

**MOTOR VEHICLE DEALER BOARD
MINUTES
September 16, 2014**

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

BOARD MEMBERS:

Robert Endter
Justin Franks
Joseph Gebhardt
Chris Hefty
Michael Jorgensen
Stan Martin
Deborah Thompson
Jason Wagner

MEMBERS ABSENT:

Anthony Brownlee

**SENIOR DIRECTOR OF
ENFORCEMENT:**

Ron Kammerzell

EXECUTIVE SECRETARY:

Bruce Zulauf

LEGAL ASSISTANT:

Leland Bebee

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

Chris Rouze
Matt Heap
Martin Kenney
John Opeka
Gloria Breeden
Dave Heinrich
Cheryl Morrison
Kaye Kopecky
Erika Garcia
Brenda Fredricey
Rita Pugh
Arleen Criddell-Tapanen

ATTORNEY GENERAL'S OFFICE:

Y.E. Scott
Randall Cherry

VISITORS:

Todd O'Connell, CIADA
Tammi McCoy, CADA
Mary Marvin, CAPSS
Art Erwin, Christopher's Dodge World
Paul N. White, Brandon Dodge
Tom Miszewski, Mike Naughton Ford
David Spaulding, Mike Naughton Ford

President, Jason Wagner, opened the meeting of September 16, 2014, at 9:11 a.m. Mr. Wagner turned the floor over to Executive Secretary, Bruce Zulauf.

AGENDA REVIEW AND ANNOUNCEMENTS

Mr. Zulauf informed the Board there were no additions or corrections. Mr. Ron Kammerzell, Senior Director of Enforcement, will address the Board in regards to compliance with statutes governing the rulemaking process. Mr. Brownlee will not be in attendance today.

Calendar –

- There will be no rulemaking workshop Thursday, September 25, 2014.
- Mr. Zulauf informed the Board to expect a full day on Tuesday, October 21, 2014. In addition to the regularly scheduled Board meeting, there are three hearings scheduled back-to-back along with the Division team reports, which he anticipates will be larger than this month's reports.
- An official rulemaking public hearing will be held on Thursday, October 23, 2014, in regards to Disclosure Forms and Hearings Procedures rules, which should last approximately a half day.
- Mr. Zulauf informed the Board to expect a full day on Tuesday, November 18, 2014, as there will probably be another official rulemaking public hearing in regards to Advertising rules. The hearing will be held in addition to the regularly scheduled Board meeting.

The Colorado Department of Revenue's new website is on schedule to launch October 1, 2014.

MINUTES

The minutes of the August 19, 2014, Board meeting were approved unanimously with a correction to be made on page 6, prior to bullet #5, to indicate the "time the Board entered and exited Executive Session" in regards to the Kuni Lexus of Greenwood Village case. In addition, the August 19, 2014, Rulemaking Minutes were tabled for the next meeting – (Hefty abstained).

ATTORNEY GENERAL'S REPORT

Ms. Y.E. Scott presented the following to the Board:

- **Proposed Stipulation and Final Agency Order** – Kash's Gems, Inc. Powersports Vehicle Dealer License #40026 – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously.

EXECUTIVE SECRETARY'S REPORT

Mr. Zulauf presented the following to the Board:

- **Proposed Stipulation and Final Agency Order – The Car Guy, Dealer #40407** – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously.

Mr. Endter recused himself and left the room.

- **Proposed Stipulation and Final Agency Order – Wangerow, Michael J., Salesperson #166942** – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously.

Mr. Endter returned to the room.

BACKGROUND INVESTIGATIONS TEAM

John Opeka presented the following:

Dealer Applications:

- **Expo Automotive LLC #43071** – Motion to grant the license – approved unanimously.

Salesperson Applications:

Mr. Gebhardt recused himself and left the room.

- **Gutierrez, Eric #179827** – Motion to deny the license based on unfitness of criminal character and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.

Mr. Gebhardt returned to the room.

- **Howard, Jeremy #187990** – Motion to deny the license based on unfitness of criminal character and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.
- **McDaniels, Dain #187717** – Motion to grant the license – approved unanimously.
- **Mendoza, Maria #187684** – Motion to grant the license – approved unanimously.
- **Sager, Imadeddin #29866** – Motion to deny the license based on unfitness of licensing character, unfitness of criminal character and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.
- **White, Paul #181315** – Motion was made to enter Executive Session at this time to seek legal counsel for a specific legal question and to discuss with counsel pending or imminent court action involving the Board as a party pursuant to C.R.S. 24-6-402(3)(a)(II); in the matter we are currently discussing, Mr. White – passed unanimously.

The Board entered into Executive Session at 10:01 a.m. and resumed Open Session at 10:13 a.m.

- **White, Paul #181315** – Motion to deny the license based on unfitness of criminal character and insufficient proof of rehabilitation – approved unanimously.

INVESTIGATION REPORT

Chief of Investigations Chris Rouze presented the following:

Statistical Reporting – Ms. Rouze informed the Board that we started with 420 cases, 169 new cases were opened and 153 cases were closed for the month, giving the Division a balance of 436 open cases. There were 374 background inquiries performed.

Affidavits of Probable Cause:

- **Cherry Motors, Inc., DL #7297** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Cherry Motors, Inc., Dealer #7297; and that the case be assigned to the Office of Administrative Courts for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations pursuant to C.R.S. 12-6-104 – approved unanimously.
- **Mumdzhyan, Araik, SP #175459** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Mumdzhyan, Araik, Salesperson #175459; and that the case be assigned to the Colorado Department of Revenue, Hearings Division for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations pursuant to C.R.S. 12-6-104 – approved unanimously.

The Board took a 5 minute break.

PROPOSED RULEMAKING

Mr. Kammerzell distributed handouts to Board members outlining the process of rulemaking. Mr. Kammerzell informed the Board that the rulemaking process has been in place for many years with significant changes in the year 2012 with the passing of HB 12-1008, directing state agencies to establish representative group(s) to evaluate and comment on proposed rules, which is referred to as the “Stakeholder Working Group” process. This bill also required state agencies to notify the General Assembly any time during rulemaking that they were going to increase fees or fines. It also required that state agencies submit a departmental Regulatory Agenda to the General Assembly each year on November 1st indicating which rules the agency will be working on for the next calendar year. Every year thereafter, the agencies have to report to Committees of Reference, which in the case of the Department of Revenue, would be the Senate and House Finance Committees. We have to let the Senate and House Finance Committees know what was done in terms of the rules, whether we repealed, added, changed or kept rules the same.

At the same time in 2012, Governor Hickenlooper issued Executive Order 2, which he entitled “Regulatory Efficiency Reviews”. This Order directly impacts the rulemaking process as well. It orders departments to conduct a review of all their rules to determine if they should be continued in their current form, be modified or repealed. This Order also requires each department to provide public notification of its rule reviews and provide the appropriate opportunity to the public to give

input and to notify other state agencies that may have a shared jurisdiction over these rules so that they, as subject matters, can also comment on any rule revisions.

The Colorado Department of Revenue policy DOR 505 was in response, in part, to HB 12-1008 and the Executive Order of the Governor. The Department of Revenue policy states that each Division shall conduct a periodic review consistent with the Executive Order and it shall be included in our Regulatory Agenda, which is required by HB 12-1008.

All of our rules have to be reviewed on a five-year cycle, which means that 20% of our rules have to be reviewed each year by the Agency. When conducting the annual review, the Division should consider the following five questions:

1. Is the rule necessary and does it not duplicate existing rules;
2. Are the rules written in plain language and easy to understand;
3. Have they achieved the desired intent and whether or not more or less regulation is necessary;
4. Can they be amended to reduce any regulatory burdens while maintaining the benefits of the regulation; and
5. Can they be implemented in an efficient and effective manner including the requirements for issuing any permits or licenses?

Mr. Kammerzell passed out a flowchart which outlined each step of the rulemaking process. There was a general discussion of Board members role in the process as the final decision-making authority. They were advised to refrain from discussing the rules with other dealers, Board members or Associations outside of a formal working group, where all opinions are transparent and recorded to avoid conflict of interest during the process.

Mr. Kammerzell recommended that, going forward, Mr. Zulauf give the Board an update at every Board meeting in regards to where we are in the process. Mr. Zulauf informed the Board that presently, we are scheduled to have a permanent rulemaking hearing on the Disclosure Form and the Hearings Procedures Thursday, October 23, 2014, which are currently on the Secretary of State's website. The Division will notify all stakeholders, via email, on Monday, September 22, 2014 or Tuesday, September 23, 2014 encouraging their comments for the rulemaking record.

New Business – No New Business.

Public Comment – No Public Comment.

The regular meeting of the Motor Vehicle Dealer Board was adjourned at 11:35 a.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