be selective or not? Because
15 if you're selective, you run into issues about you being
16 discriminated against, you singled me out.

17 MR. WHITTINGTON: Right.

18 MS. GRAY: Well, I think if we did a monthly
19 subscription, it might not matter. I think it's going to
20 depend on pricing.

21 MR. MASON: That's not the question. The
22 question is --

23 MS. GRAY: I think you're right. There could
24 be a problem doing a selective search. But I would
25 suggest --

1 MS. DEBUSK: Can we move this to September,
2 once you have pricing?

3 MS. LAZENBY: Yes. We can do that. And then
4 we can --

5 MS. DEBUSK: Put more research into it.

6 MS. LAZENBY: Also check with other states to
7 see how they go about it.

8 MS. DEBUSK: Sure.

9 MR. WHITTINGTON: That's something that I would
10 have felt like that maybe NASCLA would be doing, was have
11 a nationwide database of contractors and, you know, run a
12 check through NASCLA.

13 MS. LAZENBY: We do. The only problem is, only
14 a few states do it.

15 MS. GRAY: Well, and not that I'll ever be able
16 to make anything happen truly, but I will ask about the
17 consumer education. I mean, I haven't been here since
18 that was shot down or anything. I'm just curious about
19 it.

20 MR. WHITTINGTON: When the budget knife is
21 wielded, usually, they look at our funds to help balance
22 the budget up on the hill. And unfortunately, it's
23 usually taken for that process.

24 MS. LAZENBY: Right. But there's actually a
25 couple of laws out there that says, use the money for

1 consumer education. The Theft Bill has that down in
2 there. But, of course, that goes on -- on the money
3 collected.

4 MS. GRAY: Yeah. I mean, I've not been very
5 involved in the money part. I mean, I stick to my
6 checkbook and that's about it.

7 MS. LAZENBY: There are a couple of bills out
8 there that are saying the board -- the latest one on the
9 workers' comp, some of the proceeds are supposed to go to
10 the board for consumer education and enforcement. So
11 it's -- you know, the legislatures are trying to get it
12 in there so we can spend the money on consumer education.

13 MR. MASON: Is the legislative liaison for the
14 department of commerce making that case for us?

15 MS. LAZENBY: I will have to check. I don't
16 think anything has come from it.

17 MR. MASON: I think it would be worthwhile for
18 you to discuss this with our legislative liaison.

19 MS. LAZENBY: Okay. I can do that. I think we
20 have some information, let's see, behind --

21 MS. DEBUSK: Tab 13.

22 MS. LAZENBY: Tab 13? Yeah. It's also behind
23 tab 12, because this is a combination of a couple of
24 issues. The one behind tab 12 is -- it shows you an
25 example of our online license search. And, let's see,

1 the one that Telise has got in here, like, for instance,
2 on this one, it shows that the license is expired but
3 when somebody goes and checks it, they're going to see
4 active license. And that's usually the first thing they
5 see, is that -- their active employee license. So you
6 automatically think they can bid, they can do the job.

7 We have talked to our IS people about fixing
8 it. We have talked to them several times before, and we
9 sort of -- when this come up again, we brought it to
10 their attention again. They can't change it. The
11 problem is, if a contractor pays his fee, that makes the
12 system automatically change it to active blue license,
13 even though he doesn't qualify to renew. But the system
14 just looks at the fee, nothing else, and makes them
15 active. The only -- so there's not a way to make them
16 delinquent or fail to renew as long as they pay their --

17 MS. DEBUSK: Was it their initial fee?

18 MS. LAZENBY: Their renewal feel.

19 MS. DEBUSK: But if they pay the renewal fee,
20 then their expiration date should be different.

21 MS. LAZENBY: No. Because they -- we don't
22 renew them until they -- you know, they have fulfilled
23 everything, like the financial statement, insurance.

24 MS. DEBUSK: Okay. But the system -- when they
25 pay, money is logged into the system, it renews that.

1 MS. LAZENBY: Right. It controls --

2 MS. GRAY: The date is accurate. The date,
3 right, shows --

4 MS. LAZENBY: Yes.

5 MS. GRAY: -- the expiration. So if you're
6 literally looking at it by the date, you know there's a
7 problem. You know there's a problem with it saying
8 active but an expiration date of yesterday or a week ago.
9 So I just wanted to clarify that.

10 MS. LAZENBY: Right. It will show the correct
11 expiration date, but the status -- you know, it says,
12 active blue license. It's right out there.

13 MS. DEBUSK: Why can't the system be changed?

14 MS. LAZENBY: Well, they would have to -- I've
15 heard they do have it out to bid for a new computer
16 program, software, but right now they said there's
17 nothing they can do to fix it.

18 MR. BRODD: So if somebody sends their money
19 in, and we don't approve their license, do we then send
20 them back a refund check or...

21 MS. LAZENBY: Well, you know, they have 12
22 months to renew, so when somebody sends in their money,
23 and, you know, after we audit the renewal, if they don't
24 qualify, we send them a letter back saying, this is what
25 you need to renew. You know, send this in, and you can

1 renew. Well, this will bounce back and forth, and
2 sometimes it will even take a year for a contractor to
3 renew, because they do have renewal rights of a year.
4 And --

5 MR. SANDRELL: What if they're bidding on a job
6 like next week?

7 MS. LAZENBY: We would say their license is
8 expired. But -- you know, they have an expired license,
9 but they're not considered -- we don't consider them
10 legal, but the system will say active blue license.

11 MR. SANDRELL: But they are illegal?

12 MS. LAZENBY: Uh-huh. So it's just sort of
13 confusing to the public because -- and it's even
14 confusing to contractors because they will come in and --
15 you know, the law gives us 30 days to process a renewal,
16 so if somebody -- and if they turn it in right on the day
17 they expire, they say, you know -- you know, or even a
18 few days after they expire, they'll say, can you give me
19 a letter to extend my renewal -- my expiration date? I'm
20 like, no, we can't extend it. We have to issue it. We
21 do that most of the time. We just brush it through.
22 But --

23 MR. SANDRELL: How would a general contractor
24 know that?

25 MS. LAZENBY: He wouldn't.

1 MS. GRAY: Well, unless he looked at the date.
2 I mean, you know, I guess I have sympathy because it is
3 confusing, but if you're getting down to when does your
4 license expire -- which is a lot of times what we need to
5 know. It's not just, what's your status on the website;
6 it's, what is your expiration date? That's accurate.
7 Again, I just wanted to explain that it's not, you know,
8 wrong all the way.

9 MS. DEBUSK: Based on the information, there's
10 nothing we can do.

11 MS. LAZENBY: There's nothing we can do. And
12 that's what brings me up to part two of the bid protest.
13 We did have a contractor, the general or the prime
14 contractor took a bid from a sub, a masonry sub. Their
15 license was expired. But when his staff checked the
16 website to confirm all his subs were active, yes, they
17 were all active and fully licensed, but the license had
18 expired. So you have got this -- it's like you shouldn't
19 penalize the prime because the sub.

20 MR. SANDRELL: That's not the general
21 contractor's fault; that's the state's fault.

22 MS. LAZENBY: Right. So that's what I'm
23 asking, is, you know --

24 MR. MASON: Well, it's the subcontractor's
25 fault too.

1 MS. LAZENBY: It's the subcontractor's fault,
2 is the way I look at it.

3 MR. MASON: I mean, he knew his license was
4 expired and submitted a bid anyway.

5 MR. HAYES: When they list those on the
6 envelopes, they don't have to put the expiration date?

7 MS. GRAY: Yeah. They're supposed to.

8 MS. LAZENBY: They do have to list the
9 expiration date. But, again, it's out there. People
10 think, you know, they're active. They pull a license.
11 Most contractors will tell you they think they have a
12 grace period. They think there's a 12-month grace
13 period.

14 MR. BRODD: I think the licensing board just
15 hasn't changed it to the next year and the computer's
16 behind.

17 MS. LAZENBY: I don't know if some of you
18 remember that, probably about five, ten years ago, it did
19 take us six months to issue a license. And we did do --
20 we would do a letter that said, you're expired, but you
21 are active and fully licensed. You can bid. It's in
22 process. We did that for years. And mainly because we
23 didn't have the staff to issue the -- you know, because
24 it took longer than 30 days. And now we are getting them
25 done quicker but still most contractors, they still think

1 like that because -- we called them an extension letter,
2 and they will still call in for their extension letter.

3 MS. DEBUSK: Just like Jenny said, the license
4 expires -- it expires, and you really should be looking
5 at that date.

6 MS. LAZENBY: You should be looking at that
7 but --

8 MS. GRAY: You know, besides this, I see all
9 the time people say, I sent in my renewal. There you go.
10 I'm registered. They call it a registration. And some
11 states may work that way. I don't know. But to me it's
12 not reasonable to send in your paperwork, never verify,
13 never get on the website, never look, open your eyes. I
14 mean, I guess I just find it unreasonable to think that
15 we would need to babysit every renewal.

16 MS. DEBUSK: And that's this case. They are
17 wanting us to...

18 MS. LAZENBY: Well, I just want to make sure
19 that the general that listed him shouldn't be found in
20 violation. You know --

21 MR. TICKLE: Well, wait a minute. Why wouldn't
22 a general know -- if I'm a plumber, and my license
23 expires on May 1st and I sent my bid in because I had
24 written down on May 1st on that envelope that my license
25 expires on May 1st, if I'm the general and I have sent

1 that bid in, I'm supposed to have enough sense to say,
2 May 1st is after -- is before June 1st, so then I should
3 have never used that sub. I blame the general.

4 MR. MASON: I agree. It's not like --

5 MR. BRODD: But what happens is --

6 MR. MASON: -- the information wasn't there.

7 MR. BRODD: -- the sub gives you a bid. He
8 doesn't give you his expiration date. So you have to go
9 to the website and find it to put it on the bid envelope.

10 MR. OWENS: It's listed on the envelope on the
11 bid, the expiration date. All of that should be --

12 MR. MASON: It's on the bid envelope.

13 MR. TICKLE: But what Mark is saying is he is
14 babysitting his sub.

15 MS. DEBUSK: But you can ask your sub to
16 provide it.

17 MR. TICKLE: You're right. But I know what
18 Mark's saying. Mark's saying you've got to get ready to
19 get a bid in, and he didn't do it. And I have been
20 calling him and he hasn't done so. No trouble. So --

21 MR. BRODD: But you go on the website and the
22 date is past the date you are bidding, then you think,
23 well, he's fully licensed but his license is already
24 expired, so you really don't know what to do.

25 MS. LAZENBY: You're thinking the board is

1 behind again.

2 MR. WHITTINGTON: You've got that 12-month
3 grace period. He will be all right. He's got it in for
4 renewal.

5 MR. BRODD: Are there any other choices other
6 than active, fully licensed, Carolyn?

7 MS. LAZENBY: Well, we're going to try.

8 MS. GRAY: I spoke with somebody yesterday,
9 because I knew this was coming up. And, you know, it's
10 frustrating to say, but, you know, something about the
11 connection with the other systems and this status of the
12 money triggering the active status. Years ago that was
13 considered, I guess, the most important thing. I don't
14 know.

15 But I have been told that there's no
16 deadline. I can't get any deadline on when it will be
17 fixed, and there's even a bid out for a brand new system.
18 So if we get a brand new -- you know, there's two
19 options, a fix or a brand new system, the brand new
20 system being out there, an option anyway, beyond all this
21 happening. So if we put a bid out and get a new system,
22 that puts another -- you know, and I suggested taking it
23 all down. I mean, if this is going to be -- but, again,
24 you know, I'm a little bit more harsh maybe than you all
25 are in the industry. But, you know, somebody with a law

1 license, I wouldn't -- I wouldn't risk my law license by
2 just dibbling on a website and not checking it.

3 MR. MASON: What would be the change, pending
4 or something?

5 MS. GRAY: Yeah. That's what I was going to
6 say. It would say renewal pending or something like
7 that.

8 MS. DEBUSK: Can they do that?

9 MR. BRODD: Or expired.

10 MS. LAZENBY: No. Mainly because our status is
11 tied to the other 26 boards. They all have to work
12 together. If theirs does not have that pending, then
13 ours won't have it. And it's -- there's nothing they can
14 do right now. We talked about removing the status
15 completely. They said that wouldn't work either because
16 other boards have to list the status, you know, because I
17 think there's just different -- one of them might say,
18 this one is insured and this one is not insured. When it
19 comes to the status, it's just different for each board,
20 but they all work the same way.

21 MR. MASON: Can we put a qualifying statement
22 then somewhere else on that page that says, you need to
23 check both status and expiration date?

24 MS. LAZENBY: It's there, but it's very hard to
25 find.

1 MR. MASON: Can we increase the size or
2 something?

3 MS. DEBUSK: Make it bold.

4 MS. LAZENBY: And I've asked for that. I mean,
5 you can go to it. It's on there but -- it talks about --
6 let's see. It will say, license search tips.

7 MR. MASON: Well, if it's on there and hard to
8 see, then the question is, can we make it where it's
9 easier to see?

10 MS. LAZENBY: Yeah.

11 MR. TICKLE: Only if we get a new computer.

12 MS. DEBUSK: Can IT do that, make it bold?

13 MR. MASON: I bet they can do that.

14 MS. LAZENBY: I have asked, and they are like,
15 okay, why should we do this for contractors and we're not
16 doing it for --

17 MR. MASON: Well, because we have a problem, is
18 why. I mean, sorry to interrupt your break, but you need
19 to fix that for us.

20 MR. WHITTINGTON: So attorneys don't
21 necessarily bid on jobs that requires a current license.

22 MS. LAZENBY: Of several other people. Yeah.

23 MR. WHITTINGTON: That other jobs -- you know,
24 that's depending upon that date.

25 MS. LAZENBY: Right.

1 MS. GRAY: I agree. I just -- I'm a
2 professional with a license. I take it seriously.

3 MR. MASON: Carolyn, you know, if they can't
4 change a pending status on the current system, then why
5 don't you ask them -- insist that they fix -- that they
6 fix the cover part to emphasize that they need to check
7 the expiration date.

8 MS. LAZENBY: Yeah. They are going to have to.
9 But on our site, it does say, you know, search tips and
10 status.

11 MR. MASON: Everywhere you say it, the better,
12 but if they can do it -- now, the other part of this, to
13 make the primary contractor just, well, because it said
14 that, they don't have to worry about it, I'm hesitant to
15 do that.

16 MS. LAZENBY: Yeah. I understand.

17 MR. MASON: I mean, if they came up for a
18 violation on a fine or something, and we -- I think this
19 board is reasonable enough to take that into account.
20 But to just say, well, okay, well, if it says that and
21 you do something wrong, then that's okay, I'm not sure we
22 want to do that. I wouldn't want to.

23 MS. LAZENBY: Okay.

24 MR. MASON: I understand their confusion and
25 that they were doing it on good faith, but people who do

1 the right thing on good faith don't have much to fear
2 from this board.

3 MS. LAZENBY: Right. I did not open a
4 complaint against the contractor that did this. Nobody
5 has really reported it, and I -- when it come to my
6 attention, I didn't open a complaint, so -- unless you
7 all think I need to.

8 And then part two, we do have a bid protest,
9 and the first bid, the low bid was rejected because the
10 sub's license was expired, the one listed on the prime's,
11 on the outside of the bid envelope. And so they went to
12 the second low bidder, and this masonry contractor, he
13 listed the subcontractor in a name that they're not
14 licensed as. So that is -- that is the protest that's
15 come to us. And there is information about that.

16 It's basically saying that, you know, none
17 of their bids would now be considered acceptable. And
18 that's something that the contractor has sent in a
19 letter. And all the information has been redacted if you
20 want to look at it, but it's basically to say, you know,
21 well, my bid wasn't acceptable either because I listed
22 somebody that expired, then the other bidder who listed
23 somebody who is not licensed and the name that they were
24 listed shouldn't be considered as well. I did -- I think
25 I had first said that the geothermal wasn't listed on the

1 second low bidder, but they were listed. We did get
2 copies of the bid envelope. So I guess --

3 MR. SANDRELL: But the other masonry contractor
4 was in a different name than what it's supposed to be in?

5 MS. LAZENBY: Right. Let's see, I've got a --
6 on example behind tab 13, the example that I have given
7 is the license name is John Construction Company, LLC,
8 doing business as Quality Valley's Best Business Masonry.
9 Okay. Literally, their license is that long. So -- and
10 it's a doing business as. Okay. But that's how they're
11 licensed, and on the bid envelope they just took part of
12 it and said, Quality Valley Masonry.

13 MR. SANDRELL: And that's not legal.

14 MR. TICKLE: We kicked them out before when
15 they did that.

16 MS. LAZENBY: So that's part of the question
17 that's come to us, you know, is that an acceptable bid?

18 MR. SANDRELL: No.

19 MR. TICKLE: No.

20 MR. WHITTINGTON: Do we need to vote on that?

21 MS. GRAY: I think this is a board discussion.
22 I have never recommended you all vote on it before. But
23 I don't think there's a problem with it, but it's just a
24 general discussion. And I don't know if you have all the
25 facts. I mean, if it came up again, more facts could

1 come in later. I guess I just don't -- if you have a
2 specific motion, like listing a -- the wrong name in our
3 eyes is the same type of violation as listing an expired
4 license. I mean, I think that's sort of the question, is
5 should they both be kicked out, you know, in terms of
6 being in violation of 119, then --

7 MR. MASON: Is the second bid -- you determined
8 that the second bid is not an invalid bid?

9 MS. LAZENBY: It is. The second low bidder?

10 MR. MASON: Yeah.

11 MS. LAZENBY: Yes. That's what we're asking,
12 because they failed to list the sub on the envelope.

13 MR. MASON: But then you say on here it's a
14 nonissue. Did they list it or not?

15 MS. LAZENBY: Oh, now, the nonissue is the
16 geothermal.

17 MR. MASON: So there was something wrong with
18 all three bids?

19 MS. LAZENBY: Yeah. There was another one that
20 didn't...

21 MR. TICKLE: Well, we know right now if you bid
22 a job and you put the wrong name on the envelope, that's
23 a no-no. That's out. We know that is a fact. It looks
24 to me like the only problem we really have is determining
25 how we're going to handle this expiration of these

1 licenses, because you're saying that the computer is
2 saying one thing and somebody else is saying something
3 else, what Bill brought up, which is very valid, that the
4 general ought to make sure, and so did Ernest, whoever is
5 the bidder, your subcontractor general should be
6 responsible to make sure that his subcontractor is giving
7 them the right information to write it on the outside. I
8 would think that's what ought to be done. And, of
9 course, what Mark said, sometimes they don't give it to
10 you and you try to help them and then you get kicked out.

11 MR. MASON: But none of these bidders are
12 qualified.

13 MS. LAZENBY: I mean, none of the bids -- I
14 mean, the way we ruled before, according to this, none of
15 the bids would be acceptable.

16 MR. TICKLE: Then if we kicked them all out,
17 they can't bid again, is what we said before. In other
18 words, what we said -- last time some of this came up, we
19 had -- everybody got kicked out and said, too bad, so
20 sad. None of y'all get to bid again.

21 MS. LAZENBY: Right.

22 MR. MASON: Is that the precedent we set then?

23 MS. LAZENBY: That's what happened.

24 MR. TICKLE: That's what happened in the past.

25 MS. GRAY: That's the rule. We have a rule

1 that says that.

2 MR. TICKLE: And so, I mean, you can have a job
3 that nobody even bids on it either. I think that was
4 kind of a bad deal. That's what we have in place.

5 MS. GRAY: I mean, it comes down to the rule
6 that I'm talking about says, if you are unlicensed when
7 you bid or you violate the terms and conditions of your
8 license when you bid, then you can't rebid. And I think
9 the real question is, do you think the general and the
10 sub or both violated the terms and conditions? Okay. In
11 a case like this where we admit there's some problem with
12 the website, does that take away the fault on somebody's
13 part? Are we now saying that they didn't violate the
14 terms and conditions?

15 MR. MASON: You're either licensed or you're
16 not.

17 MR. TICKLE: I think it all boils down to the
18 general contractor, regardless of how you call it, is
19 responsible for your subs. If you're a general
20 contractor and you have a masonry guy and you have a
21 plumber and you have a geothermal and you have
22 electricity and you put them on your envelope, you better
23 be sure their name is right. You better be sure that
24 whatever day or date their expiration day is, you better
25 be sure. Don't rely on the state to tell you that. You

1 rely on your sub to tell you that. And your sub knows
2 because he is issued a license with his expiration date
3 on it, and that sub knows if he's right or wrong. And
4 that sub, he shouldn't penalize his general contractor
5 from getting a job, but he is doing that. I'd hate to be
6 the general contractor and find out. That would be a bad
7 deal for that subcontractor.

8 MR. WHITTINGTON: The bottom line is, just ask
9 for a copy of his license.

10 MS. DEBUSK: That's what I was just thinking.

11 MR. MASON: That's easy enough.

12 MS. GRAY: Like I said, I don't know -- I mean,
13 if you want to vote, but I'm not sure if there's anything
14 to vote on.

15 MR. MASON: Let me see if I understand this.
16 We know for sure that the first bid, the masonry
17 contractor, he wasn't qualified to make this bid, so that
18 one's out.

19 MS. LAZENBY: Yes.

20 MR. MASON: We know for sure the third one, who
21 you know bid in a name other than licensed, is out. I'm
22 still confused about the second low bidder. You have
23 got, failing to list the geothermal TDEC license
24 information on the outside of the bid envelope, and then
25 you have, nonissue, as it has been verified that it was

1 listed.

2 MS. LAZENBY: I think in my e-mail, I had said
3 these are three issues, but what --

4 MR. TICKLE: There's only two issues.

5 MS. LAZENBY: There's only two.

6 MR. MASON: So the second low bidder is a
7 qualified bidder?

8 MS. GRAY: The second low bidder had two
9 problems. The second low bidder had two and three as
10 their problems. The same bidder had those two problems.

11 MR. MASON: So none of them are qualified.

12 MS. LAZENBY: And then the question comes, it's
13 just -- I don't know if it is a question, but if the
14 people put it up for rebid, are either of these primes
15 going to be able to rebid?

16 MR. TICKLE: Our previous ruling was no. Now,
17 that's not to say that we can't think it over again and
18 say something else, but I don't know. But before we said
19 no.

20 MS. LAZENBY: We have.

21 MR. TICKLE: We have said no in the past. But,
22 Keith, I -- I'm going to put that ball in your lap
23 because -- and you and Cindy have been here the longest.

24 MR. WHITTINGTON: Bill?

25 MR. YOUNG: Bill Young, AGC of Tennessee. Last

1 year we had a situation with KCDC, and they all rebid it.

2 MR. TICKLE: They did rebid it?

3 MR. YOUNG: Uh-huh. As a matter of fact, the
4 plumber even did it. Because on a rebid, five of the
5 rebidders used him again and listed it wrong again. Only
6 one bidder on the rebid was the -- did it correct.

7 MR. TICKLE: We hear what you're saying, but
8 they weren't supposed to be able to do that.

9 MR. YOUNG: I understand.

10 MR. TICKLE: But I guess if you're the guy that
11 is controlling the money, I guess you can do what you
12 want to.

13 MR. MASON: That's the whole question, whether
14 they should have done that or not.

15 MR. TICKLE: Whoever was the owner, should --

16 MR. YOUNG: KCDC.

17 MR. TICKLE: Yeah. They violated the law. So
18 they violated the law, okay, so somebody could have
19 really brought them up for violating the law. But,
20 anyway, I guess we better drop that.

21 MR. SANDRELL: What's going to happen if you
22 don't have no more bidders?

23 MR. TICKLE: That's what I say. What if he
24 had nobody else to bid?

25 MR. SANDRELL: Then a couple of them get

1 together and raise the price.

2 MR. YOUNG: I think what you did, is you gave
3 it to the KCDC attorney to make that decision. The
4 attorney was here with -- representing from KCDC, and you
5 gave it to the attorney to make that decision.

6 MR. WHITTINGTON: I think you're right.

7 MR. TICKLE: You're right. I remember it
8 because I talked to them over here.

9 MS. LAZENBY: There is a contractor here that
10 can answer questions if you all have any.

11 MR. TICKLE: There's a gentleman in a blue
12 shirt trying to talk.

13 MR. HARDAWAY: Hi, I'm Stan Hardaway with
14 Hardaway Construction. It seems to me like there ought
15 to be a difference between a willful act and an unwillful
16 act as far as rebidding goes. I mean, we were one of the
17 bidders. We made a mistake, but it was -- and we were
18 actually the low bidder, so we are the ones who listed
19 the unlicensed subcontractor, but we didn't know that at
20 the time. You know, and that was the issue.

21 So it seems like there should be a
22 differentiation between those -- you know, and I think
23 even the other bidders, they didn't wrongfully list --
24 obviously, list the subcontractor, so it wasn't like they
25 were trying to do something to get around the law. And

1 so I think all the bidders should be allowed to rebid, in
2 my opinion.

3 MR. WHITTINGTON: I think it's unwillful. I
4 think that's what the question gets back to on our
5 website with the problem of listing the license. It gets
6 back to the fact that it's hard for the contractor to get
7 his bid 15 minutes beforehand, the secretary check them
8 out, they're good, it says active, but the date down here
9 was March. She didn't look at that. She looked at
10 active. Go ahead. Put it on there, and let's go with
11 it. It's an unwillful act. I don't know why they
12 couldn't bid again.

13 MR. YOUNG: Plus, the website is so hard to
14 use. It's not user friendly.

15 MR. WHITTINGTON: Huh-uh. No.

16 MR. YOUNG: It gives you two words that are so
17 blurred you can't read what the words are.

18 MR. WHITTINGTON: Just to get in there.

19 MR. YOUNG: Just to get in. And if you type in
20 the name of a company exactly the way it is on their
21 letterhead, it will say it's not there.

22 MR. SANDRELL: I think they ought to be able to
23 bid it again.

24 MR. BRODD: I agree.

25 MR. TICKLE: I agree.

1 MS. GRAY: Well, at this point, I think now you
2 all are going back to, you know, the general may not have
3 violated the terms and conditions of their license but
4 the sub did. I mean, I don't know. That's what I said
5 about not taking a vote, because the general discussion
6 is what matters.

7 MR. WHITTINGTON: Well, the sub knew he turned
8 a bid in with an expired license. If there's some way we
9 can prove that, then --

10 MS. GRAY: Which might come out in a complaint.
11 Yeah.

12 MR. WHITTINGTON: -- you know, technically,
13 we'd go after the sub, I guess, and not allow him to bid
14 the job. I don't know what else we could do to him. But
15 I don't see why the general cannot bid the job again with
16 a different sub. I don't think they can take the same
17 sub, even if he got his license in order.

18 MR. SANDRELL: I'll agree to that.

19 MR. MASON: I'll agree with that too.

20 MR. YOUNG: Did the subcontractor send his
21 renewal form in with the fee prior to the expiration
22 date?

23 MS. LAZENBY: Yeah.

24 MR. YOUNG: So the subcontractor is going to
25 think he's renewed. If he sent it in before the end of

1 his -- before his expiration date, he's going to think,
2 they've got it, and I'm good to go. That's the mentality
3 of the subcontractor.

4 MR. HARDAWAY: We didn't use -- we don't use
5 that subcontractor very frequently, so, you know, we
6 didn't know. Some of the other generals knew that he
7 wasn't properly licensed. That's why they didn't list
8 him.

9 MR. MASON: I assume you're going to check that
10 expiration date from now on.

11 MR. OWENS: Well, what happens in these cases,
12 most generals use the same subs over and over again, and
13 they usually know whether they got a good license or not.

14 MR. SANDRELL: Yeah. But they wouldn't in a
15 case like this, if he used him 20 times and all of a
16 sudden --

17 MR. OWENS: Well, like you said, he's going to
18 look at the expiration date. And plus, he should have
19 asked for a copy of his license.

20 MR. BRODD: Carolyn, correct me if I'm wrong,
21 but I think in this case, the licensing board sent the
22 sub a letter, saying he's got problems with his renewal,
23 so he knew that he wasn't --

24 MS. LAZENBY: Yeah.

25 MR. HARDAWAY: Here's one of the problems with

1 getting a copy of the license. In this case, we had to
2 list MP and E, masonry, and geothermal. It was about 40
3 different subs that we thought were going to be bidding
4 the job. So, you know, you send out a bid request to
5 those subs a couple weeks in advance. You ask them to
6 send you a copy of your license. Half of them don't do
7 it. So then you get in these bids in the last 30 minutes
8 on bid day, and you're trying to figure out, okay, do we
9 have their license, you know. And it's almost impossible
10 to do. And Mark knows that.

11 That's the reason we go to the website. We
12 preprinted all the stickers to put on our envelope so we
13 would be prepared, but, you know, we weren't looking at
14 expiration dates. We were looking at whether they were
15 licensed or not. And that was it.

16 MR. YOUNG: Plus, the issue that I brought up
17 with you this morning about the masonry. A lot of the
18 masons think that that license they got in January was
19 good for two years, and they don't realize that their
20 expiration date doesn't change from their old license.

21 MR. WHITTINGTON: They just add the class.

22 MR. YOUNG: They just added the class.

23 MR. WHITTINGTON: That's all they did.

24 MR. YOUNG: So I sent notice out there on my GC
25 members and the masonry members of ABC saying, don't

1 think that your license is good for two years. You know,
2 the expiration date -- and I was having a conversation
3 with one of the largest in the state, and he thought his
4 license was good for two years and expires the end of
5 this month.

6 MR. MASON: Well, I would encourage your
7 company always to check the expiration date in addition
8 to the active status.

9 MR. HARDAWAY: We won't make the same mistake
10 again. I can tell you that.

11 MR. MASON: As far as subcontractor, Mark makes
12 the point, they knew that they had a problem with their
13 license. They seem to be the most egregious violator.

14 MR. BRODD: I think there's no doubt about
15 that.

16 MR. WHITTINGTON: Anymore conversation on that
17 subject?

18 MS. LAZENBY: I don't know if there's anything
19 else to be said. I know that the attorney for the owner
20 had said, you know, contact me with what the board says,
21 but they are pretty much not wanting to put the bid back
22 out. So he did let me know. He said, we don't want to
23 rebid it. We want to go with the second low bidder. So
24 he wants to know --

25 MR. SANDRELL: They are overruling the board.

1 MR. MASON: He can't do that.

2 MR. SANDRELL: That's kind of bid rigging
3 there.

4 MR. WHITTINGTON: Next item then is reciprocity
5 with the state of Ohio.

6 MR. TICKLE: What did we just decide?

7 MS. DEBUSK: Nothing.

8 MR. TICKLE: What have we decided? Anything?

9 MS. LAZENBY: They were all wrong.

10 MR. BRODD: We can send a letter to this owner,
11 telling him he can't issue to the second lowest bidder
12 because he listed the masonry sub with the wrong name.

13 MS. LAZENBY: Okay.

14 MR. TICKLE: Let me ask you this: I'm just
15 curious now. I'm the guy that has the purse strings, and
16 it's my job that I'm paying everybody for. Does our
17 board have a right to tell me I can't build my building,
18 my two story building?

19 MS. GRAY: I mean --

20 MR. TICKLE: I'm asking.

21 MS. GRAY: You would have get an injunction.

22 MR. TICKLE: Huh?

23 MS. GRAY: You would have to get an injunction.

24 MR. TICKLE: Who gets that injunction?

25 MS. GRAY: The board would have to, would have

1 to -- well, I guess the AG would have to apply for it
2 with chancery court, which we've never done before. But,
3 I mean, you know -- I mean, it's my opinion that the
4 board discussion is helpful for bid protests, but that
5 there's no jurisdiction to stop the rebid or to make them
6 rebid. You can bring a complaint against somebody if you
7 think they've gone against what you all --

8 MR. WHITTINGTON: But they have violated the
9 law. If we feel like they have violated the law as far
10 as --

11 MS. GRAY: Well, if the owner is not
12 licensed --

13 MR. WHITTINGTON: The owner is not who we're
14 talking about. We're talking about the contractor and
15 the subcontractor.

16 MS. GRAY: You can open a complaint against
17 them.

18 MR. TICKLE: If I'm an owner, and I tell Bill
19 he's got my job, but Bill didn't do everything right
20 according to what the state said, there's nothing anybody
21 can do to me.

22 MR. BRODD: He's not doing anything wrong.

23 MR. TICKLE: I'm paying Bill to go to work.

24 MS. LAZENBY: So should I write both of the
25 contractors and tell them their bid was not acceptable?

1 MR. SANDRELL: Not legal.

2 MR. MASON: Not legal.

3 MR. TICKLE: They didn't have legal bids.
4 Their bids were not legal. As far as what goes on, I'm
5 kind of miffed on.

6 MR. WHITTINGTON: Well, she stated -- the owner
7 said he was going to go ahead and take the second round
8 of bids, so basically --

9 MR. BRODD: He's ignoring the licensure.

10 MR. WHITTINGTON: All of this discussion was
11 for naught.

12 MR. SANDRELL: If he's going to take the second
13 lowest bid, what's wrong with the first lowest bid?

14 MR. MASON: It's just as illegal.

15 MS. GRAY: Well, I mean, to me you can just --
16 I mean, and advisory letter stating what you all think.

17 MR. TICKLE: I think we ought to send the owner
18 of the bid and tell him that he needs to throw it all out
19 and then let everybody rebid. Just because you're the
20 lowest bidder doesn't mean you're going to get the job.
21 I mean, it just may be for naught.

22 MR. MASON: I agree. I think an advisory
23 letter needs to make it absolutely clear that all three
24 of these are not acceptable bids under the law.

25 MR. TICKLE: Right.

1 MR. MASON: Illegal bids. And that to award a
2 subcontract to anyone of them would be a violation of the
3 law.

4 MR. TICKLE: Right. Agreed.

5 MR. SANDRELL: At this point.

6 MR. TICKLE: At this point.

7 MR. HAYES: Do you think she needs to send that
8 to the owner and the bidders?

9 MR. TICKLE: We will allow him to go ahead and
10 rebid and all of them can rebid. If there's three, four,
11 five, it doesn't make a difference. Then it's up to him
12 to choose, not us.

13 MR. MASON: Jerry had a question.

14 MR. HAYES: Don't you think you need to send
15 that letter to the bidders and to the owner?

16 MS. LAZENBY: All of them?

17 MR. TICKLE: I agree with what you're saying,
18 Jerry.

19 MR. BRODD: And the architect.

20 MR. MASON: Do we need to authorize Carolyn to
21 do that or just say Carolyn should do that?

22 MR. WHITTINGTON: I think she can do that.

23 MS. LAZENBY: I'll do that. And I might have
24 some of y'all proof it. I'll send it to you.

25 MR. WHITTINGTON: That's fine. I'll sign it.

1 Reciprocity with the state of Ohio. If I'm understanding
2 this correct, we're just doing certain licenses, the
3 electrical?

4 MS. LAZENBY: Uh-huh. They've only asked for
5 reciprocity with the -- is it in here? I don't think I
6 printed it.

7 MR. WHITTINGTON: Is there a reason they are
8 not wanting to do full reciprocity?

9 MS. LAZENBY: I don't know. She didn't say. I
10 don't know if it's because that's the only thing that was
11 requested by her board members.

12 MR. WHITTINGTON: The only thing I'm going to
13 ask is, does -- that limits us. If we were to have the
14 need to go to Ohio, that limits us as well. Have we not
15 done full reciprocity with other states?

16 MS. LAZENBY: No. We don't. Because
17 North Carolina will only reciprocate with residential and
18 commercial. Then -- and a lot of times it's separate
19 boards. Like Georgia will only do commercial. And they
20 do have residential. Theirs is separate, but they only
21 will allow commercial. So I don't know why that is, but
22 there are certain states that only want to reciprocate
23 certain exams.

24 MR. WHITTINGTON: I just had kind of a feeling
25 of my preference would be we do a full reciprocity or

1 none at all, but that's going to be mighty confusing,
2 especially more so for board members.

3 MS. LAZENBY: Right. If Cathy doesn't catch
4 it, then you all are going to approve somebody that
5 shouldn't be. I see what you're saying. So most of the
6 burden would be put on Cathy.

7 MR. WHITTINGTON: Is that a problem?

8 MS. HOLLIMAN: Sometimes.

9 MR. BRODD: Can we ask Carolyn to find out why?

10 MR. WHITTINGTON: Yeah.

11 MS. LAZENBY: I can go back and ask them.

12 MR. BRODD: Reciprocity on mechanical and
13 electrical.

14 MR. OWENS: Yeah.

15 MR. WHITTINGTON: Then I would like to see us
16 do that and then bring that back in September.

17 MS. LAZENBY: Okay. I can do that.

18 MR. WHITTINGTON: PSI exams.

19 MS. LAZENBY: Just to let you know, the
20 contract still hasn't been signed, but we did only have
21 one bidder. And it was PSI, the same one we've had. So
22 I'm not ready yet for the subject matter expert, but that
23 will probably come to you in September. So be thinking
24 of who you want to put on there.

25 MR. WHITTINGTON: Employee misclassification

1 task force.

2 MS. LAZENBY: I just wanted to let you all know
3 that we had our first meeting last week, or a couple of
4 weeks ago, and I'll try to keep you all up to date on
5 what recommendations they make. And then I think the
6 final meeting is before February 2012 for you all to look
7 at the recommendations for anything you all can add.

8 MR. BRODD: What is that all about?

9 MS. LAZENBY: It's employees that are
10 labeled -- or that come on as independent contractors but
11 are really employees not getting workers' comp coverage,
12 basically, is what it is. You know, all these people on
13 their -- get 1099s. And so that's what they're going
14 after.

15 MR. WHITTINGTON: We are getting new law books.
16 Do you know a date yet?

17 MS. LAZENBY: I don't have a date yet. It's in
18 the works. The purchase order goes through the fiscal
19 department, but maybe by September we'll have those.

20 MR. WHITTINGTON: Is there any other matters to
21 come before the board?

22 MR. TICKLE: When is our November meeting?

23 MR. WHITTINGTON: It tells you in your book.
24 You have got a calendar in the back.

25 MR. TICKLE: Oh.

1 MR. MASON: After Thanksgiving.

2 MR. WHITTINGTON: Just take those pages and
3 take them home with you.

4 MS. DEBUSK: It's all of 2012 in there if you
5 want to take the whole thing.

6 MR. TICKLE: Okay.

7 MR. WHITTINGTON: Our next meeting is
8 September 27th and 28th in my hometown of Johnson City.
9 I hope everybody can make it up. And if no other
10 business comes before the board, meeting is adjourned.
11 Thank you.

12 (End of proceedings, 12:49 p.m.)

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State of Tennessee)
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County of Davidson)

I, Brittany Temples, Court Reporter, with offices in Nashville, Tennessee, hereby certify that I reported the foregoing proceeding by machine shorthand to the best of my skills and abilities, and thereafter the same was reduced to typewritten form by me.

I further certify that I am not related to any of the parties named herein, nor their counsel, and have no interest, financial or otherwise, in the outcome of the proceedings.

Brittany Temples, LCR #099
Notary Public
State of Tennessee

My Commission Expires 5/25/2014