

Approved 2-26-90
Date

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Senator Lana Oleen at
Chairperson

1:35 ~~xxx~~ p.m. on February 13, 1990 in room 531-N of the Capitol.

All members were present except: Senator Vidricksen - Excused
Senator Gaines - Absent

Committee staff present: Julian Efird - Research
Fred Carman - Revisor

Conferees appearing before the committee: Pat Barnes, Kansas Motor Car Dealers
Walt Lesline, Chairman, Dealer Review Board
Bob Parrish, Member, Dealer Review Board
Dan Carlson, KS. Independent Auto Dealers
Terry Humphrey, KS Manufactured Housing Asso.
Mark Wettig, Special Assistant to the
Secretary of Revenue
Steve Wiedman, KS Automotive Dismantler &
Recyclers

Hearing on:

SB 539 - Vehicle Review Board

Pat Barnes testifying in support of SB 539 reviewed the establishment of the Dealer Review Board and membership criteria. The primary responsibility of the Board is reviewing violations of the Dealer Licensing Act and the investigation of acts and practices by manufacturers against dealers and practices of dealers against the general public. The Board lost some of its statutory power with revisions of the Administrative Procedures act adopted several years ago. The powers now rest with the courts and this procedure can sometimes be inefficient and costly. The expertise and knowledge of board members keeps the state informed of changes in the industry as well as making recommendations. Mr. Barnes feels the Board needs to have the power, once again, to be a participant in the appeal process regarding violations of the Licensing Act. The loss of power should be rectified as this Board has merit for all concerned. (Attachment 1)

Walt Lesline acquainted the Committee with members of the Board and spoke of their qualifications and genuine interest to serve with little compensation. Responsibilities of the Board were outlined. Fair and just arbitration could be accomplished by the Board without expensive court costs and the Vehicle Department would not be possibly placed as both judge and jury. (Attachment 2)

Bob Parrish testified that the Dealer Review Board stands as a deterrent for abuses and unfair practices in keeping with the Manufacturer License Law. The fees charged for licensing salesmen will more than cover the cost of the Dealer Review Board. Mr. Parrish supports passage of SB 539. (Attachment 3)

Dan Carlson stated the Dealer Review Board acts as a sounding board with the Department of Motor Vehicles and to the Director of the Department. Mr. Carlson stated the Board should have the ability to review alleged violations in an appeal process and current law does not allow it to function in this way. With some needed changes, the Board will serve in the best interest of the public and automobile dealers. (Attachment 4)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION,

room 531-N, Statehouse, at 1:35 a.m./~~p.m.~~ on February 13, 1990

Terry Humphrey testified that KMHA supports the provisions in SB 539 that allows continuance of the Board and has provisions for the appeal to the Dealer Review Board by an aggrieved person as a result of a decision of the Director of Motor Vehicles. Ms. Humphrey also requested amending SB 539 to include a representative of manufactured housing to serve on the Dealer Review Board as it has regulatory authority over the industry. (Attachment 5)

Steven Wiechman, testifying in support of SB 539, feels the restoration of the power to participate in the appeal process by the Dealer Review Board with its expertise and knowledge could save thousand of dollars as well as time. Mr. Wiechman feels it is important for the legislature to provide a tool to the industry to regulate and control themselves. (Attachment 6)

Mark Wettig stated the Department of Revenue strongly opposes the granting of judicial powers to the Dealer Review Board, but supports its continuance. Provisions of the bill objected to are as follows: granting authority to prosecute any licensee it so chooses; insertion in the chain of appeal between the Vehicle Director and the District Court. This would undo the uniform system of appeals for all agency actions which are now in effect. Mr. Wettig requested striking the requested provisions. (Attachment 7)

At the request of the committee Mr. Barnes delivered a rebuttal to the opposition of Mr. Wettig with examples of court procedures, the possible unsatisfactory results and expenses involved. He demonstrated the useful inclusion of the Dealer Review Board in the hearing process because of knowledge and expertise in the industry. There is no opposition to the inclusion of a representative of the manufactured housing on the Dealer Review Board.

Discussion followed, and Chairman Oleen indicated that there might be some constitutional problems with the Board's request for their proposed appeal process. She will inform the Committee on this issue following research.

Meeting adjourned. The next meeting will be February 19, 1990.

GUEST LIST

COMMITTEE: SENATE GOVERNMENTAL ORGANIZATION

DATE 2-13-90

NAME	COMPANY / ORGANIZATION	ADDRESS
PAT BARNES	Kf. Moto Car Dealers Assoc	Topeka
Dwayne E. Sh...	Valley State Bank	Belle Plaine Ks
Kenneth R. Jinsley	Boeing	Belle Plaine Ks
Robert Lesline	Dealer Review Bd Chapman Robinson Lesline Truck	Wichita Ks
Bob Arnold	Parrish Motor Co	Great Bend Ks
John M. M...	Insurance Management Assoc	Wichita Ks
Ken Collins	Collins Personal Cars, Inc.	Hutchinson Ks
Joe K. ...	Kansas Livestock Assoc.	Topeka Ks
Glen E. Fuge	Fuge Motor Co Member Dealer Board	Hempstead MO
Donkuon	U.S. Motor Car Dealers Assoc.	Topeka
Steven R. Wiechman	Kansas Automotive Dismantlers & Recycling Assn	Topeka
Jacque Dakes	Topeka Ks. Ind. Auto. Dealers Assn.	
Dan Carlson	KS Ind Auto Dealers Association	Topeka
Mark Wetli	K D O R	Topeka
BOB HONEYMAN	FARMER UNION	JUNIATA CITY

STATEMENT BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL
ORGANIZATION BY THE KANSAS MOTOR CAR DEALERS ASSOCIATION
TUESDAY, FEBRUARY 13, 1990

Re: SB 539 - Restoring Dealer Review Board

Madam Chairman, members of the committee, I am Pat Barnes, legislative counsel for the Kansas Motor Car Dealers Association representing 330 franchised new car and truck dealers in Kansas. I appear before you to support SB 539, a very important issue to us. This bill would reestablish the Kansas Dealer Review Board which is presently scheduled to sunset this July 1.

For many years Kansas has had the Dealer Review Board acting as an advisory, investigatory and, to a certain extent, judicial body within the framework of the dealer licensing laws. The board was originally established by K.S.A. 8-2412 which sets forth the criteria for its makeup, membership and other agency requirements. The eight members of the board established by law, consist of two public at large representatives, two new vehicle dealers, two used vehicle dealers, a manufacturer representative and a salvage vehicle dealer representative. The members are appointed to serve three years terms which are staggered. The board was never intended to assume a full time operating function, but only meets when needed. As such, it is a very efficient body for the State to have.

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The Dealer Review Board was originally established as a buffer between dealers and manufacturers in regard to franchise contracts and as a self-regulating industry board with regard to reviewing violations of the Dealer Licensing Act. In fact, their primary responsibility was reviewing and fact finding with regard to violations of the Dealer Licensing Act. They also investigated unconscionable acts and practices by manufacturers directed against dealers and by dealers directed against the general public. From our review of the authority the Dealer Review Board once held as compared to the authority it now holds, it appears the board accidentally lost a great deal of its power with the voluminous revisions in the Administrative Procedures Act adopted several years back. The result is now a hodgepodge of board powers which essentially cannot be exercised, except through the Courts, which is not efficient.

Despite the "revisions", the Dealer Review Board currently serves an important function for the Kansas automotive industry. Because the board's construction is representative of the public, all segments of the industry and active in the day to day operations of affected business, its members:

(1) Are a useful resource for the Department of Motor Vehicles in establishing regulations that improve dealer practices;

(2) Serve as an experienced body to make suggestions for changes in current law;

(3) Are a sounding board for industry problems; and

(4) Provide the expertise necessary to ferret out operating problems created by current law, yet balance problems against the greater public interest.

In short, this board keeps the State of Kansas informed as to the continually changing automotive business environment. This is a complex industry which at times cannot be fully understood without a working knowledge of practices within the industry, whether those practices be legitimate or illegitimate.

Those in charge of regulating the industry under the authority of the Dealers and Manufacturers Licensing Act would be without an effective means of evaluating problems created by Kansas laws and practices, as well as possible solutions, without the Dealer Review Board. Elimination of this board would leave Kansas dealers without an effective regulatory board through which problems could be expertly analyzed and recommendations made to the State.

When the amendments to accommodate the Administrative Procedures Act were made, the board lost its function of refereeing and balancing out the disparity of bargaining power between dealers and manufacturers. Without the Dealer Review

Board there is very little Court relief available to address strong arm practices by manufacturers wielding the powers of their boiler plate franchise contracts. This function would be reestablished by SB 539 without disrupting the present administrative framework or amending the Administrative Procedures Act. We do ask that the Dealer Review Board once again be given the power to act as a participant in any administrative appeal process regarding violations of the Dealers and Manufacturers Licensing Act, or other issues raised under that Act for Dealer Review Board action.

In restoring that function, all you would be doing with this bill is providing an aggrieved party the ability to appeal a decision of the Director of Vehicles to the board and appeal a decision of the board to the judicial system. This is no different from what takes place when a person files an unemployment compensation claim, or another claim under another type of governing board, whether it be a medical doctor, attorney or other regulated profession. It appears the removal of the Dealer Review Board's previous authority was nothing more than accidental and the problem is easily corrected with this bill.

This board is a dealer's last line of defense against loosing his dealership, or investment, due to unfair or arbitrary enforcement, manufacturer requirements or other practices. Indirectly, communities are also protected, especially small com-

munities, since dealerships have a noticeable economical impact wherever they are located. Even so, this is not the only function the board provides the public. There are many other acts which are prohibited by law which this board is able to address.

The cost of this board is nominal. Historically, it was self-funded by salesmen licensing fees. The cost in 1989 to operate the Board was under \$5,000.00. With the restoration of the board's power, we do not anticipate the cost would substantially increase based upon the number of appeals that are now being heard by the Director of Vehicles. Most importantly, however, is the fact that this board would operate different from the present system with the inherent conflict where the Division of Vehicle's attorneys sit as both advocates and decision makers in the hearing process.

In closing, I would say to you this is one of the better examples of a cost effective board which actually has a beneficial impact on the regulatory affairs of the industry and public with which it deals. It is a mere accident that this board lost much of its authority, and that accident should be rectified. We hope you will support this action as, once again, dealers of all kinds cannot operate without the Dealer Review Board. It had merit when the legislature first created it, and it has merit now

**STATEMENT BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL
ORGANIZATION BY WALT LESLINE, CHAIRMAN, DEALER
REVIEW BOARD AND BUICK DEALER IN WICHITA, IN SUPPORT OF SB 539**

THANK YOU MADAM CHAIRMAN AND MEMBERS OF THE COMMITTEE. I AM
WALT LESLINE, CHAIRMAN OF THE KANSAS DEALER REVIEW BOARD, AND
BUICK DEALER IN WICHITA, KS. I APPEAR BEFORE YOU TODAY IN SUPPORT
OF SB 539.

ONE OF THE REASONS I AM HERE TODAY IS BECAUSE I FELT IT IMPORTANT
THAT YOU KNOW THE PRESENT MEMBERS OF THE DEALER REVIEW BOARD.
THESE MEMBERS WERE APPOINTED UNDER THE PRESENT STATUTORY
GUIDELINES.

WITH ME TODAY ARE:

BOB PARRISH, VICE CHAIRMAN AND NEW AND USED CAR DEALER FROM
GREAT BEND.

GLEN FRYE, NEW AND USED CAR DEALER FROM HADDAM.

RON COLLINS, MANUFACTURERS REPRESENTATIVE, COLLINS
INDUSTRIES, HUTCHINSON.

JACK CASSELL, INSURANCE AGENT-WICHITA. REPRESENTING THE
PUBLIC AT LARGE.

NOT HERE TODAY:

HOMER CLARK, NEW AND USED CAR DEALER FROM HORTON.

GIL BROXTERMAN, RETIRED. REPRESENTING THE PUBLIC AT LARGE.

THERE IS PRESENTLY ONE VACANCY ON THE BOARD.

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THESE INDIVIDUALS HAVE MANY YEARS OF EXPERIENCE IN ALL PHASES OF THE AUTOMOBILE INDUSTRY INCLUDING SALES, SERVICE, MANUFACTURING AND INSURANCE. THEY ALSO REPRESENT THE PUBLIC PERSPECTIVE TO PROTECT THE CONSUMER.

ALL MEMBERS HAVE A GENUINE INTEREST IN THE FUTURE OF THIS REGULATORY BOARD. THIS IS EVIDENCED BY OUR WILLINGNESS TO SERVE FOR VERY LITTLE COMPENSATION. THE BOARD HAS ACCOMPLISHED MUCH IN RECENT YEARS EVEN WITHOUT THE POWER TO CONDUCT HEARINGS WHILE LIVING WITHIN A SMALL BUDGET.

THE BOARD-

SERVED AS THE AD-HOC COMMITTEE IN REVIEWING THE CURRENT D-TAG LAWS AND PROVIDES FOLLOW UP INFORMATION ON ITS EFFECTIVENESS;

PROVIDES THE VEHICLE DIRECTOR WITH INDUSTRY EXPERTISE IN AN EVER CHANGING BUSINESS AND GUIDANCE IN LEGISLATIVE MATTERS;

POLICES ITS OWN RANKS FOR MISCONDUCT;

ACTS AS AN ARBITRATOR BETWEEN THE MANUFACTURERS AND DEALERS ON MANY ITEMS, ESPECIALLY WARRANTY CLAIMS;

AND ACTS AS A DETERRENT TO UNFAIR PRACTICES BY THE DEALERS AND MANUFACTURERS.

THE ONLY PLACE FOR A DEALER TO GO WITHOUT THE BOARD WOULD BE DISTRICT COURT, WHICH IS TIME CONSUMING AND VERY EXPENSIVE.

WITHOUT THE BOARD, THE VEHICLE DIRECTOR WOULD BECOME THE JUDGE AND JURY ON ANY DEALER PROBLEMS BROUGHT BEFORE HIM.

THE BOARD DOES NOT COST THE STATE ANY MONEY, SINCE THE ORIGINAL DEALER AND SALES LICENSING FEES WERE TO DEFRAY THE COST OF THE BOARD. THESE FEES HAVE SINCE BEEN RAISED TO MORE THAN ACCOUNT FOR INFLATION.

THE BOARD, FROM TIME TO TIME, MAY NOT HAVE A LOT TO DO, BUT IT'S VERY PRESENCE INSURES OUR KANSAS CONSUMERS AND KANSAS AUTOMOBILE DEALERS FAIR TREATMENT.

THE FUNCTION OF THE BOARD WOULD BE BETTER IF RESTORED TO MORE AUTHORITY, SUCH AS PROVIDED IN SB 539. THIS PROPOSAL WOULD PROVIDE THE NEW CAR DEALER AND THE MANUFACTURER WITH A FAIR REVIEW BY A JURY OF BOTH PARTIES PEERS WHO UNDERSTAND THE TECHNICALITIES OF THE BUSINESS.

SB 539 WOULD ALSO MAINTAIN CONSISTENCY IN THE HEARING PROCESS. DIRECTORS COME AND GO, AS DO INTERPRETATIONS OF RULES AND REGULATIONS, WHILE THE DEALER REVIEW BOARD IS MORE "LONG TERM".

THAT CONCLUDES MY TESTIMONY, BUT I WOULD BE HAPPY TO ANSWER ANY QUESTIONS.

SB 539 DEALER REVIEW BOARD

For years licensees under the Dealer and Manufacturers Licensing Act had the ability to appeal a finding of a licensing violation from the Director of Vehicles to the Dealer Review Board. Their primary responsibility was reviewing and fact finding in regard to violations of the dealer licensing act. They also investigated unconscionable acts and practices by dealers and manufacturers for violations of the act and help govern dealer - manufacturer disputes.

With the addition of the Kansas Administrative Procedures act to our law the Dealer Review Board was either overlooked or effectively bypassed, although it still presently exercises advisory power and technically has the power to enjoin dealer violations of the licensing law through court action. Kansas dealers cannot do without this important board which is scheduled to sunset this July unless the legislature revises it's authority.

DEALERS NEED THE DEALER REVIEW BOARD

* **It provides consistency in enforcement of dealer licensing laws.** Motor Vehicle Directors come and go and thus interpretations change. The Dealer Review Board would lend consistency by changing less frequently.

* **It provides a Dealer-Manufacturer dispute settlement process by someone knowledgeable.** Disputes between automobile dealers and the manufacturers are more prevalent than ever before. The issues are unique to the auto industry. The insight provided from a board of people within the industry would be beneficial in understanding the issue and reaching a fair decision.

* **Minimal Cost is required to maintain.** Under \$5,000 in 1989.

PLEASE SUPPORT SB 539

**STATEMENT BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL
ORGANIZATION BY BOB PARRISH, MEMBER, DEALER
REVIEW BOARD AND DODGE DEALER IN GREAT BEND, IN SUPPORT OF SB 539**

THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE. MY NAME IS BOB PARRISH. I AM A PAST PRESIDENT OF KANSAS MOTOR CAR DEALERS ASSOCIATION AND A MEMBER OF THE DEALER REVIEW BOARD. I HAVE BEEN A CHRYSLER DEALER SELLING DODGE CARS AND TRUCKS FOR FORTY YEARS.

SOME OF YOU MAY HAVE BEEN ON THIS COMMITTEE WHEN THE DEALER MANUFACTURER LICENSE LAW WAS ADOPTED. I HAD THE OPPORTUNITY TO APPEAR BEFORE THE COMMITTEE AT THAT TIME. THE REASON FOR THE LEGISLATION WAS TO STOP ABUSE OF SALES AND SERVICE PRACTICES BY THE VEHICLE DEALERS AND MANUFACTURERS, IN THE BEST INTEREST OF ALL OF US - INCLUDING OUR CUSTOMERS.

TO MY KNOWLEDGE, ALMOST ALL OF THE 50 STATES HAVE SIMILAR LAWS, AND MANY, SUCH AS NEBRASKA, ARE MUCH STRONGER AND EVEN ASSUME THE DUTIES OF THE DIRECTOR OF VEHICLES. WE HAVE AN EXCELLENT MOTOR VEHICLE DEPARTMENT, AND OUR REQUEST IS NO REFLECTION ON THIS DEPARTMENT.

IN THE ORIGINAL COMMITTEE HEARINGS, GENERAL MOTORS AND FORD TESTIFIED IN OPPOSITION TO THE BILL. THAT MAKES IT OBVIOUS THIS LAW WAS IN THE BEST INTEREST OF KANSAS DEALERS AND CONSUMERS. AFTER THAT HEARING, I HAD A LONG DISCUSSION WITH THE GENERAL MOTORS

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LOBBYIST TO DISCUSS "RED MEAT" BILLS. IF YOU ARE INTERESTED IN THAT CONVERSATION, I AM WILLING TO BRIEF YOU.

THE AUTOMOBILE DEALERS ASKED THAT OUR SALESMEN BE LICENSED AND THE FEES WOULD MORE THAN COVER THE COST OF THE DEALER REVIEW BOARD. OUR FEELING WAS THIS SHOULD NOT BE A TAXPAYER EXPENSE.

I WILL COMPARE THE DEALER REVIEW BOARD TO A "YIELD" SIGN ON THE HIGHWAY. IT JUST STANDS THERE. EVEN THOUGH IT ISN'T **DOING** ANYTHING, THE CARS DON'T RUN INTO EACH OTHER.

THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU IN SUPPORT OF THIS BILL AND I WILL BE HAPPY TO ANSWER ANY QUESTIONS ON HOW THIS BILL WILL PREVENT ABUSE OF KANSAS DEALERS AND OWNERS.

KANSAS INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION

1115 WESTPORT SUITE E • MANHATTAN, KANSAS 66502 • 913-776-0044



TO: SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

SUBJECT: SENATE BILL 539

Madam Chairman and Members of the Committee:

My name is Dan Carlson, President of the Kansas Independent Automobile Dealers Association. I am here today representing 332 used car dealers in the State of Kansas, and asking for the continuation of the Kansas Vehicle Dealer Review Board.

The Dealer Review Board as it stands now acts as a sounding board with the Department of Motor Vehicles and to the Director of Motor Vehicles concerning current laws and business in general. The people that serve on the board are active members of the automobile industry and provide great expertise in their meetings with the Department of Motor Vehicles.

However, the average used car dealer knows little of the Dealer Review Board because current law will not allow it to function the way it should. We believe the Board should also have the ability to listen and review in an appeal process alleged violations of Dealer Licensing laws as well as other violations.

We believe that this Board is necessary to the Kansas Automobile Dealer for a voice in the determination of the laws that govern our industry. The continuation of this Board along with some of the needed changes will help the Automobile Dealers of this state and will serve the best interest of the public.

Thank you for your time.

Individually we struggle to be heard—Collectively we cannot be ignored.

J.G.O.
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KANSAS MANUFACTURED HOUSING ASSOCIATION

TESTIMONY BEFORE SENATE

COMMITTEE ON GOVERNMENTAL ORGANIZATION

TO: Senator Lanna Oleen, Chairperson
and Members of the Committee

FROM: Terry Humphrey, Executive Director
Kansas Manufactured Housing Association

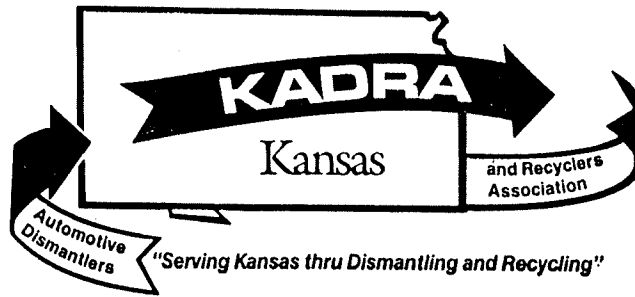
DATE: February 13, 1990

RE: Senate Bill 539

Chairperson Oleen, and members of the Committee, I am Terry Humphrey, Executive Director of the Kansas Manufactured Housing Association and I am pleased to have the opportunity to comment on Senate Bill 539.

KMHA supports the provisions of Senate Bill 539 that allows a person aggrieved by a decision of the Director of Motor Vehicles to appeal that decision to the Dealer Review Board. However, because the manufactured home dealer is also governed under Article 24 of Chapter 8, we would ask that Senate Bill 539 be amended to include a representative of the manufactured housing industry to serve on the Dealer Review Board. At this time there is no statutory provision for such a representative and we believe it is important to have someone on this board who is knowledgeable about the industry since they maybe asked to handle these appeals.

As you might guess, manufactured housing is somewhat out of place in the motor vehicle statutes. And at some point in the future, we hope to be separated but until then, it is very important that we are represented on the board that has regulatory authority for us. I appreciate your attention to this matter and I hope you will approve an amendment to Senate Bill 539 that would put a representative of the manufactured housing industry on the Dealer Review Board. Thank you.



SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

February 13, 1990

SENATE BILL NO. 539

Madam Chairman, Members of the Committee:

I am Steven R. Wiechman, general counsel for the Kansas Automotive Dismantlers and Recyclers Association.

With the committee's permission, I feel compelled to share with you some of my experience with the vehicle industry and state government to provide you some history to consider in your deliberations on Senate Bill 539.

When I completed law school in 1974, I became the attorney for the K.B.I. working in organized crime. That experience lasted for one year. Thereafter, I began working for the Department of Revenue, Legal Services Division, Division of Vehicles.

Executive Office
1101 W. 10 Topeka, Kansas 66604
913 - 233-1666

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During my three plus years with Revenue, I had the opportunity to be the legal counsel to the Dealer Review Board. Evelyn Fateley was the chairman of the Board for part of the three years. In addition, I was also setting in the Director of Vehicles chair. During that time, I held hearings for dealer violations. More importantly, during that period, I held a hearing involving a vehicle manufacturer that wanted to cancel a franchise agreement with the Pontiac dealership in Wichita, called Dahlinger Pontiac. Some of you will recall that dealership.

Part of that three day hearing revolved around a financial take over, an involuntary leverage buyout, of the dealership by a person connected to the John Delorean organization. Both the manufacturer and the former dealer, Jerry Dahlinger had an opportunity to come before the Director of Vehicles to present their concerns, claims and defenses. Findings of fact and conclusions of law were written. Because there was a Dealer Review Board in existence at that time, an appeal of my decision was made

to the dealer review board to review my decision. Without the dealer review board, the appeal would have been to the District Court. But because the dealer review board existed, that board, as it was composed at that time, had an understanding of the related issues of the vehicle industry. That knowledge allowed what could have been a lengthy appeal process through the Court system to be handled by those-in-the-know in one day. The knowledge and expertise saved thousands of dollars for the parties and the same for the state court system.

There is, in existence now, experimental programs across the state to create alternative dispute resolution to relieve the Court system of burdens of new cases. It is my firm belief that the continuation of the existence of the Dealer Review Board and the restoration of the powers of the Dealer Review Board is a way for alternative dispute resolution. In some respects, it is better than one person setting as the decision maker. There is a broader span of knowledge to draw upon to resolve disputes short of the

Court. I will not stand before you today and tell you that the existence of the Dealer Review Board will prevent Court appeals. However, I do believe that it will, in many cases, produce a result that will provide dispute resolution at reduced costs to the parties and Kansas taxpayers. How many, I cannot say. Just as we cannot say how many lives are saved with a seat belt.

Senate Bill 539 is necessary to the industry as a whole. Not just to the advantage of the dealer or manufacturer but also to the individual consumer. K.S.A. 8-2402 sets forth the declaration of public policy. It states in part that it is the policy of the state to provide "fair and impartial regulation;" to promote "fair dealing and honesty" in the industry among those engaged in the industry without unfair or unreasonable discrimination or undue preference or advantage; to protect the public interest in the purchase and trade of vehicles and to protect against irresponsible vendors and dishonest or fraudulent sale practices. I feel confident in saying that

there is no one harder on a vehicle dealer or manufacturer who is dishonest, deceptive, fraudulent or simply unfair, than another vehicle dealer. To be otherwise reflects on ones own way of life if you are a dealer. No one is more critical of another member of the legislature if someone has done some act contrary to public policy than a member of the legislature. In such a case, it reflects upon you. I can simply say, that I believe that it is in the best interest of the State of Kansas for you as a legislative body to provide a tool to industry to regulate and control themselves. If that tool is provided and not used, there is no one to blame but themselves. The cost is insignificant compared to the costs that would otherwise be expended.

I will be happy to try to address your questions or provide you further information, if I can do so.

Respectfully submitted,

Steven R. Wiechman
Attorney for KADRA

MEMORANDUM

TO: The Honorable Lana Oleen, Chairwoman
Senate Governmental Organization

FROM: Mark E. Wettig
Special Assistant to the Secretary of Revenue

DATE: February 13, 1990

SUBJECT: Senate Bill 539

The Department of Revenue appears before you today in opposition to a portion of Senate Bill 539.

BACKGROUND

The Department does not oppose repealing the sunset provision of K.S.A. 74-7276 and allowing the Dealer Review Board to continue in existence.

The Department does, however, strongly oppose the granting of prosecutorial and judicial powers to the Dealer Review Board. The provisions of the bill that the Department objects to are as follows:

- I. Giving the board the authority to commence a prosecution against any licensee it so chooses.

This provision lends itself to the possibility of abuse as well as being a violation of the licensee's Due Process rights.

- II. Inserting the board in the chain of appeal between the Director of Vehicles and the District Court.

This authority was abolished July 1, 1985, in conjunction with the passage of the Administrative Procedures Act and the Act for Judicial Review of agency actions. These acts were the result of years of study and cooperation between the Supreme Court, law professors, members of the legal community, and

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various judicial committee members of the legislature to create a uniform system of appeals for all agency actions. To undo their work and re-assert the Boards power in this area totally flies in the face of administrative and judicial progress.

CONCLUSION

In conclusion, the Department of Revenue would ask the committee to strike the requested provisions of Senate Bill 539, with the exception of sunset repealer.