

STATE OF WEST VIRGINIA

PRELIMINARY PERFORMANCE REVIEW OF THE

**DIVISION OF MOTOR VEHICLES
Motor Vehicle Dealers Advisory Board**

**Board Fulfills its Statutory
Duties
In Accordance with State Law**

**OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex**

**CHARLESTON, WEST VIRGINIA 25305
(304) 347-4890**

May 2000

PE00-05-163

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May 2000

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Antonio E. Jones, Ph.D.
Director

May 12, 2000

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
Weirton, West Virginia 26062

The Honorable Vicki Douglas
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Preliminary Performance Review of the *Division of Motor Vehicles - Motor Vehicle Dealers Advisory Board*, which will be presented to the Joint Committee on Government Operations on Friday, May 12, 2000. The issue covered herein is "Board Fulfills its Statutory Duties In Accordance with State Law."

We conducted an exit conference with the *Motor Vehicle Dealers Advisory Board* on April 27, 1999. We received the agency response on May 2, 2000.

Let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Antonio E. Jones".

Antonio E. Jones

AEJ/wsc

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Executive Summary

Issue Area 1: The Commissioner of DMV has Fulfilled Statutory Requirements to Consult with Motor Vehicle Dealers Advisory Board.

Statute requires the Commissioner of DMV to consult with the Board prior to taking any disciplinary action against a licensee. Meeting minutes from 1997 to the present indicate a pattern of such consultation.

Issue Area 2: The Motor Vehicle Dealers Advisory Board Assists the Commissioner of DMV in Developing New Laws and Policies.

The Advisory Board was created to assist the Commissioner of DMV in the development of new laws and policies to aid in the regulation of the motor vehicle industry. The Board has actively participated in developing DMV's legislative agenda. The Board is currently preparing legislation for the 2001 legislative session which will address the licensure of salespeople and the adequacy of surety bonds.

Issue Area 3: The Motor Vehicle Dealers Advisory Board Conducts its Meetings In Accordance with State Law.

The Advisory Board is in compliance with the Open Meetings Law. A review of meeting minutes also indicates that the Board enters into executive session appropriately when discussing disciplinary action against individual licensees. Once a disciplinary action is taken, the Board does discuss it in the open meeting. The Board also meets four times a year, as required by statute, and members participate actively.

Review Objective, Scope and Methodology

This review of the *Motor Vehicle Dealers Advisory Board* was conducted in accordance with West Virginia Sunset Law. The **objective** of the review is to determine the Board's compliance with state law. The **scope** was confined to the years 1997 to present. The scope was further confined to the following questions:

- Does the Board meet four times annually as required by statute?
- Is the Board in compliance with the Open Meetings Law?
- Does the Board carry out its statutory duties?

The **methodology** of this review consisted of interviews with DMV administrative staff, review of the Board's meeting minutes, observation of a Board meeting and review of legislation endorsed by the Board. This performance evaluation was conducted in accordance with **Generally Accepted Government Auditing Standards** (GAGAS) as set forth by the Comptroller General of the United States.

Background

The *Motor Vehicle Dealers Advisory Board* is created under §17A-6-18a. It consists of nine members and the Commissioner of the Division of Motor Vehicles who serves in an *ex officio* capacity. The statute mandates membership of the committee shall include:

Two members representing new motor vehicle dealers, with one representing dealers that sell less than one hundred new vehicles a year;

one member representing used motor vehicle dealers;

one member representing wreckers/dismantlers/rebuilders;

one member representing automobile auctions;

one member representing recreational dealers;

one member representing the West Virginia Attorney General's office; and

two members representing consumers.

All members are appointed by the Governor with the advice and consent of the Senate, with no more than five representatives being from the same political party. Members serve three-year terms without compensation.

The statutory purpose of the Committee is to:

assist and to advise the commissioner on the administration of laws regulating the motor vehicle industry; to work with the commissioner in developing new laws, rules or policies regarding the motor vehicles industry; and to give the commissioner such further advice and assistance as he or she may from time to time require.

§17A-6-19 states that:

The commissioner shall consult with the board before he or she takes any disciplinary action against a dealer, an automobile auction or a license service to revoke, or suspend a license, place the licensee on probation or levy a civil penalty, unless the commissioner determines that the consultation would endanger a criminal investigation.[Emphasis added].

The committee is required to meet four times annually.

Issue Area 1: The Commissioner of DMV has Fulfilled Statutory Requirements to consult with Motor Vehicle Dealers Advisory Board.

West Virginia state *Code*, as amended, requires consultation with the Advisory Board in matters relating to disciplinary action. §17A-6-18a(b) states:

The commissioner shall consult with the board before he or she takes any disciplinary action against a dealer, an automobile auction or a license service to revoke or suspend a license, place the licensee on probation or levy a civil penalty, unless the commissioner determines that the consultation would endanger a criminal investigation.

Meeting minutes from September 1997 until the present indicate a pattern of the DMV Commissioner consulting with the Board on disciplinary matters. Between September 1997 and December 1999, 54 revocations were discussed in the executive session of Board meetings. The Board also consulted with the Commissioner of DMV and the Attorney General's representative regarding disciplinary and legal action taken against a dealer.

§17A-6-18 provides for disciplinary actions for 19 reasons. Disciplinary issues discussed by the Advisory Board include, but are not limited to: incorrect taxes remitted to DMV; different sales prices on the title and the sales invoice; failure to assign, reassign or transfer a title certificate for vehicles; unlawful use of dealer plates; lack of appropriate dealership sign; no warranty agreement in display window; incomplete dealership records; failure to collect taxes; failure to maintain a place of business as required by state law; failure to make business available to inspection; failure to keep minimum posted business hours, and lack of telephone listing for the dealership.

The Advisory Board discusses pending disciplinary action in executive session before action is taken. At the March 2000 meeting members reported illegal activities currently conducted by individuals with revoked or suspended dealer licenses to the Commissioner of DMV. In this function, the Advisory Board is fulfilling its statutory duty.

Issue Area 2: The Motor Vehicle Dealers Advisory Board Assists the Commissioner of DMV in Developing New Laws and Policies.

The Advisory Board was created to assist the Commissioner of the Division of Motor Vehicles in developing laws and policies which aid in the regulation of the motor vehicle industry. The Board's duties are set forth in statute. §17A-6-18a(a) states:

There is created a motor vehicle dealers advisory board to assist and to advise the commissioner on the administration of laws regulating the motor vehicle industry; to work with the commissioner in developing new laws, rules or policies regarding the motor vehicle industry; and to give the commissioner such further advice and assistance as he or she may from time to time require. [Emphasis added.]

The manager of DMV's Dealer Services stated in a letter to the Legislative Auditor that:

The Board is composed of members who serve as the link between the Commissioner and the community. Their insight and ideas have been very productive in providing suggestions on effective laws, policies and procedures that help in the process of proposing bills to the legislature. The efforts put forth from board members, along with their wide range of knowledge, have proven to be beneficial for the Division of Motor Vehicles in serving the consumers and dealers of West Virginia.

In the 2000 regular Legislative Session, the Advisory Board helped DMV develop House Bill 4153 and Senate Bill 651, both of which passed and will become law. House Bill 4153 is effective June 9, 2000. It allows persons to retain possession and ownership of a vehicle that sustains only cosmetic damage to the extent that repairs exceed 75% of the vehicle's value. Under current law, the vehicle would be considered totaled and consequently turned over to the insurance company. The new law also requires insurance companies to determine if a vehicle is: Cosmetically damaged; Structurally damaged but capable of being rebuilt, or Non-repairable. Senate Bill 651 becomes effective July 1, 2000. The law grants DMV the authority to regulate the Rental Vehicle Industry in order to ensure that businesses are collecting the daily rental transaction fee.

The Advisory Board is currently active in preparing two pieces of legislation for the 2001 legislative session. The Dealer Recovery Fund is the most important item on DMV's 2001 legislative agenda. This legislation will attempt to address the inadequacy of current surety bonds in a manner that is affordable for small vehicle dealers while improving the protection of the public from unscrupulous dealers. The Advisory Board is also helping DMV develop legislation to license salespeople in order to protect the public, as well as licensed dealers from unscrupulous salespeople. However, neither the DMV nor the Advisory Board has submitted an application to the Joint Standing Committee on Government Organization, as required under §30-1A-2, otherwise known as the Sunrise Law.

§30-1A-1 states:

The Legislature finds that regulation should be imposed on an occupation or profession only when necessary for the protection of public health and safety. The Legislature further finds that establishing a procedure for reviewing the necessity of regulating an occupation or profession prior to enacting laws for such regulation will better enable it to evaluate the need for the regulation and to determine the least restrictive regulatory alternative consistent with public health and safety.

Recommendation 1:

If the Motor Vehicle Dealers Advisory Board and the DMV believe auto sales-persons should be licensed, the licensing board should be created under Chapter 30 of the West Virginia State Code, as amended, and the appropriate parties should submit information pursuant to the West Virginia Sunrise Law, §31-1A-2, to the Joint Committee on Government Operations.

Issue Area 3: The Motor Vehicle Dealers Advisory Board Conducts its Meetings In Accordance with State Law.

According to the Administrative Law Division of the Secretary of State's Office, the Board is in compliance with the Open Meetings Law. A review of meeting minutes indicates that the Board enters into executive session appropriately when it discusses disciplinary action against individual licensees. §6-9A-4 allows a governing body of a public agency to enter into executive session under certain circumstances. During the open meeting, the presiding officer must identify the authorization for holding the executive session and present it to the body and the general public. Executive session is authorized, by statute for several reasons, including:

To issue, effect, deny, suspend or revoke a license, certificate or registration under the laws of this state or any political subdivision...

A majority of members present must vote to go into executive session. When the Advisory Board goes into Executive Session, it continues to keep minutes of the discussions, with the names of the individuals and business deleted. During the December 1997 meeting, the Board discussed information related to confidential actions against dealers, pursuant to §17A-6-18(a). According to the meeting minutes, *Those actions are kept in a separate confidential minute book at the Motor Vehicle Commissioner's Office.* §17A-6-18(a) states:

The commissioner may conduct an investigation to determine whether any provisions of this chapter have been or are about to be violated by a licensee. Any investigation shall be kept in the strictest confidence by the commissioner, the division, the licensee, any complainant and all other persons, unless and until the commissioner suspends or revokes the license certificate of the licensee involved or fines the licensee: Provided, That the commissioner may advise the motor vehicle dealers advisory board of pending actions and may disclose to the motor vehicle dealers advisory board such information as may enable it to perform its advisory function in imposing penalties.

June 1998 meeting minutes indicate that the Advisory Board considers compliance with the Open Meetings Law important. An excerpt from the discussion follows:

[The Attorney General's representative] discussed the Open Governmental Meeting Laws and advised that the Board's meetings were considered open for the public with several exceptions including pending investigations and revocations of dealers and licensing services. Pending investigations and revocations could only be addressed in executive sessions without the public being present...The minutes of the executive meeting will be kept without disclosing the names of the businesses being investigated. Notice of regularly scheduled meetings should be sent to the Secretary of State...

Once an action is taken, it is discussed in the open meetings.

Meeting minutes also indicate that the Board meets four times a year, as required by §17A-6-18a(a). Since 1997, the Division of Motor Vehicles has actively participated in Board meetings, with the Commissioner always in attendance. Furthermore, at least two other representatives of DMV

are present at all meetings. The Attorney General's representative, which serves as legal advisor to the Advisory Board is always present at Board meetings. Citizen members do not maintain perfect attendance, which is not surprising due to the fact that they receive no compensation or reimbursement for their travel or participation. Still, citizen members, on the whole, actively participate and attend the meetings.

Recommendation 2:

The Legislature should consider changing the statute to reimburse appointed board members at the same rate as the Legislature.

Recommendation 3:

The Legislature should consider continuing the Motor Vehicle Dealers Advisory Board.

APPENDIX A

Transmittal Letter to Agency

WEST VIRGINIA LEGISLATURE
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Antonio E. Jones, Ph.D.
Director

April 27, 2000

Joe Miller, Commissioner
West Virginia Division of Motor Vehicles
Building 3, Room 113
1900 Kanawha Boulevard, East
Charleston, West Virginia 25317

Dear Commissioner:

This is to transmit a draft copy of the performance review of the *Motor Vehicle Dealers Advisory Board* and to confirm our exit conference scheduled for 11:00 a.m. on Thursday, April 27, 2000. Please provide a written response to the draft no later than 2:00 p.m. on Tuesday, May 2, 2000. We will present this report to the Joint Committee on Government Operations during the May interim meetings.

Thank you for your cooperation.

Sincerely,


Harvey R. Burke
Research Manager

Enclosure

_____ *Joint Committee on Government and Finance* _____

APPENDIX B
Agency Response



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

1800 Kanawha Boulevard East • Building Three
Charleston, West Virginia 25317-0010

Cecil H. Underwood
Governor

Samuel H. Beverage, P. E.
Acting Secretary

April 28, 2000

Joe E. Miller
Commissioner

Mr. Harvey Burke
Research Manager
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Ms. Shannon Riley
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MAY 2 2000

**RESEARCH AND PERFORMANCE
EVALUATION DIVISION**

Dear Mr. Burke and Ms. Riley:

In response to the performance review of the Motor Vehicle Dealers Advisory Board, the Division of Motor Vehicles agrees with the findings of the Office of the Legislative Auditor.

The Division and the Motor Vehicle Dealers Advisory Board have made great strides in writing and passing legislation that protects the interests of the citizens of West Virginia. The Division respects the input that the Dealer Advisory Board brings to the table and look forward to working with the Board in the future.

If I can be of further assistance please feel free to contact me at 558-2723.

Sincerely,


Joe E. Miller
Commissioner

JEM/ec

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