

Motor Vehicle Advisory Board 1/22/13
Meeting called to order at 2:09 PM by John Beutler.

John welcomed everyone in attendance. Those in attendance were:

John Beutler, Chair, Advisory Board Member
Sam Barber, Advisory Board Member
David Morris, Advisory Board Member
Greg Miller, Advisory Board Member
Michael Cragun, Commissioner, Tax Commission
Barry Conover, Executive Director, Tax Commission
Kent Jorgensen, Director, MVED
Curtis Stoddard, Assistant Director, MVED
Allan Shinney, Lieutenant, MVED
Jenny Stanger, Office Manager, MVED
Wayne Jones, IADA
Craig Bickmore, NCDU
Dane Wood, NICB

Gary Petersen, Advisory Board Member - Absent

John Beutler called meeting to order at 2:09 PM. John welcomed everyone in attendance.

John Beutler observed no public was present in the meeting so there will be no public comment at this time.

John Beutler stated there was a discussion about brokering in the last meeting minutes. Gale Francis is not in attendance at the meeting this time. He wants that carried over to the next advisory board meeting so it doesn't fall through the cracks. John asked for a motion to approve the minutes from January 2012. David Morris made a motion to approve the minutes. Sam Barber seconded. All board members present approved.

Time was turned over to Commissioner Michael Cragun for training in regards to the open meetings act. All public bodies shall hold public meetings if there is a quorum. The Motor Vehicle Advisory Board is considered a public body. There must be a majority of the board members present to be considered a quorum. Information of the regular meeting schedule must be posted annually. Agendas must also be posted 24 hours in advance. Agenda must specify which topics the board is going to consider. Action Items must be indicated if you are going to vote on something. All meetings must be recorded. Recordings must be made available to the public. Minutes must also be provided. A public body can have a closed meeting but only for specific reasons and you must take a vote to do a closed meeting. You must start a closed meeting during an open meeting. You cannot take any action during a closed meeting and notes are optional. Training must be provided yearly in regards to the open meetings act.

John asked Jenny when the elections must be held for the board members. Jenny stated they must be held yearly. Curtis Stoddard read from the code and explained the elections must happen each July or as soon thereafter that is practicable. Barry Conover stated they had received an email from the Deputy Chief of Staff saying that they wanted board members that had more than two terms replaced so that other people could participate on boards. In order to not lose the knowledge of the board, you cannot replace the whole board at the same time. Kent and Curtis have been asked to look at the appointments of the board members. Barry also stated that statute states that board members will serve until a replacement board member is found. The Governor's Office has not looked at the board since information was last sent to them in 2010. Barry said there is no rush but something needs to be put together. We will work together to come into compliance with the new request from the Deputy Chief of Staff. John asked if they want to replace board members every 6 months. Kent stated they would like the board be replaced in a staggered way. Replace one or two people every two years so they don't lose the knowledge of the board. Curtis has been working on a way to replace board members in an orderly way. Statute says each board member shall serve for 4 years or until a new appointment is made. Half of the board should be appointed every two years. Sam's time was up in 2011. John's time was up in 2012. Gary's time was up in 2012. Dave's time was up in 2011. Greg's time is up in 2013. Greg asked if it could be revised to be 5 years? John also stated they should consider looking at the size of the board. Should it be larger or smaller? John feels like another used car dealer should be on the board. Barry said statute would have to be changed to allow any changes like that.

John opened up comments in regards to elections. John suggested to have the chairman be someone that would be on the board a little longer, which is Greg Miller. Greg said he is happy to serve but wants everyone to know his attendance has not been stellar and he doesn't want to commit to something he cannot fulfill. His attendance to this point is what should be expected in the future. He has attended every meeting he can. John asked if his attendance would change as Chair. Greg stated no. If the meetings are on the same dates he would have some conflicts. Maybe an alternative would be to have a vice chair that could conduct in his absence. Sam stated that when Larry Miller was chair that they also did the same thing since he also couldn't attend every meeting. Sam stated Larry's attendance and Greg's attendance have been pretty similar in his observation. John stated he feels like the chair should be someone that is involved in the pulse of the auto industry. Greg stated their business has become involved in other aspects and Greg is not involved as much in the auto industry. Greg suggested Dean Fitzpatrick as a board member for their organization. Kent stated that Dean is only an employee of the dealership and statute states that they must be an owner. Curtis said the elections they are looking for right now are just positions for current board members. Appointments for new board members must be presented to and chosen by the Governor. John asked where the names for new board members come from? Curtis stated the industry, board members, and from MVED. Those suggestions are submitted to the Commissioners. The Commissioners then submit a suggestion to the Governor's Office. Greg asked if the prerequisite is that you must have a dealer license? Barry felt like the statute would require that. Curtis read from the statute that states the board member must be a licensee from the industry. One board member must be from new motor vehicle dealers; one

board member must be from used motor vehicle dealers; and one from manufacturers, transporters, dismantler, crushers, remanufacturers and body shops. The other 2 board members are open to any of the types. Greg said he would go back to his original question, if the most important thing is to advise in a meaningful manner than Dean would be the perfect fit. If they had to they could set up a body shop license and place Dean in a position that would allow him to serve that could be done. Barry agreed Greg could set up a business for that purpose but reminded the board members that the person must be chosen by the Governor and approved by the House and Senate. Sam said there are a lot of people out there that everyone could think of that would do a great job on the board. Barry stated they would appreciate any recommendations.

John opened up the nominations for Chair. David nominated Greg. Sam seconded. All board members agreed.

John opened up the nominations for Vice Chair. David nominated John. Sam seconded. All board members agreed.

John recommended that Gary was kept on as Secretary. David seconded. All board members agreed.

John recommended that David Morris be the Assistant Secretary. Sam seconded. All board members agreed.

John asked Jenny about the yearly permit audit. Jenny explained the first letter is sent out in October of each year and they are due January 1st. Seconded notices are sent out in January. As of the meeting there were about 200 outstanding permit audits. Those dealers cannot purchase any more temporary permits until their audit is resolved. If someone goes out of business for any reason they must respond to a permit audit before they can come back into business. Kent stated the audit is easy to clear up and not necessarily something that requires a fee to be paid. Curtis stated if a dealer keeps a temporary permit log, as required by statute, then the audits are easy to complete.

John asked Wayne to discuss bond and insurance changes. In 2012 legislative session there was a proposal to increase the dealer bond from \$75,000 to \$200,000. Representative Butterfield who worked on the bill also had a tie professionally to a credit union in Cache Valley. Because of some claims with their credit union members he was requesting a bond increase. As Wayne researched this with the insurance companies that write dealer bonds for Utah dealers, they were told that the bond companies would not write dealer bonds higher than the current amount of \$75,000. Wayne offered to review the bond, the amount and what the bond covers. During November 2012 he testified at a hearing and brought them up to date on their progress. They are trying to develop a new product that a dealer would be required to purchase so that if the bond did not cover 100% of the loss that this product would cover the difference. Limited to consumers only, does not cover financial institutions. He has a proposed solution that they presented to the Insurance Commissioner's office. They don't know if this would be considered a title product or insurance product. This is a brand new product that doesn't exist

anywhere else in the US. There is a bill file opened for this session but no language yet. One of the goals they had was to have a minimal impact on the dealers. His main goal is to protect consumers and drive more people to a dealer. If someone does have a claim then they would not be able to come back into business until they have 100% restitution. They also want to put something in there in regards to the financial institutions. In their research they found that financial institutions were not doing any complaints when they weren't receiving pay offs in the 21 days, required by law, which was the case in the Cache valley cases. There has to be a responsibility of everyone involved, dealers, financial institutions and consumers. Sam asked how a bank would know that a car was traded in 21 days ago? Wayne stated in either the 2010 or 2011 session there was a bill that required the dealer to notify the financial institution that the vehicle was traded in within 7 days and then they have 21 days to make a pay off. The 7 day notice can be done by paying off the vehicle within 7 days as well. It makes sense for a financial institution to file a complaint and that should raise a red flag for MVED with a dealer not paying titles off. Kent said Wayne indicated that by the insurance company paying off vehicles that this would lessens MVED work load so that indicates to him that this would negate any criminal penalty and he doesn't think that should negate any criminal penalty. Wayne said this isn't negating anything for that. The regular bonding process would still occur. This new product would come in and say that ABC Auto Sales bond didn't pay the whole claim then this insurance policy would pay the difference. So that we don't end up with consumers only getting partial payment and having outstanding loans and they don't have the vehicles. This is just another step to allow a consumer to be made whole. John stated this sound like you are just putting another policy in place. Like having two life insurance policies, if the first one isn't enough the second one will cover. Which would be an extra expense to the dealers. Why would insurance companies sign onto this if they weren't willing to increase the bond amount? If they have to pay out the same way. Wayne replied this is a brand new product and when they underwrite this they understand this is a policy that doesn't go into effect until after the original bond has paid. Wayne said they have received pressure from the legislatures to come up with some kind of an answer. John said the board would surely want to know what they have come up with. He would like to have another meeting before Wayne moves ahead with this. Wayne said if it isn't ready to go this session he would delay it another year. Sam asked if in Wayne's opinion if the appetite of the legislature is to increase this? Wayne said generally yes. Because the auto industry is such a huge generator of revenue for the state they know they need to keep dealers in business. They understand that the bonding companies don't want to increase the bond amount. Sam said in the past that it increased gradually. The move from \$50,000 to \$75,000 about 5-6 years ago caused a significant amount of heartburn. Larry Miller was concerned that would put a lot of independents out of business. There is now talk from \$75,000 to \$200,000. Does an increment make more sense? Wayne said they aren't worried so much about who can qualify but who will be able to stay in business. The legislature's appetite is more about consumers that only have one car in their driveway but two car payments. Wayne feels he can control the costs and make the consumers whole. This product is specific to consumers only. A financial institution or another dealer would be limited to make a claim on the bond only. Sam asked if this is an "insurance", would the insurance policy be less than increasing a bond amount? Wayne said yes. John said it also is not just a matter of money, if no

insurance company would issue a bond at a higher amount it puts everyone out of business. They know they aren't going to let that happen. Kent asked if this was a requirement to get a dealer license? Wayne said yes it would be required. Kent asked what tools would the division have to know that the dealer has this insurance? Would they buy it monthly, weekly, yearly? Wayne said it should run parallel to the bond and be paid yearly. The insurance company would be required to notify MVED of cancellation. John said he doesn't believe they will find an insurance company willing to write an open liability policy. Craig said he hasn't been involved in this level of detail up to this point. Would this be available to all agencies? VA has a law that they pay into a fund that covers title problems. How do you insure against an open ended policy? On the new car dealers side they need to make sure they don't get penalized because of their success and not having trouble. Craig said it took him two years working through a bill with the insurance side. Wayne said he is not looking at anything to be a detriment to the industry. Curtis asked what happens to the insurance company if they don't have enough money to fund all the failure to deliver titles if they are a small company? Wayne said the insurance company must have a certain rating and have certain assets to cover that.

John asked if Craig if he had any legislative items. Craig said they don't but they are watching some bills that have been numbered but have no language yet.

John asked Wayne if he had any another legislative items. There are probably 8-10 bills they are watching.

John talked about agenda item of direction the board is taking. As they said earlier today the board's position is to assist and advise. John wanted to talk about a customer that came into his office and wanted to trade in her vehicle. He pulled a Carfax on the customer's vehicle and it showed two wrecks. The customer claimed the vehicle wasn't in a wreck and she had a copy of the Carfax from when she purchased it. The Carfax she had was for a different vehicle, same make and model but a different VIN. John thought this was an enforcement issue however, she did not want John to have a copy of it and didn't want to become involved. With that scenario how does the board advise and assist? Kent stated in the old days MVED would put items on the agenda. We would open the meeting with the cases we were working. The Executive Director has read the statute and believes that MVED should be allowed to put items on the agenda as well as the board members. We would like permission from the board to do that and be able to ask the board for advice. John believes that is the direction we need to be taking. If the board is here to assist and advise how does he know what we need assistance in? Sam said he served back in the time where MVED would ask the board for advice or council. He felt like they were very productive meetings. Kent stated the prior Executive Director felt like we should let the industry do the agenda. The current Executive Director feels like MVED can bring agenda items to the board. John made a motion that the board allows MVED to add items to the agenda. David seconded. All board members voted in favor.

Curtis said we do get Carfax cases like mentioned above, however he wanted to advise that Carfax sometimes has wrong information. In the case like John mentioned the dealer would probably state that they just got the vehicle confused with another one on the lot.

So in that case we wouldn't be able to charge anyone with fraud. In this case the Carfax report was right but the consumer didn't verify the VIN number on the report to see that it was for the right vehicle. We do try and educate consumers on how they need to read their contracts and other legal documents before they sign them. In many cases we cannot help customers since they have signed contracts without reading them first.

Kent talked about LPR (License Plate Readers) and there are some pending legislation items that will be coming up. Some of the information that has been on the news is not correct. The only information captured on our database for the LPR system is if the plate was seen and if the registration was expired, revoked, stolen or suspended. Even the vehicle was expired, revoked, stolen or suspended it will only show year, make, model and what the status is such as "stolen". The first data is so sterile that it is not useable without accessing a second database. That second database has to be queried to find out the year, make, model, VIN, what agency has the stolen case, owner info, address, etc. The access to the second databases is restricted to agencies such as law enforcement. Criminal penalties would occur if someone was using the database for something other than law enforcement. David said that he saw that Washington County had a LPR system. Is their information treated the same way? Kent stated that MVED are actually the ones that keep their data. They would have to go through Curtis to get the information to see if the plate was seen. It is one of MVED loaner vehicles. There are several cities/counties that use that vehicle. 90% of law enforcement use the MVED LPR database. Even on the other 10% it is a picture of the car, date and time stamp, again sterile data.

David asked about funding for MVED with the temporary permit sales. Curtis said with current funding right now we can fulfill our budget. We had an open meeting to discuss the ability to increase fees. We got approval, however when it went to legislative research it was declined. We are at the max fee we can charge right now and if something happened such as raises for state employees, our staff may not receive raises. We are down one position right now but we are planning on filling that position. We are hopeful that industry will continue as it has recently and the cost of the permits will decrease.

John asked for a motion to adjourn. Motion made by Greg Miller. Seconded by Sam Barber.

Meeting adjourned at 3:50 PM.