

Approved February 16, 1983  
Date

MINUTES OF THE Senate COMMITTEE ON Governmental Organization

The meeting was called to order by Senator Vidricksen at  
Chairperson

1:38 ~~am~~/p.m. on February 3, 1983 in room 531N of the Capitol.

All members were present except:

Senator Hein  
Senator Gaar  
Senator Francisco

Committee staff present:

Norm Furse - Revisor  
Julian Efird - Legislative  
Research

Conferees appearing before the committee:

Glenn Deck - Legislative Post Audit  
Alan Alderson - Kansas Motor Car Dealers Association  
Marcus Woods - Department of Revenue - Vehicles  
Jack Quinlan - Kansas Motor Car Dealers Association

Glenn Deck presented the Sunset Audit Report on Dealer Licensing on behalf of the Legislative Post Audit Department, a copy of which was distributed to the committee members. (Exhibit A) The report covered the areas of dealer licensing and the titling process.

The Agency Response was presented by Alan Alderson who stated that a committee had been appointed by the Secretary of Revenue to review the Post Audit's recommendations with the idea that procedural changes would be made which were warranted. He listed five recommendations which were being considered along with other concerns expressed by the Post Audit Division. (Exhibit B) A copy of a letter from the Department of Revenue to the Better Business Bureau was distributed to members of the committee. This letter suggested several remedial actions that could be taken by individuals who had complaints against vehicle dealers or salesmen. (Exhibit C)

Marcus Woods and Jack Quinlan made brief statements to the committee and answered questions. (Exhibit D)

The Chairman announced that this bill would be rescheduled at a later date to allow more time to finish the discussion.

A motion was made by Senator Mulich to approve the minutes. A seconded was made by Senator Meyers. Motion carried.

The meeting was adjourned at 2:33 p.m. by the Chairman



**SUNSET AUDIT REPORT: DEALER LICENSING  
LEGISLATIVE POST AUDIT PRESENTATION**

**February 3, 1983**

This audit of the Division of Vehicles is the third in a series of sunset audits of the Department of Revenue. Based on discussions with members of the Legislative Post Audit Committee, three topics within the Division of Vehicles were selected for review--a sunset analysis of the Dealer Licensing Bureau, the timeliness of issuing motor vehicle titles, and the performance of the Driver Control Bureau. This report covers dealer licensing and the titling process; the Driver Control Bureau's performance will be covered in a later report.

**Need for Dealer Licensing**

In reviewing the activities of the Dealer Licensing Bureau, we used the sunset and performance audit factors set forth in the Sunset Law and the Legislative Post Audit Act. These factors call for assessments of the need for State regulation, the extent to which regulation serves the general public, the cost of that regulation, and the potential for administering the regulatory program in a less restrictive manner while still protecting the public. These factors were applied in keeping with the Legislature's intent which is to place the burden of proof on the agency being audited to demonstrate a continued public need for regulation.

Based on our review we recommended that the Dealer Licensing Bureau and Dealer Review Board be abolished, and the Bureau's administrative responsibilities for issuing dealer plates, tax stamps, and temporary permits be transferred to the Titles and Registration Bureau. These recommendations are based on the following three findings:

First, consumer complaints against such problems as fraudulent sales and service practices are always handled by the Attorney General's Consumer Protection Division. The box on page 14 of the report shows the typical consumer complaints handled by the Attorney General. These include warranty problems, problems with repairs and service, and fraudulent sales practices. By contrast, the Dealer Licensing Bureau handles only administrative-type problems concerning dealers--such as an unapproved place of business, misuse of dealer tags, or unsigned titles.

Second, there was no evidence that the types of violations uncovered during inspections of dealers resulted in significant harm to the public. The table on page 16 of the report shows the types of violations found during inspections of dealerships. Our analysis of these violations found that most are the result of dealers' oversight or noncompliance with administrative laws and regulations. None resulted in measurable harm to any individual.

Third, the regulatory activities of the Dealer Licensing Bureau do not provide protection from potential harm. The Bureau's regulation does not

help ensure the competence or qualifications of dealers or salesmen because there are no training, education, or experience requirements for licensure.

If the Legislature decides to retain the Bureau we recommend that the regulation over vehicle salesmen and the dealer-manufacturer relationships still should be discontinued and that dealer inspection activities should be improved.

### **Eliminating Licensing of Vehicle Salesmen**

First, regarding the licensing of salesmen. Based on our review of the licensing requirements, we concluded that the licensing of vehicle salesmen does not serve to protect the public. This conclusion was based on a number of factors.

First, under Kansas law, the dealer employing a salesman is clearly responsible for any wrongful or harmful conduct on the part of the salesman when such conduct is related to his or her work-related activities. The dealer-salesman relationship is one of employer-employee. Any member of the public who is harmed by the actions of a salesman would find most effective and complete recourse through legal action against the employing dealer rather than against the salesman. In our review of vehicle-related complaints filed with the Attorney General, we found that

no complaint resulted in legal action being taken against a motor vehicle salesman; consumer recourse was always obtained through legal action against a dealer, distributor, or manufacturer.

Second, we found no evidence that actions by vehicle salesmen have caused significant harm to the public. No administrative hearings or fines involved violations by motor vehicle salesmen. Further, none of the licensed salesmen in the sample had been disqualified as a result of background checks by the Kansas Bureau of Investigation, nor had any of them ever had their license denied. In fact, there have been no licenses denied during the past five years.

Third, because there are no examination, training, or experience requirements for licensure as a salesman, this function does not help ensure the competence or qualifications of salesmen to perform their jobs.

### **Eliminating Regulation of Dealer-Manufacturer Relationships**

In the area of dealer-manufacturer relationships, Kansas began regulating this area in 1974. The Bureau had no record of major problems in this area at the time, but at the urging of dealers, the 1974 Legislature passed legislation significantly strengthening the laws governing manufacturers. For example, the law imposed the following requirements on manufacturers:

--They must repurchase the inventory of a dealer upon termination of the franchise.

--They must compensate dealers for performance of delivery and preparation obligations specified in the franchise agreement.

--And they must supply dealers with a reasonable quantity of new vehicles within a reasonable period of time after a written order.

Based on our review, we concluded that this type of regulation is not designed for the protection of the public, but rather for the benefit of the new car dealer industry. These matters involve business relationships that can be governed by contracts between the two parties rather than by State regulation.

#### **Eliminating the Dealer Review Board**

The Dealer Review Board was created in 1974 primarily to hear appeals of decisions made by the Director of Vehicles. A review of the legislative history shows that one of the major reasons for the Board's creation was to hear appeals on cases involving cancellations of dealer franchises by manufacturers. Since 1974, however, the Board has heard only four appeals cases--only one of which involved a dealer-manufacturer relationship. Also, the composition of the Board, which is mostly dealers, may leave it open to a legal challenge that it is not an impartial body.

## Inspections

In the area of inspections, we found that the number of inspections of some dealers with no history of violations seemed excessive. The law requires that a dealer's place of business must be inspected and approved before the dealer can be licensed. However, periodic inspections of dealers are not required under the law. Our review found that about one-fourth of the dealers were inspected six or more times in a five and one-half year period although there appeared to be little justification for these inspections such as a history of violations or problems. By contrast, about one-fifth of the dealers were not inspected at all.

We also noted that there were no formal written guidelines for investigators to follow in inspecting dealers and identifying violations. And, there are no formal procedures for a systematic follow-up to ensure violations have been corrected. Formal inspection procedures and instructions would help ensure that dealer inspections are conducted on a uniform basis. Further, the inspection form, which is now a blank form, should be revised to provide a checklist of violations. To improve the inspection process, we recommend that unnecessary inspections be eliminated; that formal inspection guidelines be developed; and the inspection report forms be revised.



## The Titling Process

In the area of title processing our review was designed to address two specific concerns raised by Legislative Post Audit Committee members:

First, Is the titling process timely?

Second, Do dealer requests for titles take priority over individual citizens and cause regular title issuances to be delayed?

We found that the processing time for regular title applications took an average of 24 days--about 12 days at the county level and 12 days at the State level. This did not appear to be an excessive wait for applicants who do not need titles right away. However, eight of the 23 counties in our sample exceeded the county average and one county's average processing time was as long as 22 days.

To address this problem in these counties, we recommend that the Division of Vehicles re-examine its policy on title submissions by counties and request the Legislature to amend State law to impose penalties on counties that do not submit title applications on time.

The average turnaround time for processing priority or "rush" title applications was about 8 days. These requests are being handled much faster than regular title applications, but this faster service seems very

useful for those who need it. We found that both dealers and individuals take advantage of this priority service; and, there was no evidence that dealer requests took priority over individuals' requests.

STATEMENT OF THE DEPARTMENT OF REVENUE  
ON THE SUNSET AUDIT OF THE DIVISION OF VEHICLES

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to appear this morning to comment on the Sunset Audit of the Division of Vehicles. Our statement will be brief, but we have several employees of the Department of Revenue present today for the purpose of answering specific questions that any member of the Committee might have.

We would offer the general observation that the analysis offered by the Post Audit Division was generally sound and thorough and any inaccuracies contained in the Report were minor and were not material to the conclusions reached. Their mention in our written response did not appear to be warranted. We do not necessarily agree with all conclusions reached by the Post Audit Division, but believe that most areas where there is not complete agreement involve legislative policy issues upon which the Department of Revenue would be happy to comment at the appropriate time and place.

A major recommendation in the Report was the elimination of the Dealer Licensing Bureau. The Department believes that the continued licensure of vehicle manufacturers, dealers, brokers and salesmen is a policy matter to be determined by the appropriate committees of the Legislature. If it is the decision of the Kansas Legislature that such regulation is warranted, the Department will continue to require an adequate staff organization, like the present Dealer Licensing Bureau, to continue to license and regulate in an effective manner.

Aside from legislative policy questions, the Post Audit Report identified a number of areas involving dealer regulation which may require the improvement of administrative procedures by the Dealer Licensing Bureau. In furtherance of making these determinations, a committee has been appointed by the Secretary

*Ex. B*

of Revenue to review the Post Audit Division's recommendations with a view towards implementing procedural changes which are warranted. This committee is looking at, among others, the recommendations relating to:

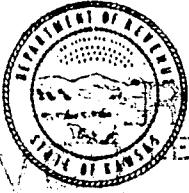
1. Performance of background checks on applicants for licensure;
2. developing better coordination with the district attorneys, the Attorney General's Office and the Better Business Bureau;
3. whether inspections should focus primarily on new dealers, dealers changing location, complaints or repeat violations;
4. development of dealer inspection check procedures; and
5. development of systematic follow-up procedures.

In addition to the ad hoc committee appointed to review the recommendations regarding the Dealer Licensing Bureau, a major ongoing project team has been operating for approximately a year. This project, known as VIPS (Vehicle Information Systems Processing) is addressing many of the concerns expressed by the Post Audit Division about title and registration processing and coordination with the 105 counties. The changes brought about by the VIPS project will be fully operational by 1986, and many of the VIPS committee's recommendations will be implemented periodically between now and 1986. In light of this ongoing comprehensive study, the Department of Revenue believes that it would be premature to make piecemeal changes in title and registration processing procedures.

Finally, another area of the law addressed by the Post Audit Division, concerns the regulation of the relationship between vehicle manufacturers and dealers. The Department of Revenue believes that this subject needs a thorough review by the Legislature. Recent experience has shown the relevant provisions of law to be ambiguous and confusing, and it is clear that procedural defects exist in the present statutes. At the very least, these defects and ambiguities need to be corrected

and adequate powers and guidelines must be given to the Director of Vehicles to enable him to do equity in disputes between manufacturers and dealers.

We will be glad to answer any questions the Committee might have.



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State Office Building  
TOPEKA, KANSAS 66625

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DEPARTMENT OF REVENUE  
MEMORANDUM

DEPARTMENT OF REVENUE

TO: Michael Lennen  
Secretary of Revenue

DATE: January 18, 1983

FROM: Joyce V. Romero

RE: Division of Vehicles  
Sunset Audit

The Division of Vehicles Sunset Audit Project Team has under taken the implementation of a series of improvements in the Dealer Licensing Bureau.

Among these improvements has been the development of a revised form, D-11, to be used by Special Investigators when conducting a vehicle dealer inspection. This form will consolidate the present D-25, Routine Inspection Form and the D-11, Assigned Inspection Form. The revised D-11 provides a check list format to assure that all inspections are conducted on a uniform basis. The back of the D-11 provides instructions and guidelines to be used by vehicle dealer investigators. As has been the policy of the Dealer Licensing Bureau priority is given to inspections concerning, a) new dealers b) dealers who change locations, c) complaints concerning an individual dealer and d) follow-ups of dealers who have a history of problems or violations. Outside of these inspections investigators will complete routine inspections as time permits.

Marc Woods, Bureau Chief, Dealer Licensing Bureau, has made contact with the Better Business Bureau, through Marilyn White, to disseminate information on remedies available through the Department to individuals with complaints against vehicle dealers or salesmen.

The feasibility of using the ASTRA system located in the Alcoholic Beverage Control Bureau to run background checks for the Dealer Licensing Bureau is currently being studied by ABC personnel.

As work progresses this project team will submit further reports.

If you have any further questions or comments, please advise.

*Joyce V. Romero*  
Joyce V. Romero

JVR:mas

cc: Bob Bugg ✓  
Alan Alderson ✓  
Gary Russell  
Harold Turntine  
Marc Woods  
Jim Lane  
Lee McMahan

*Ex. C*



*Kansas*  
DEPARTMENT OF REVENUE

State Office Building  
TOPEKA, KANSAS 66626

January 19, 1983

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DEPARTMENT OF REVENUE

Marilyn White  
Better Business Bureau of  
Northeast Kansas Inc.  
501 Jefferson  
Topeka, Kansas 66607

Dear Marilyn:

The Vehicle Dealer and Salesman Licensing Bureau, as created by the Legislative under the Motor Vehicle Registration Act, requires those persons who are engaged in buying and selling motor vehicles of a type required to be registered to be licensed with the state as a vehicle dealer.

The Dealer and Salesman Licensing Bureau is a regulatory agency that is charged with the responsibility of establishing requirements for conducting business as a dealer in this state. Routine inspections of dealers and salespersons are conducted by department field investigators for compliance. Infractions of these requirements may be concluded in an administrative hearing before the Director of Vehicles.

The Director has several remedial actions he may exercise if he finds that the dealer or salesperson has violated any provision of his licensure, among them are: (1) Revocation of the dealership (2) Suspension of license (3) Civil penalty or both civil penalty and suspension. In addition to these remedial options, the Director may also require a corporate surety bond be furnished, in such form and amount, and with such sureties as may be required by the Director.

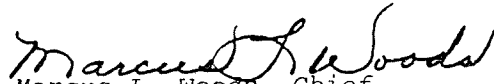
Although the bureau is not empowered to collect damages in the case of consumer fraud, matters of this nature, when brought to the attention of the bureau are referred to the State Attorneys General Department.

In addition to the licensing of dealers, the bureau publishes annually, and updates periodically, a listing of licensed dealers, manufacturer's, distributor's, and franchises held by these individuals.

All dealer related problems may be forwarded to this agency's attention  
at this address:

Kansas Department of Revenue  
Division of Vehicles  
Dealer and Salesman Licensing Bureau  
State Office Building  
Topeka, Kansas 66626

Very truly yours,



Marcus L. Woods, Chief  
Dealer and Salesman Licensing Bureau  
Division of Vehicles

MLW:nc

cc: Alan Alderson ✓  
Robert Bugg  
Harold Turntine  
Jim Lane  
Lee McMahan  
Joyce Romero



Statement by the  
KANSAS MOTOR CAR DEALERS ASSOCIATION  
before the  
SENATE COMMITTEE on GOVERNMENTAL ORGANIZATION

Chairman Vidricksen & members of the Senate Committee. On behalf of the 415 members of the Kansas Motor Car Dealers Association we appear before you today in support of the continuance of the Dealer Licensing Bureau, Dealer Review Board, and the Dealer-Manufacturer Licensing Law.

The franchised new car and truck dealers of Kansas feel that all three of the above mentioned are vital to a good business climate for dealers and fair treatment for customers.

There are several specific items we would like to address which we feel justify the existance of the Bureau, Board, and Law.

The Dealer-Manufacturer Licensing Law was enacted during the 1974 Session of the Kansas Legislature on the urging of KMCD. Dealers for many years have been at a severe disadvantage when dealing with the manufacturer of the vehicle they market. Factory franchise agreements are unilateral in the strongest sense of the word. The factory writes one agreement which is used for every dealer in the nation wanting or having that franchise. If a dealer doesn't like what is in the agreement, his only option is to not sign which means not having a franchise. The manufacturers do not negotiate their franchise agreement with each individual dealer, and won't. This law has put certain requirements on manufacturers which they would not include in their franchise agreement. For example, manufacturers are required to "reasonably compensate" their franchised dealers for warranty defects corrected by the dealer in the manufacturer's product. "Reasonable Compensation" can be considered to be the rate or charge which dealers in good faith charge their

regular customers for the same work. This means that the manufacturers have to allow dealers a similar rate or charge for warranty work, which was not necessarily the case prior to the enactment of the law.

The effect of this is that the regular customer is not having to make up the difference which the manufacturer might not have paid without this requirement. It just stands to reason that if the manufacturer would not pay a reasonable rate to the dealer for warranty work, then the dealer would have to increase the rate of charge for the regular customer who has work done to his vehicle under non-warranty claims.

The law attempts to prevent manufacturers from coercing, intimidating or discriminating against a dealer by forcing them to participate in programs, advertising, or purchasing unwanted vehicles under the threat of having their franchise cancelled.

It also prevents the manufacturer from arbitrarily or unreasonably cancelling a franchise or preventing the proposed sale or transfer of a dealer's business.

The law, which contains many other provisions, works in consort with the Directors Office and the Dealer Review Board in preventing abuses against and by dealers.

On numerous occasions, manufacturers have threatened dealers with loss of franchise, or other assorted threats. When the manufacturer is made aware of the law, the threats have quickly halted.

One of the criticisms of the Dealer Review Board has been their lack of cases to review and act on. The main reason for the lack of cases, in our opinion, is that when a case is brought by a dealer against a manufacturer, in most cases, the manufacturer will settle the dispute before it goes

to the hearing. It is not uncommon for settlements to be made minutes prior to the hearing beginning.

KMCDA feels the fact that the law and the Board are in place keeps everyone, dealers and manufacturers alike, operating more respectable and above board.

The Kansas Legislature apparently felt that it was in the public's interest to enact this legislation which provides for the protection not only of the dealer, but of the consuming public in the purchase and trade of vehicles. The law specifically outlines operation practices by dealers to protect the public against the irresponsible vendor and dishonest or fraudulent sales practices.

As with any law, administration is necessary. The Dealer Licensing Bureau is already setup and operating enforcing the provisions of this act and performing necessary services related to this act and other statutory provisions. Should the law be eliminated, certain provisions would have to be retained, i.e., dealer tags, inventory tax stamps, 15-day permits, etc. We submit that if these tasks were transferred to another department, little if any revenue would be saved as someone still has to do the work.

Finally, we would like to point out that even though this is not a true "fee agency," the revenue generated by licensing dealers, manufacturers & salesmen & sale of dealer plates, exceeds the expenses of the Bureau, Board, and enforcement of the law.

We urge that this Committee take no action which would in effect sunset the Dealer Licensing Bureau and Dealer Review Board, or repeal the Dealer-Manufacturer Licensing Law considering that many other states either have a similar type of law, or are attempting to enact similar legislation. Currently 45 states license new and used car dealers, 37 license manufacturers,

and 22 license salesmen. We would estimate that over half of the states regulate the dealer/manufacturer relationship in a similar manner to Kansas.

We feel that any action to remove regulation in Kansas would be a severe regression for Kansas consumers and dealers.

If there are any questions, I would be happy to attempt to answer them. Thank you.