

**MOTOR VEHICLE DEALER BOARD
MINUTES
April 14, 2011**

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

BOARD MEMBERS:

John Medved
Philip Harris
Scott Ehrlich
Eva Wilson
Beau Smith
Fred Wegener
Deborah Thompson

MEMBERS ABSENT:

Bob Perry
Jason Wagner

**SENIOR DIRECTOR OF
ENFORCEMENT:
EXECUTIVE SECRETARY:**

Matt Cook
Bruce Zulauf

LEGAL ASSISTANT:

Leland BeBee

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

Chris Rouze
Kaye Kopecky
Bud Heinrich
Gloria Breedon
Eric Hartsough
Sherry Colborg
Margaret Jungmann
Matt Heap

ATTORNEY GENERAL'S OFFICE:

Brendon Reese

BUDGET OFFICE:

Jill Vaughan
Curtis Tremble

VISITORS:

Mary Marvin, CAPSS
Tammy McCoy, CADA
Keyth E. Inskeep, McDonald Automotive Group
Leann L. Loewen, Loveland RV Service Inc.
Sherry Loewen, Loveland RV Service Inc.
Greg Benyo, Mike Ward Infiniti
Micah Lewis, McDonald Auto. Group
Greg Shellabarger, McDonald Auto. Group
Mike McKinnon
Ronald Preeson, CO Ride the West RV Rentals

Donald Stott
Cora M. Sundeen
Jon Setzer
Claudia Brett-Goldin, AG's office

President of the Board, John Medved opened the meeting of April 14, 2011 at 9:05 a.m. Mr. Medved turned the floor over to Executive Secretary, Bruce Zulauf.

AGENDA REVIEW AND ANNOUNCEMENTS

Mr. Zulauf stated there were no additions or changes to the agenda. Mr. Zulauf suggested that the Attorney General's report be moved to the end of the agenda as it could possibly entail going into an Executive Session. Also, Mr. Ehrlich has to leave early and if we need to go into an Executive Session he has already recused himself from the cases to be discussed.

We have 2 major items to discuss today: fee setting and the mastery exam.

Mr. Wagner and Mr. Perry will not be present. Mr. Wagner is traveling and Mr. Perry is in a unique situation. Mr. Perry sold his ownership interest in EMI and technically, he is no longer qualified as a dealer for the Board. There is a possibility that Mr. Perry may become a small minority owner in the dealership he is at; if this happens, he will be qualified.

Criminal Investigator Supervisor Matt Heap is present today. Mr. Heap will be making the Investigation presentations today. He has been assigned this task for the next few months. Ms. Rouze has been put on a temporary assignment for up to four months. Ms. Rouze will be overseeing the entire licensing operation from start to finish; in every aspect assessing staff, policy, procedures, supervision, and training. We have known that there are major issues with procedures and the paper flow. The Division is undertaking this course due to Governor Hickenlooper's directive to the commitment of redefining good government and assessing the effectiveness, efficiency and elegance of our operations.

MINUTES

The minutes of the March 11, 2011 Board meeting were unanimously approved.

BUDGET

Jill Vaughan presented the budget reports:

- For February 2011, **gross** revenue collected was \$138,000. Percentage calculations indicate 58.51% of FY11 projected revenue figures have been collected as of period 8.
- For February 2011, **net** revenue collected was \$136,993.
- **Cash Fund Analysis** – synopsis of the official financial statements for the Division and indicates a current fund balance of \$826,241. This analysis shows that YTD FY11 revenue is down 35.09% and total expenditures are up 1.3% from the figures last year.
 - A question was asked about the 23% increase in legal costs.

- It was asked why there wasn't a figure listed for background checks. Mr. Tremble stated that in the past the cost for background checks was paid out of the cash fund. 2 years ago this changed and background checks are now paid out of the operating costs.
- **Cash Fund Flow Analysis** – displays the cash and fund balance position for FY11 provided all projections hold true for the Division. This analysis summarizes the data provided on the first three budget reports and includes categorized adjustments to the revenue at the bottom. February actual revenue came in at \$54,000 less than the projection of \$191,000. Expenses were more than the revenue collections for the month of February as indicated by the negative net income figure of \$77,899. The EOY fund balance for FY11 is projected to be in excess of the Division need and the projected fund balance for May is adequate at this time to cover two months of personal services expenses for the Division.

Mr. Zulauf addressed the question regarding the increase in legal fees. Mr. Zulauf stated that we have about \$10,000 a month for legal services. Mr. Zulauf is constantly working with Mr. Reese and Ms. Brett-Goldin to hold this line. Mr. Zulauf advised the Board that there is one case that we all are aware of that could potentially cost \$20,000 - \$30,000. Once the line item is expended we either have to shut down our legal services or find the money someplace else. The Fiscal rules do allow money to be transferred out of personal services. This particular year we have some additional variance in that we had not replaced some staff positions. We do have some money that could be transferred into legal services. We have filled a position so currently we are at full staff. We have one ½-time position that must remain open because all divisions across government took a 1.5% reduction in personal services next year. This means that position cannot be filled next year.

FEE SETTING:

Mr. Zulauf informed the Board that he had provided a year-to-date license count. Ms. Vaughan would be handing out the Budget office projections. Mr. Zulauf provided the board with a brief history of fee setting. Two years ago, there was a 90% increase. Last year the Board recommended a 35% decrease, with the Executive Director agreeing. We are now in deficit spending by design. Mr. Zulauf advised the Board that a decision can be discussed, or discussed and tabled, but a decision has to be made by next month on the fees.

Mr. Zulauf stated that he, Ms. Vaughan, Mr. Tremble, Mr. Cook, and Ms. Rouze have been working for the last two weeks on this issue.

Ms. Vaughan presented spreadsheets reflecting:

- 0% fee increase with a 0% license variance
- 5% fee increase with a 0% license variance
- 10% fee increase with a 0% license variance
- 15% fee increase with a 0% license variance
- 0% fee increase with a 3% license variance
- 5% fee increase with a 3% license variance
- 10% fee increase with a 3% license variance
- 15% fee increase with a 3% license variance

Mr. Zulauf stated that as of yesterday, there was no indication that the JBC was going to raid the fund. However, there are still 20 days left in the session. The Budget staff has prepared scenarios in case this happens. If that happens, we will bring the Board back for further discussion. Conservatively speaking, we should base the fee setting on a 3% loss of licenses; it may only be 2%.

Mr. Smith suggested holding off on a decision until the JBC ended their session to see if the fund would be raided. Mr. Zulauf again informed the Board they could make a recommendation if the fund is not raided, if the fund were raided, they would need to come back, or they could table this item until next month. Mr. Cook stated there was another option. The Board could, based upon the information they have today, make a decision and make a contingency recommendation; contingent upon the fund being raided. Technically, this could be revisited next month. Mr. Cook stated he feels pretty confident that the JBC is not going to raid the fund.

Mr. Cook recommended a 5% increase based on a 3% variance in licensing. Ms. Vaughan stated this was the Budget office recommendation as well. This recommendation provides a projected fund balance that is slightly over the statutory limit.

Motion made for a recommendation of a 5% increase – approved unanimously

Mastery Exam:

Mr. Zulauf stated the mastery exam was originally a proctored exam. This was not an open book test and the applicant had to score 70%. Then the test became an un-proctored exam. It was an open book test and the applicant had to have a score of 100%. Under Sunset, changes needed to be made. Legislation SB221 required a psychometrically valid mastery exam. This was an unfunded mandate. Ms. Rouze did the research and Mr. Cook found the funds. Ms. Rouze went to CSU, found the Research and Development Center, and worked with Dr. Morgan and Dr. DeMiranda on the project.

A contract was signed for the development of a psychometrically valid test.

Step 1: Make the questions psychometrically valid

Step 2: Add to that question base and come up with a testing instrument - Recommendation was made to do an internet based test. CSU found the internet based company. About this time, the management of the project passed from Investigations to the Licensing. Mr. Heinrich was given this project.

Step 3: Signed another contract and CSU assisted with the finalization of the testing environment.

We had the associations come in and test the system. One of the Go dealerships volunteered to test the system. We tested about 60 applicants. The changes needed were noted and made to the system.

The associations were each assigned a password and there was one password for the dealers. When passwords are assigned there are many things that need to be done by Mr. Heinrich and Ms. Jungmann to create a mini file.

When the test is submitted, Mr. Heinrich immediately receives an e-mail with the test result. These are a few of the many problems we are encountering:

- A franchise dealership in the metro area recently submitted 4 original salesperson applications; Mr. Heinrich was not able to find any test results in the system. A call to the dealership determined the test had been given to the applicants in the written form. (Old test)
- A franchise dealership in Southwestern Colorado submitted 6 original salesperson applications for an off premise sale. The names on the affidavits did not match. Mr. Heinrich found that there is a licensed salesperson who also works for a company out of Michigan that supplies salespersons for off premise sales. Somebody at the dealership gave this person the password. It appears, the Michigan company was testing their own people, but the affidavits show that sometimes the salesperson was giving the test or somebody else from the dealership is listed. These tests may have been given all over the country on personal computers.
 - This was found late on a Friday afternoon about two weeks ago. Mr. Zulauf had Mr. Heinrich disable the password and break the state into 4 separate regions with separate passwords for each region so that we do not have to shut down the whole state again. The password is not given over the phone, an e-mail has to be sent in from the dealership and a reverse email is sent
- There are still dealerships giving the paper test. (Old test)
- There are situations where we know the password is being given out for the applicant to take the test at home. We received a test result for 12:30 a.m. and we know the dealership is not open and we know that there is not an administrator sitting in someone's house watching them take the test.
- The administrator has to, under penalty of perjury; state that nobody has helped this applicant take the test. This cannot be done if the testing is being done at home.

Mr. Zulauf read the regulation relating to the affidavit signed by the administrator. The second paragraph states anyone who violates this is subject to the potential disciplinary actions the Board has. The fourth paragraph states the employing dealer or designated manager of the employing dealer, Auto Industry Division, or a 3rd party approved by the board, may administer the exam. This means that a salesperson that lives in Michigan is not authorized to administer the test or to give the password to other people.

Mr. Zulauf recommended that we go in, tweak rulemaking, and make it clear. When someone who has no knowledge of the test, then signs the affidavit under the penalty of perjury, it could be treated as a criminal investigation. Mr. Zulauf stated he does not know if he wants to open 50 new investigations. A suggestion was made to make the rules clearer, apply a stiff fine for a violations rather than adding to the caseload. It was explained that under due process, an investigation would need to be completed before action could be taken or a fine could be imposed.

A motion was made to go back into rulemaking to discuss the mastery exam application – approved unanimously.

The Board took a break.

LICENSING REPORT:

Ms. Kopecky presented the following to the Board:

Dealer Applications:

- **Colorado Ride the West RV Rentals Inc.** – Motion to approve the application for a dealer license - Unanimous

Salesperson Applications:

- **Peter Hughes Bosco Jr. #178756** - Motion to approve the application for a salesperson license – approved unanimously.
- **Jeremy Clark #178847** – Motion to deny the application for a salesperson license on basis of unfitness of criminal record and failure to disclose – approved unanimously.
- **Zachary Tel Hart #174149** – Motion to approve the application for a salesperson license – approved unanimously.
- **Robert Brandon Heath #178609** – Mr. Harris recused himself and left the room – Motion to deny the application for a salesperson license on basis of unfitness of criminal character – approved unanimously.

Mr. Harris returned to the room.

- **Mark Harris Hess #178397** – Motion to approve the application for a salesperson license – approved unanimously.

Salesperson Applications with Prior Board Action

- **Greg Scott Benyo #178745** – Motion to approve the application for salesperson license – approved unanimously.
- **Raymond Dean Childers #178799** – Motion to deny the application for a salesperson license on basis of unfitness criminal character and unfitness of criminal record – approved unanimously.
- **Andrew Thomas Dearing #161362** – Motion to approve the application for a salesperson license – approved unanimously.
- **Keyth Earl Inskip #178469** – Motion to approve the application for a salesperson license – approved 5-1 (Wilson).
- **David Anderson Jarrett #169133** – Motion to deny the application for a salesperson license on basis of unfitness of criminal character – approved 4-2 (Thompson, Harris)
- **Kevin Patrick Kelly #29867** – Motion to approve the application for a salesperson license – approved unanimously.
- **Leann Lorraine Loewen #178064** – Motion to approve the application for a salesperson license – approved unanimously.

- **Tommy Lovato III #178528** – Motion to approve the application for a salesperson license – 5-1 (Wilson)
- **William Lee Nelson #152360** – Motion to deny the application for a salesperson license on basis of unfitness of criminal character and failure to disclose – approved unanimously.
- **Donald Douglas Stott #23549** – Motion to approve the application for a salesperson license – approved unanimously.
- **Cora Marlene Sundeen #178626** – Motion to approve the application for a salesperson license – approved unanimously.
- **Aldo Buttiglione-Cornejo #178792** – Motion to approve the application for a salesperson license – approved unanimously.
- **Larry James Wickes #153024** – Motion to approve the application for a salesperson license – approved 5-1 (Wilson)

EXECUTIVE SECRETARY’S REPORT

Mr. Zulauf presented the following reports:

- Case Status Record
- Fines Imposed and Received Log

Mr. Zulauf presented the following to the Board:

- **Proposed Stipulation: Emich Oldsmobile, LLC d/b/a Go Subaru Arapahoe #4301** – Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously.
- **Proposed Stipulation: Highline automotive, Inc. d/b/a Highline Automotive #41358** – Motion to accept the Proposed Stipulation and Final Agency Order – approved 5-1 (Harris)

Mr. Reese excused himself and left the room.

- **Initial Decision: Michael Morris #177739 - Motion** to approve the Hearing Officer’s recommendation and deny the license – approved unanimously.
- **Patrick Daniel Nolan #172978** – Motion to adopt the Hearing Officer’s recommendation and deny the license – approved unanimously.
- **Robert J. Patterson #33102** – Motion to set aside the Hearing Officer’s recommendation and revoke the license on basis of unfitness of criminal character and criminal record – approved unanimously.

- **David Rozenblum #171654** – Motion to set aside the Hearing Officer’s recommendation and revoke the license on basis of unfitness of criminal character, unfitness of criminal record, material misstatement and a mandatory disqualifier – approved unanimously.
- **Adis Selimovic #159473** – Motion to set aside the Hearing Officer’s recommendation and revoke the license on basis of unfitness of criminal character and unfitness of criminal record – approved unanimously
- **Joni Rena Tims #156995** – Motion to remand for further findings regarding status of probation – approved unanimously.
- **Auto Locator #1282** - Motion to accept the ALJ’s recommendation to revoke the license on basis of criminal character and conviction of a class 2 felony solicitation to commit 3rd degree murder – approved unanimously.
- **Integrity Auto Consultants Inc. #38132** - Motion to table until May Board meeting to have Conflicts Counsel present – approved unanimously.

Mr. Reese returned to the room.

- **William Lewis Holbrook #178149** - Motion to Reserve the Right to Review – approved unanimously.
- **Robert C. Webb #177162** - Motion to Reserve the Right to Review – approved unanimously.
- **E&Y Auto Sales #36231** - Motion to Reserve the Right to Review – approved unanimously.
- **Brother Bears Auto Brokers, Inc. #4069** - Motion to Reserve the Right to Review – approved unanimously.

INVESTIGATION REPORT:

Criminal Investigator Supervisor Matt Heap presented the following report:

Statistical Reporting – This report will be given verbally rather than a printed copy. Mr. Heap informed the Board that 183 new cases were opened and 167 cases were closed for the month, giving the Division a balance of 609 open cases.

Affidavits of Probable Cause:

- **Friendly Auto Sales #37592** – Motion made that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Friendly Auto Sales #37592; that the case be assigned to the Colorado Office of Administrative Courts for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations under the Complaint Investigation Settlement Process – approved unanimously.

- **Hi Mesa Truck and Auto Center #40378** – Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Hi Mesa Truck and Auto Center #40378; that the case be assigned to the Colorado Office of Administrative Courts for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations under the Complaint Investigation Settlement Process – approved unanimously.
- **Prestige Chrysler Dodge #193** - Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Prestige Chrysler Dodge #193; that the case be assigned to the Colorado Office of Administrative Courts for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations under the Complaint Investigation Settlement Process – approved unanimously.

NEW BUSINESS: There was no new business to discuss.

PUBLIC COMMENT: There was no public comment.

ATTORNEY GENERAL’S REPORT

Mr. Reese asked for an Executive Session for discussion on pending and imminent litigation of the Champion auto dealerships. A motion was made to enter Executive Session pursuant to C.R.S. 24-6-402 (3)(a)(II) to discuss Champion Kia case # MV2009-0003, Champion Chrysler Jeep Dodge case # MV2009-0004, Champion Mitsubishi case # MV2009-0005, Champion Chevrolet case # MV 2009-0006, and Champion Mazda case # MV2009-0007 – passed unanimously.

The Board went into Executive Session 11:52 a.m.

The Board resumed open meeting at 12:07 p.m.

The regular meeting of the Motor Vehicle Dealer Board was adjourned at 12:10 p.m.

(Note: The Minutes of the Motor Vehicle Dealer Board summarize the contents of the meeting. They are not verbatim transcripts and are based principally upon the digital recording of the meeting and upon the later collaboration of staff attendees to ensure that the summary faithfully captures the matters before the Board and the actions the Board took. The digital recording of the meeting is a permanent record of the Board, retained in the electronic filing system of the Auto Industry Division, and is available as a resource for review, as needed.)

Bruce Zulauf
Executive Secretary