

**MOTOR VEHICLE DEALER BOARD
MINUTES**

October 23, 2008

The regular meeting of the Dealer Board was held at the Department of Revenue offices, Lakewood, Colorado. The following persons were present:

BOARD MEMBERS:

Jeff Carlson, President
Robert Feder
Philip Harris
Eva Wilson
John Medved
Jim Reitz

MEMBERS ABSENT:

Lisa Schomp
Jim Varner

**DEPT OF REVENUE,
SENIOR DIRECTOR OF
ENFORCEMENT**

Matt Cook

EXCUTIVE SECRETARY:

Bruce Zulauf

LEGAL ASSISTANT:

Leland BeBee

**DEPT OF REVENUE,
AID, ENFORCEMENT
DIVISION STAFF**

Chris Rouze
Kaye Kopecky
Gloria Breeden
Margaret Jungmann
Chuck Halberstadt
Joe Kelley
Eric Hartsough

ATTORNEY GENERAL'S OFFICE:

Becky Connors
Rob Huss

Katherine Spaulding, Conflicts Counsel

VISITORS:

John Kronenberger, CIADA
Jerry Martinez, La Junta Valley Tire Co.
Jeanette Martinez, La Junta Valley Tire Co.

Mr. Carlson opened the regular Board meeting stating there were 5 members present for a quorum.

MINUTES:

The minutes of the October 9, 2008 meeting were unanimously approved with the following amendment to be added to the Budget Section; page 4, last paragraph: "Mr. Carlson suggested cost containment. The Board is asking Management to look at all costs."

ATTORNEY GENERAL'S OFFICE:

Becky Connors reminded the Board they had asked her to do research on the issue of moratoriums at the last Board meeting. Ms. Connors stated after her research, her conclusions were an Agency needs either authority in its statutes expressed, expressly placed in statute or necessarily implied authority to impose a moratorium. Having looked at and examined the Board Statutes, she does not see any express or implied authority for a moratorium.

Off Premise sales do not cause any permanent changes in the land or do anything permanent that would require a moratorium while rules could be made. If the Board wants to proceed with this, it would first require rulemaking for a moratorium. The Board cannot do a moratorium simply by a vote. The Board would need to do a rulemaking on a moratorium because there is a regulation for off premise permits and you cannot affect that law without making another law. Ms. Connors advised the Board that if they are going to have rulemaking for a moratorium, they might as well go straight into rulemaking for the situation of off premise permits instead.

EXECUTIVE SECRETARY'S REPORT:

Bruce Zulauf reported at this time he and the Division are not fully prepared to proceed with the Procedural Workshop Discussion as indicated in the Board packet. The Procedural Workshop is on hold while the Division works through some APA issues. The Division is working to cut legal fee costs. Areas have been identified where it can be done procedurally and internally to save hard dollar costs. Hard dollar costs are costs the Division incurs when it uses the AG's office; we are trying to turn those into soft dollar costs, with the Division having the ability to do some of the minutia in the middle with the AG's office doing things on the front and back side. The Board would still be consulted on the front and back side as well. Mr. Zulauf explained this is the basis of the workshop and discussion to be presented at the November Board meeting for the Board's consideration.

Mr. Zulauf continued with the Executive Secretary's Report:

Jeffrey Marcus Alcorn – License #164629. Hearing on September 9, 2008 before a Hearing Officer. The Hearing Officer made a recommendation of Denial. Unanimous to adopt the Hearing Officer's decision.

Patrick K. Sweet – License #29062 – Hearing on September 9, 2008 before a Hearing Officer. The Hearing Officer made a recommendation of Revocation and Denial. Unanimous to Reserve the Right to Review.

Valley Tire Auto Sales – Appeal - Unanimous to have a hearing before the Board at 11:00 on this date.

Mr. Zulauf advised the Board the Executive Session on the Agenda is regarding an appellate case similar to the last appellate case heard by the Board. This needs to be heard in Executive Session as the AG's office needs to advise the Board. This will also require a quorum of six. Mr. Carlson informed the Board, with the arrival of Mr. Medved, there was now a quorum of six.

LICENSING REPORT:

The following Salesperson Applications were presented to the Board:

Victor Arbor – Unanimous to deny license on basis of criminal character and record of the license applicant.

Brandon Conti – Unanimous to deny license on basis of criminal character and material misstatement.

Heather Geiger – Unanimous to deny license on basis of failure to disclose.

Donna Soria – 4-1 to approve a 1 year probationary license contingent upon compliance with conditions of probation. Mr. Feder recused himself.

The Board took a short recess to research the issue of whether or not the Board had the authority to require court fines be paid prior to licensure. Ms. Connors reported that the Board could take in consideration the payment of the fines, but could not require the applicant to pay the fines as this is between the applicant and the courts.

Justin Brozovich – Unanimous to approve license.

Ronald Risner – Unanimous to approve license.

Sandi Davis – 3-2 to deny license on basis of criminal background.

The following Dealers were presented to the Board:

Steve Shurbet, Holiday RV – 3-2 to deny license on basis of criminal charges

INVESTIGATIONS:

Agent in Charge Chris Rouze reported on the following:

Affidavit of Probable Cause:

Quicksilver Imports, Inc. #37143 – Unanimous - a hearing to be held before an ALJ.

Richland Auto Plaza #6567 – Unanimous - Summary Suspension

Mr. Carlson changed the agenda to ask for public comment at this time. After a short recess the Board returned to hold the hearing for Valley Tire Auto Sales.

HEARING:

The Board held a hearing on Valley Tire Auto Sales – The license had been denied for financial fitness.

Unanimous Approval to overturn original denial

Unanimous Approval to grant a license

RULE MAKING:

SB08-151 Unanimous to approve with changes

Unanimous to approve emergency rules

The Board went into an Executive Session.

The Board reconvened to discuss the matter of Gabino Nieto, Salesperson #153026, license application and appeal. A motion was unanimously passed to have the Board stand down on the appeal. The AG's office will notify Mr. Nieto's appellate counsel the Motor Vehicle Dealer Board would not defend against an appeal. If appellate counsel withdraws the appeal and the matter comes before the Board again, the Board will let the Hearing Officer's initial decision to grant a restricted license stand.

Mr. Leland BeBee asked if Rulemaking could be reopened concerning SB 08-151 as Ms. Connors had brought up an issue. In order for the emergency rules to implement requires a finding of imperatively necessary under Federal or State law. It is imperatively necessary under State law in order to maintain the existing program that we have been maintaining under the emergency rules so far; and in order to actually affect the will of the legislature that the program be in place. Mr. BeBee would ask the Board to append their earlier motion on the emergency rules. Motion passed unanimously to amend the earlier motion to include the language necessary to comply with State law.

The regular meeting was adjourned at 12:15.

Bruce Zulauf
Executive Secretary.