

Preliminary Performance Review

**MOTOR VEHICLE DEALERS
ADVISORY BOARD**

**Motor Vehicle Dealers Advisory Board
Provides A Beneficial Service To The
Commissioner Of The Division
Of Motor Vehicles**



**May 2003
PE 03-02-277**

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John Sylvia
Director

May 4, 2003

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

The Honorable J. D. Beane
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 Motor Vehicle Dealers Advisory Board*, which will be presented to the Joint Committee on Government Operations on Sunday, May 4, 2003. The issue covered herein is "Motor Vehicle Dealers Advisory Board Provides a Beneficial Service to the Commissioner of the Division of Motor Vehicles."

We transmitted a draft copy of the report to the Motor Vehicle Dealers Advisory Board on April 21, 2003. We held an exit conference with the Advisory Board on April 22, 2003. We received the agency response on April 22, 2003.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

JS/wsc

Joint Committee on Government and Finance

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Executive Summary

Issue 1: The Motor Vehicle Dealers Advisory Board Provides A Beneficial Service To The Commissioner Of The Division Of Motor Vehicles.

The Motor Vehicle Dealers Advisory Board was created by West Virginia Code §17A-6-18a 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.

The Motor Vehicle Dealers Advisory Board consists of nine members and the Commissioner of the Division of Motor Vehicles. Currently, all but one member of the Board is appointed. An opening for the wrecker/dismantler/rebuilders representative has been open for up to two and a half years. Meeting minutes show that the Board has discussed potential replacements, but the position has not been appointed by the Governor.

The Legislative Auditor finds that the Motor Vehicle Dealers Advisory Board provides a beneficial service to the Commissioner of DMV and the 1,884 licensed vehicle dealerships in West Virginia. Meeting minutes show that Board meetings provide a forum for members and the public to discuss concerns involving the motor vehicle industry.

According to meeting minutes that were provided, the Board met four times in 2001 as required, but only met twice in 2002. DMV staff stated that the reason why only two meetings were held in 2002 was because of personal and business conflicts of Board members. The Legislative Auditor recommends that the Board **meet four times annually** as required by code. In addition, the Board filed meeting notices in accordance with the Open Government Proceeding Act §6-9a-1 *et seq.* in all but one case.

Recommendations

1. The Legislative Auditor recommends that the Motor Vehicle Dealers Advisory Board be continued.

2. *The Legislative Auditor recommends that the Governor's Office fill the vacant slot representing the wrecker/dismantler/rebuilders.*

3. *The Legislative Auditor recommends that the Board meet four times annually as required by code.*

4. *The Legislative Auditor recommends that the Board file meeting notices with the Secretary of States Office in accordance with the Open Meetings Law.*

Review Objective, Scope, and Methodology

This Preliminary Performance Review of the Motor Vehicle Dealers Advisory Board is required and authorized by the West Virginia Sunset Law, Chapter 4, Article 10 of the West Virginia *Code*, as amended. The Board was created to assist and advise the Commissioner of the Division of Motor Vehicles on the administration of laws regulating the motor vehicle industry. In addition, the Board is to work with the Commissioner in developing new laws, rules or policies regarding the motor vehicle industry.

Objective

The objective of this audit is to determine whether there is a need for such a board to assist the Commissioner of the Division of Motor Vehicles. It is also the intent to determine whether the Board complies with statutory requirements, and to determine its effectiveness.

Scope

The performance evaluation covers the period from the last PERD performance review in May of 2000 to the present.

Methodology

Information compiled in this report has been acquired through interviews, conversations and correspondence with the Commissioner of the Division of Motor Vehicles and staff of the Division. Documents obtained and reviewed included: 1) Board meeting minutes from 2000 through 2003; 2) A list of Board Members and their term expiration dates; 3) A letter from Division staff expressing the importance of the Board; 4) A letter from the Secretary of State's Office regarding Board meeting notifications. Every aspect of this review complied with Generally Accepted Government Auditing Standards (GAGAS).

The Motor Vehicle Dealers Advisory Board Provides A Beneficial Service To The Commissioner Of The Division Of Motor Vehicles.

The Legislative Auditor finds that the Board provides a valuable service to the Commissioner with no associated costs.

The Motor Vehicle Dealers Advisory Board was created by West Virginia Code B17A-6-18a to assist and advise the Commissioner of the Division of Motor Vehicles (DMV) on the administration and development of laws regarding the motor vehicle sales industry. The Legislative Auditor finds that the Board provides a valuable service to the Commissioner with no associated costs. Board members do not receive compensation, and the Board has never incurred any expenses. In 2002 the Board did not meet as often as required by code, which is four times annually. The Legislative Auditor recommends that the Board meet as required by code. Also, the Legislative Auditor recommends that the vacant position representing the wrecker/dismantler/rebuilders be filled, and that the Board file meeting notices in accordance with the Open Meetings Law.

Board Provides A Beneficial Service

The Motor Vehicle Dealers Advisory Board consists of nine members and the Commissioner of the Division of Motor Vehicles. The membership of the Board includes:

- i two members representing new motor vehicle dealers;
- i one representing used motor vehicle dealers;
- i one representing wrecker/dismantler/rebuilders;
- i one representing automobile auctions;
- i one representing recreational dealers;
- i one representing the Attorney General's office;
- i and two members representing consumers.

All representatives are appointed by the Governor for three year terms, with the exception of the Attorney General's representative who serves continuously. Currently, all but one position on the Board is filled. The wrecker/

dismantler/rebuilders representative position has been open for up to two and a half years. Meeting minutes show that the Board has discussed potential replacements, but the position has not been filled by the Governor.

West Virginia §17A-6-18a states that the Board was created 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.

The manager of Dealers Services with the Division of Motor Vehicles states:

Board members serve as an important liaison between the Commissioner and the consumer community.

Board members serve as an important liaison between the Commissioner and the consumer community. Each board member brings their own unique insight and personal perspective that has been very helpful in proposing bills to the legislature. The combined effort and knowledge put forth by board members has proven very beneficial in assisting the Division of Motor Vehicles in serving the consumers and dealers of West Virginia.

The Legislative Auditor finds that the Motor Vehicle Dealers Advisory Board provides a beneficial service to the Commissioner of DMV and the 1,884 licensed vehicle dealerships in West Virginia. Meeting minutes show that Board meetings provide a forum for members and the public to discuss concerns involving the motor vehicle industry. Meetings often include presentations by invited speakers, and are attended by Division of Motor Vehicles staff. Similarly, though not an appointed member of the Board, a representative from the West Virginia Automobile and Truck Dealers Association is often active during meetings.

Board Advises And Assists The Commissioner Of DMV

West Virginia Code states that the Board was created to advise and assist on laws and issues relating to the motor vehicle industry. Meeting minutes show that the Board is active in performing this function. Meetings include discussions of legislation concerning the motor vehicle dealer industry. Specifically, the Board was involved in drafting legislation for the licensing of salespersons, and discussed legislation regarding Canadian imports, rules relating to

dealers, and the issue of flood vehicles.

In addition, the West Virginia Code also 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...

Meeting minutes reflect that the Board goes into executive session to discuss current revocations and civil penalties. Thus, the Board is performing the function for which it was created.

Board Currently Has No Associated Costs

Division of Motor Vehicles staff stated that the Board has incurred no expenses. Members do not receive compensation for attending meetings nor do they receive expense reimbursement. The 2003 Legislature passed H. B. 2797 on March 8, 2003 that would reimburse members for expenses associated with Board related activities. The bill was signed by the Governor, and will take effect 90 days from passage. Assuming members begin claiming expenses for attending meetings, the passage of this legislation will create costs for maintaining the Board. Meetings are held in Charleston, and currently half of the members are located in the Charleston vicinity. Thus, there should not be a significant expense.

Board Did Not Meet The Mandated Four Times In 2002

According to meeting minutes that were provided, the Board met four times in 2001 as required, but only met twice in 2002. The table below contains the meeting dates from 2001-2003.

Table 1 Meeting Dates 2001-2003
January 8, 2003
June 5, 2002
April 10, 2002
November 14, 2001*
July 11, 2001
February 26, 2001
February 6, 2001
<i>*Did not file meeting notice with Secretary Of State's Office</i>

DMV staff stated that the reason why only two meetings were held in 2002 was because of personal and business conflicts of Board members. The Legislative Auditor recommends that the Board **meet four times annually** as required by code.

Board Adheres To The Open Meetings Law In Most Cases

The Board did file meeting notices in accordance with the Open Government Proceeding Act §6-9a-1 *et seq.* in all but one case. As noted by the asterisk in Table 1, the Board did not file a notice for the November 14, 2001 meeting. All other notices of Board meetings were filed properly with the Secretary of State. The Board should file meeting notices in all cases with the Secretary of State's Office as required by code.

Conclusion

The Motor Vehicle Dealers Advisory Board provides a beneficial service to the Commissioner of the Division of Motor Vehicles by representing the 1,884 licensed vehicle dealerships in West Virginia. The Board advises and assists the Division with drafting legislation regarding the industry, and discussing additional concerns. Currently, the Board provides this service at no expense to the State, although this will change with the passage of legislation during the 2003 session, which will allow members to be reimbursed for Board related expenses. The Board did not meet the required number of times in 2002, and the Legislative Auditor recommends that in the future it meet the mandated four times. Also, the Legislative Auditor recommends that the vacant position representing the wrecker/dismantler/rebuilders be filled, and that the Board file meeting notices in accordance with the Open Meetings Law.

Recommendations

- 1. The Legislative Auditor recommends that the Motor Vehicle Dealers Advisory Board be continued.*
- 2. The Legislative Auditor recommends that the Governor's Office fill the vacant slot representing the wrecker/dismantler/rebuilders.*
- 3. The Legislative Auditor recommends that the Board meet four times annually as required by code.*
- 4. The Legislative Auditor recommends that the Board file meeting notices with the Secretary of States Office in accordance with the Open Meetings Laws.*

Appendix A: Transmittal Letter to Agency

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

April 18, 2003

Mr. Mike Griffin, Manager
Motor Vehicle Dealers Advisory Board
1800 Kanawha Blvd. E
Charleston, WV 25317-0010

Dear Mr. Griffin:

This is to transmit a draft copy of the Regulatory Board Evaluation for the Motor Vehicle Dealers Advisory Board. This report is scheduled to be presented at the Sunday, May 4, 2003 interim meeting of the Joint Committee on Government Operations. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have. If you would like to schedule an exit conference to discuss any concerns you may have with the report between April 21 and April 23, please notify us. We need your written response by noon on April 24, 2003 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, May 1 to make arrangements.

We request that your personnel treat the draft report as confidential and that it not be disclosed to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

c: Commissioner Pritt

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

Bob Wise
Governor

Fred VanKirk, P. E.
Secretary

Roger Pritt
Commissioner

April 22, 2003

Mr. Denny Rhodes
West Virginia Legislature
Performance Evaluation and Research Division
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610

Dear Mr. Rhodes:

The Commissioner and I would like to thank you for the advice provided by your office concluding the review of the Motor Vehicle Dealer Advisory Board.

As per your recommendations, the Board will continue to assist and advise the Commissioner on the administration of laws regulating the motor vehicle industry. In addition, it will ensure the vacancy on the board representing the wrecker/dismantler/rebuilders is filled, satisfy all meeting requirements as outlined in the West Virginia Code and file all meeting notices with the Secretary of State's Office in accordance with the Open Meetings Law.

Once again, thank you for your assistance with this review.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Griffin".

Michael Griffin, Manager
Dealer Services

MG/cl

