

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION

In re: Sunset Review Hearing
State Board of Motor Vehicle Manufacturers,
Dealers and Salesmen

* * * *

Verbatim report of hearing
held in Room 22, Capitol
Annex Building, Harrisburg,
Pennsylvania, on

Wednesday
July 13, 1983
10:00 a.m.

HON. AMOS K. HUTCHINSON, CHAIRMAN
Hon. Victor J. Lescovitz, Subcommittee Chairman on Aviation
Hon. Thomas J. Murphy, Subcommittee Chairman, Highways
Hon. Robert C. Donatucci, Subcommittee Chairman on Public
Relations
Hon. Joseph A. Steighner, Subcommittee Chairman on Transportation
Safety
Hon. William R. Lloyd, Secretary

MEMBERS OF COMMITTEE ON TRANSPORTATION

Hon. Barry L. Alderette	Hon. Charles F. Nahill, Jr.
Hon. Harry E. Bowser	Hon. George Misceovich
Hon. Brian D. Clark	Hon. Dennis M. O'Brien
Hon. Rudolph Dininni	Hon. Joseph A. Petraca
Hon. Ron Gamble	Hon. John E. Peterson
Hon. Richard A. Geist	Hon. Merle H. Phillips
Hon. Michael C. Gruitza	Hon. Joseph R. Pitts
Hon. John Kennedy	Hon. Ted Stuban
Hon. Gordon J. Linton	Hon. Benjamin H. Wilson

Reported by: Dorothy M. Malone

Dorothy M. Malone
Registered Professional Reporter
135 S. Landis Street
Hummelstown, Pennsylvania 17036

Also Present:

Jim Martini
Paul Landis

I N D E X

<u>Witness:</u>	<u>Page</u>
RICHARD DARIO, Executive Director, Legislative Budget and Finance Committee	3
BILL HARRAL, Senior Analyst	
EUGENE LIPSI, Chairman, State Board of Motor Vehicle Manufacturers, Dealers and Salesmen	32
GENE STOCKER, Stocker Chevrolet, Inc.	86
RON WEATHERCOAT, PIADA	94
JAMES B. MOORE, Executive Vice-President, Pa. Recreational Vehicle & Camping Assn. Pa. Manufactured Housing Assn.	112
MICHAEL J. PERULA, Bureau of Consumer Protection	145
TOM DeWALL, Executive Director, Common Cause	159
JOE DAVIDSON, Former Board Member	171
PHIL DEEMER, Bureau of Motor Vehicles	179

CHAIRMAN HUTCHINSON: I want to call the meeting of the Sunset Review hearing on the State Board of Motor Vehicle Manufacturers, Dealers and Salesmen to order. There are not too many here yet. Give her your name?

REPRESENTATIVE NAHILL: I already did.

CHAIRMAN HUTCHINSON: Go ahead.

MR. DARIO: Good morning. Thank you very much for inviting our participation in this public hearing pertaining to sunset review of the State Board of Motor Vehicle Manufacturers, Dealers and Salesmen. I am pleased to be with you this morning. Bill Harral, another member of the Legislative Budget and Finance Committee staff, is also in attendance at today's hearing.

Bill is a Senior Analyst on our staff, and he served as team leader for our performance audit of the State Board of Motor Vehicle Manufacturers, Dealers and Salesmen. Bill and I have brought many of our audit file papers with us today, and, at the conclusion of my prepared remarks, we will be pleased to try to answer any questions that you may have about our audit process or findings.

The Legislative Budget and Finance Committee has a rather unusual relationship to the sunset review process in Pennsylvania in that the Committee is asked by law to make its

staff available for the conduct of a performance audit of each agency that is scheduled for sunset review and possible termination. The Committee members themselves do not play a direct role in the performance audit process. Therefore, it is important for me to point out that the audit findings that I will be discussing represent the work and conclusions of our audit staff and do not necessarily represent the point of view of any of the members of the Legislative Budget and Finance Committee.

The State Board of Motor Vehicle Manufacturers, Dealers and Salesmen is one of 24 separate licensing boards administered within the State Bureau of Professional and Occupational Affairs, Department of State. The Board carries out a licensing and registration function for motor vehicle manufacturers, distributors, wholesalers, factory representatives, dealers and salesmen. The Board charges an initial licensing fee for such persons and businesses and also biennial renewal fees. During the time of our audit, these fees ranged from a low of \$5, which was the charge for a salesman's change of employer transaction, to a high of \$25, which was the fee charged for a motor vehicle dealer license and for several of the other licenses issued. During the four-year period from FY1978-79 through FY1981-82, the Motor Vehicle Board

realized a total of approximately \$1.5 million in total fee revenues, with the highest single year amount being \$587,000, which was realized during FY 1980-81. Total expenditures of the Board during this same four-year period amounted to about \$1 million, with the single highest one-year total being \$267,000 in FY 1981-82.

The Motor Vehicle Board is governed by Act 144 of 1973. According to this law, the Board consists of a total of 11 members. This includes three members who are to be new car dealers, two members who are to be used car dealers, one member who is to be a mobile home dealer, one member who is to be a motor vehicle salesman, and three members who are to represent the general public or consumers. The 11th member is the Commissioner of Professional and Occupational Affairs who serves as an ex-officio member of the Board. Like the other licensing boards in Pennsylvania, the Motor Vehicle Board functions to some degree in an executive, legislative and judicial sense. The Board can be viewed as an executive agency in its role as a licensing and registration agent for the Commonwealth. The Board's functioning in a legislative sense relates to its authority to promulgate rules and regulations to control and direct persons involved in motor vehicle distribution and sales in Pennsylvania. The Board

exercises a judicial function when it sits as a hearing body to consider disciplinary actions against licensees which can result in the loss of license or other disciplinary action.

As of the end of 1982, the Motor Vehicle Board had issued a total of approximately 32,500 active licenses. Further information about the functioning of the Board and its relationship to the Bureau of Professional and Occupational Affairs is set forth in our sunset performance audit report on the Board which was provided to each member of the House Transportation Committee on February 28, 1983.

I would like to talk for a few minutes, now, about the sunset performance audit obligation that is imposed upon our Committee by the Sunset Act and about the audit process in relation to the Motor Vehicle Board.

According to the Sunset Act, the performance audit that we are to complete is defined as follows:

A written report by the Legislative Budget and Finance Committee evaluating the management and performance of an agency based on the statistics on its operations and carried out in accordance with standards for performance and financial compliance auditing developed by the United States General Accounting Office.

In addition to setting forth a specific definition

of a performance audit, the Sunset Act also describes what matters should be dealt with during the audit process. The Sunset Law requires us to apply the seven sunset criteria enumerated in the Sunset Act to the existence and functioning of each board that is undergoing sunset review.

The sunset evaluation criteria that are set forth in Pennsylvania's Sunset Act forced us to ask the following questions:

(1) Would termination of the State Board of Motor Vehicle Manufacturers, Dealers and Salesmen significantly harm or endanger the public health, safety or welfare?

(2) Is there overlap or duplication of effort by other agencies that permit the termination of the State Board of Motor Vehicle Manufacturers, Dealers and Salesmen?

(3) Is there a more economical way of accomplishing the objectives of the Board?

(4) Is there a demonstrated need, based on service to the public, for the continuing existence of the Board?

(5) Has the operation of the Board been in the public interest?

(6) Has the Board encouraged public participation in the making of its rules and decisions or, rather, has the Board permitted participation solely by the persons it regulates?

(7) Is there an alternate, less restrictive method of providing the same services to the public as are currently provided by the Motor Vehicle Board?

Our staff began pursuit of these questions in relation to the Motor Vehicle Board in September 1982. An audit team consisting of one of our salaried staff members and three contracted persons was assigned to conduct this particular audit, along with three other sunset performance audits, during the period September through early December of 1982. Our staff members were involved in a broad variety of activities during the audit.

The following are some of the areas that our staff investigated:

(1) We reviewed the basic statute that governs the Motor Vehicle Board and regulations that have been promulgated by the Board. In reviewing the basis statute, we attempted to identify the functions of the Board that impact upon the public health, safety or welfare. We also took note of the intent of the law as identified within it. Some of the law's purposes are as follows:

- to prevent fraud, unfairness, inequality, discrimination, impositions and other abuses upon citizens;

- to foster and keep alive vigorous and healthy competition for the benefit of the public by prohibiting unfair practices by which fair and honest competition is destroyed or prevented;

- to prevent false and misleading advertising;

- to prevent unfair practices by motor vehicle dealers, manufacturers and distributing organizations; and

- to promote the public safety and prevent deterioration of motor vehicle dealers', manufacturers', and distributing organizations' facilities for the servicing of motor vehicles and keeping the vehicles safe and properly functioning on the highways in this Commonwealth.

(2) Another audit activity of our staff was to attend meetings of the Motor Vehicle Board that were held during the fall of 1982 and to review minutes of other recent Board meetings. We looked particularly for the degree of public input and concern for the public expressed during Board meetings. We found a substantial amount of concern for the public interest displayed by the Board at its meetings. We also found, however, that two long-term vacancies in the membership of the Board were in existence during the time of our audit. One of the vacant positions is a public or

consumer member of the Board. These long-term vacancies were, of course, of concern to us and particularly the long-term public member vacancy since it can be presumed that an additional consumer representative on the Board increases the level of public input into the Board's decision making.

(3) Our staff looked carefully at certain financial aspects related to the Motor Vehicle Board. We surveyed several other states for the purpose of comparing the license fees charged in Pennsylvania with those charged in other states. We found that Pennsylvania's fees are not out of line with other states and, in fact, tend to be somewhat lesser than the fees that are charged at least in the other states that we surveyed. However, we found that total fee revenues taken in by the Board during the period 1978-1982 were substantially in excess of expenditures of the Board during that same time period. Revenues, in fact, exceeded expenditures during this period by about \$500,000. If this trend were to continue into the future, it surely may warrant the attention of the Board and perhaps the Legislature since such excess license fee revenues may represent an unnecessary cost to persons and businesses that are licensed by the Board.

(4) Our staff also examined, in some detail, the consumer protection and enforcement activities of the Board.

We found both positive and negative aspects of the Board's functioning in this area. On the positive side, we found the Board to be very active in the area of consumer protection in relation to the other boards audited during the fall of 1982. We found that the Motor Vehicle Board had closed a total of 123 complaint cases during the period September 1981 through October 1982. Based on a detailed examination of 40 of these cases, we found that the Board had required an average time of approximately seven months to close these cases. This is a substantially shorter period of time than was required for several of the other licensing boards that we audited during the fall of 1982. We also found that the Board is apparently not reluctant to take disciplinary action against the persons and businesses that it regulates. We found, for example, that the Board revoked nine licenses and suspended 21 licenses during the period November 1979 through October 1981. The Board also issued one letter of reprimand during this period, indicating a total of 31 disciplinary actions taken. This represents the largest number of disciplinary actions for that period among the eight boards that we audited during the fall of 1982. As I indicated, however, our review of the enforcement function also raised some concerns. We noted that several of the persons that we contacted during the audit and

that participated in our questionnaire surveys suggested that the Board is not able to deal effectively with persons who are engaging in automobile sales without obtaining a license. It may be that changes in law are necessary in order to effectively deal with unlicensed activity. The current law provides that the carrying on of unlicensed activity is a misdemeanor offense which can be time consuming and difficult to prosecute.

Another area of concern involves the relationship between activities of the Bureau of Consumer Protection, within the Attorney General's Office, and the Motor Vehicle Board. We found that the Bureau of Consumer Protection has been significantly involved at times in activities aimed at identifying and prosecuting automobile dealers that are engaging in odometer rollbacks in order to increase the value of their used cars. We were also informed that the Bureau of Consumer Protection receives complaints from the public in regard to improper or illegal practices by persons engaged in motor vehicle sales. We found that no formal system exists between the Bureau of Consumer Protection and the Motor Vehicle Board for exchanging information and coordinating efforts in such areas of common interest. I might add that this was a general concern of ours during all of the audits that we have performed related to the Bureau of Professional and Occupational Affairs

administered licensing boards. We have received recent information which indicates that the Bureau of Professional and Occupational Affairs and the Bureau of Consumer Protection may be giving consideration to correcting this problem.

(5) Our staff conducted a large number of personal interviews during our audit of the Motor Vehicle Board. We talked with persons directly involved with the Board and its operations as well as with representatives of other state agencies that carry on activities related to those of the Motor Vehicle Board. Foremost among these other agencies is the Department of Transportation. The Department of Transportation conducts a registration function of motor vehicle dealers which, in some ways, is closely allied to the licensing activity of the same persons that is carried on by the Motor Vehicle Board. Unfortunately, we did not have sufficient time and resources during our audit to determine with certainty whether or not unnecessary duplication of activities occurs between the Motor Vehicle Board and the Pennsylvania Department of Transportation. I would suggest that this is an area to which your Committee might wish to give further consideration. Our staff also had conversations with representatives of the Pennsylvania State Police. The State Police, as we understand it, are involved in visits to

motor vehicle dealers in connection with the work of both the Department of Transportation and the State Board of Motor Vehicle Manufacturers, Dealers and Salesmen. It is our additional understanding that enforcement personnel of the Bureau of Professional and Occupational Affairs also carry out investigatory activities in relation to motor vehicle dealers. As with the concern in regard to possible duplication in licensing and registration activities, we also were unable during the time of our audit to determine with certainty the degree of unnecessary duplication, if any, that may exist in regard to investigatory and inspection activities by the Pennsylvania State Police and the Bureau of Professional and Occupational Affairs enforcement personnel. This is, again, an area that your Committee may want to give additional attention to.

(6) Another area of staff activity during the performance audit was our evaluation of the relationship of the functions of the State Board of Motor Vehicle Manufacturers, Dealers and Salesmen to the protection of the public health, safety or welfare. We concluded that the legally established functions of the Board do have a causal relationship with the public safety and the public welfare. In our consideration of this matter, we recognized the potential danger to the public

associated with the sale of motor vehicles in particular. Factors that we took into account include the almost universal extent of automobile ownership among the populace; the lack of technical expertise among the general populace in regard to automobiles; the size of an individual's monetary investment in an automobile; and the potential danger to the motoring public from unsafe practices on the part of persons involved in motor vehicle businesses.

I hope this has given you some idea of the manner in which our staff conducted its audit of the State Board of Motor Vehicle Manufacturers, Dealers and Salesmen. I have tried also to inform you about the concerns that came to our attention during the audit, particularly those that relate to the seven sunset criteria that are set forth in Pennsylvania's Sunset Act. I am sorry that I have not been able to give you more definitive statements in regard to particularly the overlap issues that I have raised. We simply did not have the time and resources to resolve these matters to the extent that we could provide specific recommendations, if , in fact any are warranted.

I thank you very much for your attention. Bill Harral and I will try to answer any questions that you may have about our work.

CHAIRMAN HUTCHINSON: The members that just came in, will you introduce yourself?

REPRESENTATIVE PITTS: Representative Pitts, Chester County.

REPRESENTATIVE MURPHY: Tom Murphy.

REPRESENTATIVE GAMBLE: Ron Gamble.

REPRESENTATIVE LINTON: Gordon Linton, Philadelphia.

REPRESENTATIVE LLOYD: Bill Lloyd.

REPRESENTATIVE PETRACA: Joe Petraca, Westmoreland County.

REPRESENTATIVE WILSON: Ben Wilson.

CHAIRMAN HUTCHINSON: Any questions for Mr. Dario? Bill.

BY REPRESENTATIVE LLOYD:

Q Mr. Dario, I recall when we looked at your report before that there is in the appendix a response to the Board which took very violent issue with some things that you apparently said in the draft report. I recognize that those things have been excised from your final report. They don't have the official blessing of you or your committee. However, some of the things which you have addressed this morning as not being able to reach a conclusion on, specifically overlap, apparently those issues were addressed in that draft report.

I would appreciate if you would share with the Committee what you did find with regard to overlap even if you are not willing to put some kind of a conclusion on it. I would like to know, it seems to me the one purpose of Sunset is to get rid of unnecessary regulation. Here we have three different people, who in one way or another regulate the same thing. So how about explaining to us what each one does. Give us your assessment as far as you are able to go as to whether or not it is necessary to have all of that?

A Okay, thank you very much. Just a comment on that. If I may also quickly on the issue of the response to the Board. We did, it is part of our process, of course, as you know, to submit a draft document, a final draft document to the agency that has been audited for the purpose of giving them an opportunity to review it and respond to it. Additionally, call to our attention problems which they think exist. In the case of this particular audit, we did in fact arrive in hindsight, I feel, prematurely at a conclusion that the registration function of the Board could in fact be carried out by the Department of Transportation. We did, as a result of the -- as a result of discussions which I personally got involved in with the Board and as a result of further review of our working papers in which I felt we had drawn some

unwarranted conclusions, we did, again, remove those conclusions from the report and at this point I definitely feel we did the right thing. I do not feel that we had sufficient information to arrive at those conclusions.

Now, they center primarily, around the Department of Transportation's work in this area. Part of our problem in this particular audit was the fact that the amount of time allocated to it in terms of numbers of audit hours was sufficient for us to look at the work of the Board. Unfortunately, it was not sufficient for us to look at the work of the State Police and the work of the Department of Transportation, and I also might add, which I didn't mention at all, the work of the Department of Community Affairs in the area of mobile home registration which is another area which we didn't even really get involved in. But the point is we unfortunately would have had to spend a substantial amount of time to analyze the functions and activities of those departments and we simply did not have time to.

Now, what we do know is in the case of the Department of Transportation, when it comes to a motor vehicle dealer, the Department of Transportation and the State Board of Motor Vehicles or the Motor Vehicle Board rather are both involved in the licensing process. Applications, separate

applications have to be filled out by a dealer for both. The Department of Transportation, as I understand it, basically does two things in terms of motor vehicle dealers. And they obviously can explain this better than I could as perhaps could the Board. But it is our understanding they issue dealer plates, dealer registration plates on the one hand to motor vehicle dealers. Additionally, they authorize motor vehicle dealers to issue temporary registration plates.

Q Can I stop you right there?

A Yes.

Q Is there any reason why the Department of Transportation would have to do anything other than rely upon the fact that this person had gotten a license from the Board. Once a person gets a license from the Board he can be authorized to issue temporary plates and he can get dealer plates. Is there any reason why that shouldn't be done?

A Well, it is our understanding that the inspection procedures and requirements are somewhat different. To answer your question directly, I would say that I honestly do not know. But in terms of the process, the State Police, for example, are involved in an inspection process for the Department of Transportation, as well as, we understand it to some degree on behalf of the Board. It is our understanding

that they look for different things. Exactly what those things are, I honestly do not feel -- let me just say this, Representative. We do have materials in our work papers. I am not sure that we ever satisfactorily understood, because like I said, we do not have time to deal with it fully with the department, why it is necessary to have different inspections, okay. Why, just as you're saying the process can't be, as you are suggesting, one in which the department would simply issue plates on the basis of the judgments of the Board. I would suggest this. The licensing process for the Board, again, Bill, correct me if I'm wrong, actually occurs without an inspection having taken place as far as the Board is concerned. They drew pictures of a facility when a dealer requests licensure. A dealer has to submit certain pictures of the facility.

It is our understanding that the licensing process can actually occur prior to an inspection, is that true?

MR. HARRAI: Yes.

MR. DARIO: It is our understanding. The inspection by the State Police will occur sometime later, sometime subsequent to that. To, apparently, as far as I know, it does occur in every case. Again, the Board and the State Police if they were here, could provide better information, but that is our understanding.

Now, whether the Department of Transportation would want to be in a position to issue dealer plates and issue the authorization for temporary license plates under those circumstances, again, I would suggest this. I would suggest this to you. It is very serious business, obviously, to send out a bunch of dealer plates. Now, whether the department would be willing to do that without its own assurances of the requirements of the Vehicle Code being met in that regard, I would not want to suggest.

REPRESENTATIVE LLOYD: We don't really know what those requirements are. Are we going to have a witness from PennDOT who can answer these questions?

CHAIRMAN HUTCHINSON: PennDOT refused to come.

REPRESENTATIVE LLOYD: Refused to come.

CHAIRMAN HUTCHINSON: We do have the State Police who can answer questions, but we want to get on with this so other people can ask questions.

REPRESENTATIVE LLOYD: I appreciate that. But this Board has jerked around two of my constituents in the last three weeks. Now I don't want to have them jerked around by PennDOT after they finally get satisfied by the Board and then get jerked around by the State Police. If this Sunset process is going to do anything, it ought to clarify what the

rules are. Here we are trying to save money, trying to cut the budget. Well one way to cut it is to stop having people run around doing the same thing. The fact that the Department of Transportation refused to show up I think is absolutely irresponsible.

CHAIRMAN HUTCHINSON: We'll get them here if we have to have them.

MR. DARIO: May I make one further comment in that regard? I would say this, it appears to us, and we have looked at the minutes and looked at other activities, it does appear to us that the Motor Vehicle Board has made attempts and reasonable attempts to get cooperation and coordination of activity from the Department of Transportation. It does not appear to us though they have succeeded in doing that. Now, again, perhaps the Board can comment on that further. But we have seen from the minutes, we have seen attempts to get representatives of the Department of Transportation to attend Motor Vehicle Board meetings. We have seen what appeared to be other attempts on the part of the Board to get the department to participate with them.

Quite frankly, well, again, let me just leave it at that. But I want to bring that to your attention.

CHAIRMAN HUTCHINSON: Anybody else have any other

questions?

REPRESENTATIVE LINTON: I just have a comment. Having had the opportunity to participate in two previous Sunset hearings, it is really disturbing to me that my colleagues said that we are dealing with this Board and dealing with a duplication of activity and not having, what I consider, adequate information to make a decision on the continuation of this Board. I think one of the set of criteria has to do pretty much with duplication of activity.

MR. DARIO: Right.

REPRESENTATIVE LINTON: I don't know what we can do in the long run, not with just this evaluation but other evaluations, to see that either you have more time or more staff, whatever, to do this process properly.

The Sunset process is a serious process and I think we need to make sure that ^{there is} adequate staff or adequate time so we can have adequate information to make the right decision.

MR. DARIO: Well, I appreciate your comment. I would say this, and I don't say this in the sense of a crybaby, that is not the point. But we did face an unusual circumstance this year. For example, the amount that we had requested in our budget was literally cut in half for this current fiscal

year which immediately put a crimp in our ability to carry out our process. But even with that I sincerely believe, as I look back on the process, we now have completed 13 audit reports. I sincerely believe that we had adequate staff and time in the case of 12 of them. I honestly would comment that this is one that we did not, and I would say that one of the reasons, again, is because of the substantial amount of duplication that exists as I mentioned. The fact that we were faced with not only analyzing this Board but analyzing several other agencies as well as this Board. Now again, the other thing was the unmovable time frame. You know, the March 1st date was involute, you know, it was not able to be moved. If we could have moved to six weeks, it would have made a big difference, but we couldn't.

REPRESENTATIVE LINTON: A substantial amount of duplication that you referred to is just a problem that is in front of you.

MR. DARIO: That is correct. I agree with you, sir.

REPRESENTATIVE LINTON: Thank you.

CHAIRMAN HUTCHINSON: Anybody else have any questions?

(No response.)

BY CHAIRMAN HUTCHINSON:

Q I have one. You said you had, what, three consumers or two consumers on the Board?

A Three consumer representatives.

Q I have always had a problem with putting consumers on Boards. Do they get oriented with the Board that they are on and become part of it instead of looking after me or somebody else?

A Well, the bureau has, first of all, they take efforts to create a different perspective in the consumer member than in the professional members. There are two primary ways they do this. One is they have, which are required by law, they have seminars which are specifically for the public members, the consumer members, at which they talk about public issues in order to orient them toward looking after the general public.

Secondly, they have a manual which they provide to public members which is really a good document, truthfully, a meaningful document, well, whatever.

Q You mean they don't brainwash them?

A Well, the bureau, I'm not going to say that. The bureau itself attempts to have the consumer members or appears to us, truthfully, to have the consumer members unbrainwashed.

Only brainwashed for the public point of view.

Q The Department of Transportation?

A Pardon me.

Q When you say bureau what do you mean?

A The Bureau of Professional and Occupational Affairs in the Department of State. They do seem to make reasonable efforts to attempt to keep the consumer members with a consumer point of view. Now I would definitely say this to you in all candor and I do not necessarily relate it to this Board, but in all the boards we have looked at there have definitely been circumstances where we would feel that the consumer members perhaps did see eye to eye with the same perspective as the professional members as opposed to the consumer point of view. But what are you going to do? Again, it is one of those things where they live with them all the time. Consumer members do not have to go to seminars. They obviously do not have to read the manual. But the tools are there for them in order to try to -- one of the problems is the lack of consumer members, a great number of vacancies.

CHAIRMAN HUTCHINSON: Any other questions? Mr. Lloyd, do you want to pursue the one about the State Police? Mr. Monko, would you answer --

REPRESENTATIVE LLOYD: Well, he's going to be a

witness later on.

CHAIRMAN HUTCHINSON: No, he is here to just answer questions.

REPRESENTATIVE LLOYD: Maybe he can explain what the State Police looks for, how they fit in this whole picture.

MR. MONKO: The State Police garage supervisors conduct an inspection of the dealer sites. We prepare a report and send it into the motor vehicle section. In there we check for the office area, file cabinets, telephones, desks, make sure the lot is properly marked, a sign, business name and he can accommodate a number of vehicles himself. Also he maintains proper records of the vehicles sold. And also, we do check for his lot license and his motor vehicle salesman's license. Now this report is sent into the Bureau of Motor Vehicles and then it is forwarded up to the Professional Licensing section. They have the final decision as far as if the dealer is issued the registration plates.

BY REPRESENTATIVE LLOYD:

Q So when you say Bureau of Motor Vehicles you mean the Board?

A No, we work in conjunction with the Bureau of Motor Vehicles and the Professional Licensing Board, two agencies. The application goes in and is reviewed by both

agencies and a report is sent up to the State Police.

Q Both agencies, you mean both Transportation and the Department of State?

A Yes.

Q In other words, you do the investigation for both of those people so they don't have to have their own investigator?

A Well, they do have investigators. Like if a complaint would come in on a title, or something about sending a title or sales tax, they also can send an investigator out, but we do that type of investigation.

Q But on new licenses you do the investigation?

A Yes.

Q And you do that investigation not after the license is issued but before the license is issued?

A Well, in the case of a new car dealer sometimes the dealer registration plates are issued to the new car dealer which would be an A tag dealer and then the State Police will eventually conduct an investigation on the new car dealer. The used car dealer we do the investigation first before the plates are issued.

Q Why do we issue plates before we do the investigation?

A That would be up to the Professional Licensing Board to answer that.

Q I have problems with constituents, two different people in the last three weeks say they have gotten written material from the Board that says they are to do one thing. The State Police come out and look and they tell them they are to do something else. Then they send the pictures in and Clara Finchum calls them up and says now you got to do the third thing. They missed this Board meeting and now they are in the next one.

When you go out there do you have a checklist of things that somebody has given you from the Board or PennDOT tells you what you are supposed to be looking at?

A Well, there is a checklist, but it was never published in the Pennsylvania Bulletin as far as to make it official. And the State Police, we have a report of the investigation that we do check out certain areas. The Professional Licensing Board is in the process of publishing these regulations in the Pennsylvania Bulletin as I understand it.

Q Okay, but you don't check out anything for yourself. I mean, everything you are checking out is to help some other agency, either PennDOT or the Board to fulfill its responsi-

bilities. If I wanted to go into the used car dealer business, there is nothing that you would check for the State Police only?

A No, not for the State Police.

Q So you are kind of the innocent party in this. You are doing what you are told?

A We are conducting the investigation.

REPRESENTATIVE LLOYD: Right. Thank you.

BY REPRESENTATIVE LINTON:

Q One other question. Is there anything that you do in terms of inspection that is different from what is done by the inspectors that comes from the Bureau of Professional and Occupational Affairs?

A Well, my involvement, I conducted the state inspection work. The investigators usually handle the complaints of people not getting titles or maybe not paying the sales tax. We usually conduct the investigations on the applications.

Q Okay, let me ask you another way. Are there things that they do that you also do?

A Yes.

Q Could you tell me what those are?

A Well, the investigations of private complaints.

What might happen is an individual might complain to the State Police and also complain to the Bureau of Dealers and we are not aware that they do have investigation also. We both go out and start the investigation. Then eventually we do get together and solve the problem.

BY CHAIRMAN HUTCHINSON:

Q And you also may from PennDOT, too?

A Yes.

Q You could be working on two complaints and they could be working on one?

A But in the end, when you contact the dealership, they will tell you that somebody was out from the Department of State checking on them. And then we do usually contact them and get together on the investigation.

CHAIRMAN HUTCHINSON: Are there any more questions for Dick?

(No response.)

CHAIRMAN HUTCHINSON: Thank you very much.

MR. DARIO: Thank you very much. Thank you all very much.

REPRESENTATIVE GEIST: I would like to say I totally agree with Bill Lloyd. I have had the same problem with constituents and I think we got to mark that on the record

that Bill Lloyd and I finally agree.

CHAIRMAN HUTCHINSON: I had the same argument today.

Eugene Lipsi, Chairman State Board of Motor Vehicle Manufacturers, Dealers and Salesmen.

MR. LIPSI: After all the questions, I think I better put my whole file out on the table because I better be prepared.

CHAIRMAN HUTCHINSON: Mr. Miller is also here to answer any questions. Have any new members come in? George, give the lady your name please.

REPRESENTATIVE MISCEVICH: George Misceovich.

CHAIRMAN HUTCHINSON: Okay, sir, you can start whenever you are ready. Do you have a prepared statement?

MR. LIPSI: No.

CHAIRMAN HUTCHINSON: Mr. Bowser.

REPRESENTATIVE BOWSER: Harry Bowser.

CHAIRMAN HUTCHINSON: Okay, sir, you can begin.

MR. LIPSI: Mr. Chairman, members of the Standing Committee appointed by the Leadership Committee, ladies and gentlemen. I am hereby honored and privileged to be called upon to address this prestigious committee on an issue important in our state. The issue whereby the Standing Committee shall

have a determination as to whether the State Motor Vehicle Manufacturers, Dealers and Salesmen shall be continued, altered or terminated. I thank you for the opportunity to meet and present the facts, to help you arrive at a decision, hopefully in the affirmative to continue the existence of this so well needed Board. My Board and my staff have vested into me their trust. I will convey my message needed to continue and serve my constituents in the State of Pennsylvania.

If I do not succeed, I will have contributed a serious injustice to you and everyone concerned and also to the members of the Standing Committee who are representing their constituents in their best interest. I notice most of you are incumbents. You would not be here were you not serving your people properly, and I am sure you will render justice here today.

First, I would like to read to you the legislative findings and purposes. Why we are where we are at. "The General Assembly of the Commonwealth of Pennsylvania finds and declares that the distribution and sale of new and used motor vehicles in the Commonwealth of Pennsylvania vitally affects the general economy of the Commonwealth and the public interest and public welfare that in order to promote the public interest and public welfare and in the exercise of its police

powers, it is necessary to license salesmen of new and used motor vehicles, motor vehicle manufacturers, distributors, wholesalers, dealers, salesmen and their representatives doing business in Pennsylvania."

Why, in order to prevent frauds, unfairness, inequality, discrimination, impositions and other abuses upon its citizens and to avoid undue control of the independent motor vehicle dealer by motor vehicle manufacturing and distributing organizations, and to foster and keep alive vigorous and healthy competition for the benefit of the public by keeping alive vigorous and healthy competition.

And also prohibiting unfair practices by which fair and honest competition is destroyed or prevented to protect the public against the creation or perpetration of monopolies, practices detrimental to the public, false and misleading advertising, to prevent unfair practices by motor vehicle dealers, manufacturers, distributing organizations, promote the public safety, prevent deterioration of motor vehicle dealers, manufacturers, distributing organizations and facilities for the servicing of motor vehicles and keeping same safe and properly functioning on the highways in the Commonwealth. Prevent bankrupting of motor vehicle dealers who might otherwise be caused to fail because of unfair

practices and competition thereby resulting in unemployment, loss of taxes and revenues to this Commonwealth and inevitable undesirable consequences including an economic depression.

Gentlemen, we do not sit in the Transportation and Safety Building only and solely to license dealers. That is not our primary function. That is one of the many functions. If you sunset this Board, you are saying or are you saying, do I understand you to say that we are not interested in the public interest, we are not interested in the public welfare, we don't care if you go out and fraud people, go ahead. We don't care about the unfairness that a salesman or a dealer will impose upon one of your constituents and our consumers. We are not concerned about the inequality nor are we concerned of our citizens or the control of the motor vehicle dealer. Go ahead, Mr. Dealer, do what you want to do. Go out there. You have a free run. You want to wind back odometers, you want to cheat people, go ahead out there, do whatever you want to do. License anyone that you want to license.

Take when Seymore Heyison was part of PennDOT, Seymore's thoughts were license anyone. License anyone that applies for a license then handle them later. Gentlemen, that is why we have the problems we have here today. That is why we have the odometer rollbacks, that is why we have the

discrepancies in the organization. That is why we have so many people that are being cheated. One case, if I may, in Harrisburg where a young lady went in to purchase a corvette. Never received the title to the corvette. The dealer was unconcerned about it. He took her money, not to mention that his father was a doctor, and when we first licensed him, he met the criteria. His father went on the hook for him. He would be totally responsible for his actions. The Board forced the father to comply with what he said he would do. The Board was instrumental in getting the title for this young lady.

Not to say in Philadelphia where so many people purchased vehicles, paid sales tax, never received the titles. They appealed to the Board. The Board saw to it that they were satisfied. The Board had another dealer in Philadelphia that was keeping deposits. He would sell to a certain type person. He would sell to the person that, as we would say, was not real sharp, was not real versed in what they were buying. They were more or less catering to the people that earned their money very, very hard. They didn't have too much money. They didn't have too much knowledge and they were spot delivering the vehicles. They were spot delivering the vehicles. They would take the deposit, they would spot the

car only to find that in two or three days the banking institution did not accept the credit, did not buy the contract. They would repossess the vehicles from the people. Just take it right out of their driveway. Keep their deposits. They already had their trade, sold their trade. This was very probable, gentlemen. This is part of our function, not only licensing dealers.

Are you saying that it is all right to go out and falsely advertise? I don't know. If you sunset us, obviously, you will be saying that. Are you saying that it is all right for a manufacturer to cancel a dealer as I have with me here today in the case of Ford Motor Company when they cancelled a very, very solvent dealer, attempted to cancel a very solvent dealer in the Easton area and I don't know which one of you are from that area. If you are, you recognize the name, Continental Motors, Doug Cooper Ford. Ford attempted to cancel their franchise. The Board heard the case over many months, many hours. Many hours we spent beyond our normal day. The normal day of the Board or the Commissioner or his deputy is not 4:30. We have been in the office until 6:30 and 7:00. The Board ruled in favor of the dealer in the Doug Cooper case. And, as I was questioned previously, how did you accomplish this? It wasn't easy. It

was very difficult.

Our adjudication was that we would suspend Ford Motor Company one day for every day that they would not recognize Doug Cooper as a dealer. They adhered to the adjudication. Today he is a very profitable dealer.

Are you also saying that you don't care what happens to the establishments of the dealers? Are you saying that if Joe Dokes has a rundown dealership and he cannot service the vehicles properly --

CHAIRMAN HUTCHINSON: Sir, I want to stop you a minute. These people on this panel are not trying to do anything. The Legislature that we have Sunset. We are not trying to take anything. We want you to be positive. Don't blame it on us. Go on. Forget the part you are always saying, are we going to do this. No, I don't want fraud. I want you to do your job. I want to hear what you are doing, not blaming it on us right now. The whole thing for the last 15 minutes you have been blaming it on this panel.

MR. LIPSI: Okay, thank you, Mr. Chairman. I stand to be corrected and I do apologize to the Chairman and to the members of the Standing Committee. But it is my understanding that in December of 1983, unless this is revitalized, that we will be sunsetted.

CHAIRMAN HUTCHINSON: That was the Sunset Legislation, not this panel. We were picked to listen to you why you should stay here. Don't keep on saying do we want to do this? We don't want to do a damn thing but listen to you.

MR. LIPSI: Thank you. I really appreciate that, Mr. Chairman. Okay, so then I will go on. You want to know what the duties of the Board are. And Mr. Chairman, I am only stating this because it seems like the licensing of the dealer was a primary issue.

CHAIRMAN HUTCHINSON: Whether you are doing your job and whether the people can afford to have you. That is the main issue. Whether you are just over there sitting. That is what the whole sunset is about.

MR. LIPSI: Well, Mr. Chairman, we --

CHAIRMAN HUTCHINSON: Okay, let's go on. I have said my say.

MR. LIPSI: Thank you. I will go on with this. Okay, the duties of the Board, if I may, are to be sure that a dealer does not misrepresent any material acts. The Board is well prepared. I do have documentation. Also, that a dealer knowingly make any false promises to a character likely to persuade or induce the sale of a ^{motor} vehicle. The Board is prepared and has been attacking that. The Board protects the

consumer against forgery, embezzlement, extortion, conspiracy, fraud, bribery and other crimes. The Board has protected, as I mentioned earlier, people against the sales tax that the dealers had been keeping. The Board has taken on the duty of the Department of Revenue whereby the Board has collected bad checks that were given to the Department of Revenue. The Board saw to it that these checks were paid for and that the dealer was reinstated into good standing. I have --

CHAIRMAN HUTCHINSON: Sir, since we're on a rough schedule, there are some members that have to go to session and some to a meeting. Can they ask you a couple of questions?

MR. LIPSI: And then you want me to continue on.

CHAIRMAN HUTCHINSON: Mr. Lloyd.

MR. LIPSI: It is perfectly all right, Mr. Chairman. I am here and --

CHAIRMAN HUTCHINSON: He will be back by 11:30.

MR. LIPSI: I would be happy to answer it now.

CHAIRMAN HUTCHINSON: Go ahead.

BY REPRESENTATIVE LLOYD:

Q Well, to pursue some of the issues, and I want to associate myself with some of the Chairman's remarks, I believe we ought to be preventing fraud and I don't know whether you are doing a good job of that or not. We will get into that

later.

I am concerned, however, with some of your regulations and requirements with regard to licensing dealers. Specifically, why does there have to be an office strictly for vehicle sales? Let me give you the specific case I am referring to. I have a fellow who makes a lot of money in the hardware business. He is going to sell mobile homes. He had to tear a side of his building out, put in a plywood kind of entry-way so he could have a separate office for the place to sell mobile homes. What is the point of that?

A You did state that he is making an awful lot of money in the hardware business.

Q He is a profitable established businessman.

A Profitable hardware dealer. I own a dealership that is worth three million dollars conservatively. The Board and the Legislature has got to protect people that have these gross investments. I am not saying if he doesn't qualify, if he doesn't meet with the criteria that he should not be licensed. That is not what I am saying.

Q That is not my question. My question is why does he have to tear a side of his building out and build a separate office? What is wrong with using the office in the store which is in a pretty good building as it is, the whole operation.

Why does he have to have a separate office just to sell the mobile homes?

A Well, how does he know whether the person came into buy something in the hardware store or whether he came into buy a mobile home?

Q I assume if a consumer comes in he is going to tell him what he is there to buy.

A Well, we feel that by having such regulations that we will secure the man that really wants to become a dealer. We want people, as dealers that want to be dealers and have the capital to become dealers, because we have found that the dealer that doesn't meet the criteria --

Q This gentleman obviously wants to become a dealer because under your regulations he was required to go out and take a consignment of mobile homes that he now has sitting out on his back lot that he can't sell because you won't give him a license. So he has shown he has got a commitment to selling the motor vehicles.

I want to go back to the question why does having a separate office have anything to do with his commitment to sell motor vehicles?

A For the public health and safety.

Q Let me try a different question.

CHAIRMAN HUTCHINSON: To cut down competition.

MR. LIPSI: No.

BY REPRESENTATIVE LLOYD:

Q Let me try a different question. He has a sign out front and it is one of those signs that has letters that you can put on and you can take off. He was told that that kind of sign is not acceptable. He wasn't told that on the first trip or the second trip or the third trip. About the fourth time he communicated with the Board. He was told you can't have that kind of sign. It has to be a permanent sign, permanent letters, because you could pull those letters off. Well, okay, that sounds good. But why isn't it the guy that's going to commit fraud, can't he letter a permanent sign and put it up and when he wants to commit fraud he takes the sign down. How are we protecting anything by telling this fellow that he can't use that sign with letters that go on and off?

A We have arrived at these regulations from past statistics. We have found that the people who have gone into business with temporary signs, mixing their used car business with another business have not proved to be successful and good dealers. Therefore, it is our duty to protect the consumers in the state and we feel that in the best interest that they should have separate offices if they are going to be

in the used car business. They either should be in or out of it.

Q That has nothing to do with the sign, a separate office. That was the first question that you didn't answer. My question is what is wrong with this man's sign?

A What is wrong with the temporary sign? The same thing that would be wrong with a man that used a mobile home for an office and the wheels are on it. He is going to be there today. He may sell ten of our constituents in one day and be gone.

Q I could agree with that if he were a new fellow who just came in, was doing this out in a vacant lot someplace, but he is not. He has got an expensive building there. He wants to expand and get a building on the other end of the county. He is an established businessman in the community. The probability that he is going to run away is not very high.

A We are there to protect the consumer. I am a Chevrolet dealer. Before I became a Chevrolet dealer I had to meet certain criteria. One was to service the public and have an established place of business that the Vehicle Code states. We are going by the Vehicle Code.

Q In addition, this gentleman has a business phone. He has an extension on that business phone in his home so that

after hours if somebody wants to call him up in his place of business and he is not there, he can answer the phone. He was told you cannot do that. Can't have that extension in your home. Why not?

A What would be the purpose of answering the business phone in his home after hours?

Q Because he would like to get more business. Somebody calls up and says, when are you open or do you have this, do you have that or when can I arrange to come in and see a trailer. I am going to be off Friday night. I am going to be off tomorrow. Are you open tomorrow? When are you going to be in.

A That is one of the criteria. They must be open during regular business hours.

Q No, but the consumer doesn't know that. The consumer is calling up -- this is nonsense. My father has been in business my whole life and I know how many phone calls -- he doesn't sell cars. I know how many phone calls he has gotten in the evenings and over the weekends when people need a part and they want to find out when you are going to be there, whether you have something or you don't. For you to sit there and say why would anybody want to call this guy in the evening, that is kind of strange.

A Senator, we do have dealers that want to be open 24 hours and seven days a week. We do have dealers that are respectable dealers that are open during regular business hours. We are just trying to keep a clean organization.

Q Why can't he have a phone which is in his business and which rings in his place of business also ring in his home?

A What if he is not in his place of business and his wife answers the telephone? She knows nothing about the business. She is not licensed by this Board.

CHAIRMAN HUTCHINSON: That is the same as my wife answering the phone when I am not there. She is answering to my constituents. She doesn't know what goes on either. She can communicate and take a message.

MR. LIPSI: Certainly. You are a public servant, Mr. Chairman, and that is very, very nice of your wife, which happens with all Representatives and Senators. I know that they take messages. But in the automobile business it is totally different.

BY REPRESENTATIVE LLOYD:

Q A final question, different constituent. A fellow was in the used car business 15 years. Moved from one location in the Borough of Berlin to another location in the Borough of

Berlin. Notified the Board so he could get the address changed. What they told him was that you have got to put up a fence. And what he is doing, the outside of his building used to be a gas station. It is no longer a gas station. He is renting it. It has two bays to fix cars which regulations say you have to have. He is being told that he has got to put up a permanent fence to somehow fence off those used cars from the rest of that operation all of which is tied together and all of which is required by your regulations.

I did a little survey. He happened to call me just by chance last week. I did a little survey over the weekend of used car lots in my district. I didn't see any that had a permanent fence around it. As a matter of fact, I didn't see any that had a temporary fence around it. This guy is being told, he is up for review next week, he is being told you can't get your license. You cannot continue to sell used cars until you put up a permanent fence. What is the sense of that?

A Senator, I have that file and I am going to review it. I am not saying that we are 100 percent in the regulations and that some you can't deviate from or some should not be there. That is not what I am saying, but I will say when our House Bill 829, with the assistance of everyone here is passed,

most of those questions are answered in that bill.

Q I am not familiar with House Bill 829. Unfortunately, I have to leave.

A Senator, I will look at, are you talking about Philips?

Q No, I am not. The two people, the one that you have before you for your next meeting is Landis Auto Sales in Berlin, Pennsylvania and the one before was Hardesty's. I think they are trading under the name of Guy Shasta Dealer in West Salisbury.

A Senator, I do have that file and after I testify I will be happy to go over it with you rather than take the time of the Committee.

REPRESENTATIVE LLOYD: Fine. Thank you.

CHAIRMAN HUTCHINSON: I'm sorry we got you off --

MR. LIPSI: Perfectly all right, perfectly all right.

We do have guidelines, Senator, obviously.

REPRESENTATIVE LLOYD: I have read some pamphlets. I think there is a lot of confusion in that pamphlet and there seems to be confusion, whether it is because the pamphlet isn't well written or whether answers aren't given clearly when people call the Board. This Mr. Landis made a

trip down to Harrisburg and they told him things. He goes home, he sends papers in and then they say, you got to do this, this and this. That shouldn't be necessary.

MR. LIPSI: Mr. Chairman, if I may address that before I go on. Since I have become Chairman, I have instituted a different system. I have instituted a system whereby rather than sending letters back and forth Mr. Jones today needs this and Mr. Jones tomorrow we need that. I set up informal hearings that are conducted by persons who are mostly close to it. For instance, if it is the automobile business, I have the salesman on the Board who is very, very learned. We let him conduct the informal hearing. And if it is in the case of mobile home dealer, I let the mobile home dealer conduct the informal meeting. Because if it goes to a formal hearing, and we are resolving. In fact, in the past I have made many, many visits. It is not the intent of the Board not to license people. We do want to license people. We do need the revenue. We do need the competition and we do need the right kind of people in business.

REPRESENTATIVE LLOYD: Thank you.

CHAIRMAN HUTCHINSON: Jim.

BY MR. MARTINI:

Q On your informal hearing proceedings, what sense

is there to drag someone in, say, from Erie for example for an error or change of address on their application? To bring them all the way across the state, have them come in, tell them this is incorrect because the address is incorrect, send them back home, a week later mail them a new application to fill out which they then transmit back to the Board?

A I am not certain that you're talking about a particular case. We don't bring them directly across the state.

Q I am talking about a particular case.

CHAIRMAN HUTCHINSON: I could add five more.

BY MR. MARTINI:

Q When it's something that could be handled by telephone or via letter, I can't see bringing someone in all across the state?

A Okay, Jim, I am addressing that. When we attend the Board meetings, we have meetings two days out of the month. I am on the telephone or one of the other members are on the telephone, we are attempting to resolve as many as possible on the telephone. The ones that are a little touchy we bring them into informal meetings only to license them. We want to license them.

Q The problem with the application was instead of

putting R.D. 2, he put down R.D. 1.

A Okay, we have a lot of misunderstandings. Some of the dealers cannot communicate properly. So when they are brought into an informal meeting and we show it to them in black and white, we communicate with them. And it is the intent of the Board when we bring them into an informal meeting to license that individual. That is the intent. We don't bring them in because we want to harass them as has been brought out here. We do want to license them.

Q I was just curious because the particular gentleman was brought in. It was told that the address was incorrect, he would have to refile the paper. An application was not given to him. He then had one mailed to him by the Board which seemed to defeat the purpose of what you're talking about. And when he sent that back, it was denied because even though his original application had a statement from the bank as to his credibility on it, he didn't on his new application fill that in which was his fault per se. He didn't fill it in, but he already had the bank statement on the original application.

A In answering your question I am going to answer one of the criteria. The Board meets two days a month and I conduct state business probably 24, 25 days out of the month.

People call me and I call across the state. Answering another one of the criteria as far as the economic part of it, I don't charge my telephone calls out and my telephone bill runs like maybe \$1,500 a month, not all state calls but that is part of my business. But I attempt to resolve them all. Many people get to the Commissioner and I work very, very closely with the Commissioner. I must say and I can state that there has not been one that we have not resolved when I looked into it. And it is my intent and as Chairman of the Board to minimize the difficulties in licensing dealers. We want the right people and we want to minimize the requirements that seem very difficult and strenuous to them.

CHAIRMAN HUTCHINSON: Carry on.

MR. LIPSI: I just want to go on with, here is a copy of part of what the State Board, State Licensing Board's control of variety of jobs. When I indicated to you that the State Board of Motor Vehicle Manufacturers, Dealers and Salesmen is vitally important, that is one of the reasons. We have, when I talk about the manufacturers and I gave you the Doug Cooper case, here is a case of Fiat. Where Fiat Motors is attempting to cancel like maybe 15 or 16 dealers. The Board intervenes in this end, of course, they seem to be holding to the criteria of 60 days' notice, but the Board will resolve

this. This is another duty of the Board. To see that manufacturers don't unduly cancel dealers out.

Here is another case I have here, Downingtown Imports, where the Board ruled in favor of the manufacturer, because the Board felt that the consumers would be hurt and were being injured. Ruled in favor of the manufacturer. I read that one to you.

Here is a case where a salesman was cheating. He was rolling back odometers. If I just may point out, an odometer rollback constitutes from 15 to \$2,500 that the consumer is being cheated out of. If we are not there to protect our consumers to see that these people are put out of business, our consumers will be injured.

I have another case here where 48 Toyota dealers were inflating prices. We corrected that situation. I have another case here where the used car dealer industry is put under study by the FTC. They find that this is important enough, this is another important duty of ours to see that the used car dealer is controlled. We have a used car act from Magnus and Moss. Part of our duty is to see that this is upheld.

I have touched on the odometer rollback, and here is an article, I believe, in the Pittsburgh Press that says,

"Legislators might as well be condoning rollbacks if they fail to act or stop them." We represent you, gentlemen. If this is not done, if we do not handle this, see what they are saying, the legislators are not doing their job. We are. We know that you are very, very busy people. We do know that you have busy schedules as government has it. We are there to see that your constituents are handled properly. We do have copies of the odometer laws that we pass out to our people. Here is a copy of a clipping in the Harrisburg press, "State Board clamping down on an unscrupulous car salesman." We have been clamping down on them. We want the bad people out of the business. We are putting them out of the business. Statistics will show that in a little while. Group plans to probe odometer tampering. We read the papers. We have members throughout the state that send us clippings. When we get this, we turn them over to our prosecutors. They investigate them and we handle that judiciously. We have referrals from consumer protection answering some of the criteria. Some of the consumer protection mediate cases. They try to settle them, find them. But they don't put the dealer out of business. We do. If that dealer is not all right, we put him out of business.

We pass resolutions, as we have the power to, to

further protect the consumer. I have sales tax cases here. I will read one. "Dear Mr. Geist, State Board of Motor Vehicle Manufacturers, Dealers and Salesmen have scheduled an informal meeting to discuss certain title violations which you have incurred. This is an informal meeting where no action against your license will be taken."

We have cited him to an informal meeting where we can resolve this. Putting the man in jail is not helping the consumer. Putting him out of business is not helping the person. We want the title. We want the title from this man. We will get it. We have been.

Here is another case here where an automobile dealer, an associate, faces tax conspiracy charges, clipping. Clipping to the tune of 100 percent. We will handle that. This man, I mean, he is cheating the State of Pennsylvania. He is cheating me, he is cheating you, he is cheating all of us. If we don't handle this properly, instead of six percent we will have seven percent. Again, we have helped the sales tax even after state auctions. The state is the biggest violator of the state sales tax. You can go to the state auction to buy cars and don't even pay sales tax on them. They are condoning the unlicensed --

CHAIRMAN HUTCHINSON: One of the things a lot of

people don't know is a dealer is not licensed to collect sales tax.

MR. LIPSI: I understand that, Mr. Chairman. It is not his responsibility --

CHAIRMAN HUTCHINSON: Right.

MR. LIPSI: -- to collect sales tax. In the case of a mobile home dealer, he is responsible and he is compensated for it. In the past, we were, as a dealer, when I say we I mean the dealers, were obligated to collect the tax and were compensated. However, many dealers kept the money and we have more fraud and more clipping and more sales tax money going into dealers' pockets. Therefore they came out with a law that says that the purchaser must write the check direct to the Revenue or if he writes it to the dealer, the dealer must endorse ^{it} /over to sales tax. However, if the purchaser's check is not good, the dealer is responsible for it. Even though he is not responsible --

CHAIRMAN HUTCHINSON: That is on the mobile homes, not automobiles. The only thing on automobiles, any dealer has to collect taxes. And if the person wants to be straight, he will take that tax and make out his own check and pay you because you are not responsible as a dealer.

MR. LIPSI: Absolutely. What if Jim comes in and

pays his sales tax with his check and his check is no good? Does that mean I can stop payment on mine to the state? No, no, sir, no way. There is corrections to be made there.

Here is another situation, car dealer to be tried in tax case. Again I say we have collected taxes for the state. We have disciplined the people. We have put the bad people out. We still intend to do that and we will. Here is a situation here, you talk about PennDOT, another one of your criteria. Steven A. Tibbens, Supervisor sends it to us. Mail has been returned to this department by United Parcel Service as undeliverable at registered location as listed. Please forward to this section notice of any action taken by the Motor Vehicle Board.

Very simple, very easy. PennDOT says we send this man literature and he is not there. Handle it for us. How can they handle our affairs, they don't handle their own.

Furthermore, while I am on that, when the Salesmens Act was changed in 1973 that was because PennDOT was not handling it properly, moved down to us. And again while I am on that, touch on what the trooper had talked about, what the Senator mentioned, why we license or why PennDOT licensed new car dealers without an investigation and made a subsequent investigation and why a used car dealer's license is investiga-

ted before he is licensed. The reason for that is in order to become a new car dealer, you meet a lot more stringent criteria than you do to become a dealer in the State of Pennsylvania. The Board feels, as others, that if you meet the criteria of the manufacturer, you certainly must be honorable and reputable and must have a facility requirement that would meet with our requirements.

I have another one here, part of our duties. This is a memo that was sent out to the Board for the Board to consider. I will just read part of it.

It is the policy of the Legislature of the Commonwealth of Pennsylvania to encourage and contribute to the rehabilitation of criminal offenders and to assist them in becoming responsible citizens. The public interest is best served when such offenders are given the opportunity to secure employment or to engage in meaningful trade, occupational profession and that policies to ensure this and shall be provided under the laws of this Commonwealth. Except as provided by this act, a board, c o m m i s s i o n or department, when determining eligibility for licensing, certification, registration or permission to engage in a trade, professional occupation may consider convictions of the applicants of crimes but the convictions shall not preclude the

issuance of a license, certificate of registration or a permit."

We have got to evaluate those people. We have evaluated a banker who printed twenty dollar bills. Ironically, he only printed the amount that he needed. He wasn't a real thief. He was just a small thief. We felt that in the best interest of the Commonwealth that he was rehabilitated by his fines. He gave us restitution and all. We gave him the opportunity to sell. I must say that all of the people that have criminal offenses that came before the Board for licensing and the Board licensed them, I can vehemently say that not one has returned to the Board for committing a like offense or other.

Another duty of the Board, here is a letter that I will read that was sent to Mr. Sam Firestein (phonetic) when he was chairman of the Board from Jim Morris. It says Mr. Ortlock (phonetic), PRVCA, Pennsylvania Recreational Vehicle Camping Association co-chairman and I had a business meeting last night and he asked me to forward a page from the newly proposed Vehicle Code. As you will note, passage of the new Vehicle Code legislation will certainly enhance the status and importance of your Board, essentially eliminating the PennDOT dealership license. The Pennsylvania Recreational

Vehicle and Camping Association has some differences within the proposed Vehicle Code, but essentially we feel the new code was essentially needed."

This was sent from one of our chairmen who attends most of our meetings. Gives us a great deal of input as well as PIADA as well as PAA.

I would like to read a letter sent to the Governor. "Dear Governor, sometime ago I purchased a new automobile and found that the vehicle did not, in my opinion, meet the standards of a new car. The car seemed defective in many ways. Although I called all these matters to the attention of the dealer from whom I purchased the automobile, I was still forced to seek legal counsel in order to attempt to set things right.

"My attorney and I learned of Pennsylvania's Board of Motor Vehicle Manufacturers, Salesmen and Dealers and contacted them requesting their help. From the outset of our contact with the Board, I was completely impressed by their dedication to their job. In every instance inquiries made by either my attorney or me were quickly and courteously answered. The hearing was speedily arranged and conducted. I was able to appear at the hearing without my attorney and my interests were protected completely by the judge and by the

Assistant Attorney General who appeared at the hearing.

"The net result of the entire referral to the Board was successful as far as I am concerned and I feel at the same time that the dealer and the national manufacturer both were enlightened as to deficiencies in the automobile which I purchased.

"The purpose of this letter is to commend the Board of Motor Vehicle Manufacturers, Dealers and Salesmen and to let you know in as strong a way as possible that I recommend the employees and agents of the Board to you for commendation. They indeed performed an important consumer service and reflect well on your administration in its effort to protect the citizens of the Commonwealth of Pennsylvania. Signed by Frederick C. Harris"

We have many more of these letters and I won't take all of your time and read them.

I just want to address one more of your questions. The Chairman asked about consumer members. I furnished my consumer members with a pamphlet from the Governor, Professional and Occupational Licensing. In here it tells the consumer, it tells him what he should do, how he should act, the questions that he should ask. And let me say that they do have an obvious interest in public service. One of our members is a

banker that we feel is very, very helpful to the Board. He has been diligently selected. He is from the western part of the state from Erie. We have merchant, a merchant from Philadelphia, who is very, very helpful to the Board.

Mr. Dario mentioned the consumer member vacancy on the Board. I would like to address that. The reason that consumer member, that membership is vacant, is because we have a consumer member on the Board that was retired from another profession and was asked to resign from the Board. Our consumer members have common sense. They question, Mr. Chairman, policies, procedures and decisions of the Board and have asked for an explanation. They have questioned, when a consumer is involved, as chairman I will always call the consumer first. What is your feeling? We want to hear the -- beside hearing the complainant's part, we want to hear what our consumer, what he has to say about it. I call on both, the consumer. When we have three, I call on three. I call on two when we have two consumers. I want their opinion first. Their attendance has been consistent. They have given direction and support to the Board in their decisions. And in general, Mr. Chairman, they are not intimidated in their decisions by the Board. Many times, many times, they probably intimidate the professional members of the Board. I may add

that the professional members of the Board constitute 200 years of experience, 200 years of experience. Gentlemen, where can another organization muster up 200 years of experience in order to expedite Act 144 and the newly formed Act 829 judiciously as we can.

Mr. Chairman, just a few more remarks and then I'll be ready for your questions. I'm going to take my entire 45 minutes. I could probably go on all day, but I'm going to take my 45 minutes. I want to say that we, the Board, as well as the Commissioner and the Deputy Commissioner, and I must add that in my tenure as a Board member, this is the first time that I have seen so much participation from the Commissioner and the Deputy Commissioner. Some of the other Commissioners I never knew. So we have a consumer member missing, we do have an active participation of our Commissioner. We are there to assist you. We want to help you. Tell your constituents who we are, where we are at, what we can do for you. Sure, there may be cases where a constituent of yours has not been licensed. But I ask you to take a close look at it. We are there to be corrected. If we are doing something unjustly, I want to be told about it. I want a perfect board. I want to do what is right.

CHAIRMAN HUTCHINSON: Sir, you say you want a board.

Who is your main director? Is she here today or is he here today, the person that does the nuts and bolts every day, makes the decision if you are not here? Did you bring her along?

MR. LIPSI: The Executive Secretary to the Board is not here, no, sir, Mr. Chairman. But in closing, I would like to say this act was born by you. We have a good law on the books. It is working well. We have a new bill, House Bill 829 that is before you. This will enhance our present act. We need your help and we beg and ask you to please give it to us. Gentlemen, we are here. We are here primarily to serve the public to make your job easier. We move the burden from your shoulders and thus make you more efficient. You have many, many governmental duties that you have got to perform. You have many responsibilities to your constituents. You are important to the Legislature. You are important to the people and to the constituents of this Commonwealth. You are important to government and you are very, very important to us. I say please keep us in existence and thank you very much and I will be happy to entertain your questions.

CHAIRMAN HUTCHINSON: Are there any questions?

BY REPRESENTATIVE NAHILL:

Q I don't think any of us really have a problem. I may be speaking out of turn for other people, with the Board,

say the Board members, etc. I think an awful lot of us do have problems with those who really do the nuts and bolts work that you just referred to. What kind of supervisory work do you and your Board do? Do you honestly feel you are aware of what the bottom, the top, the bottom and middle of your organization is doing? I am not condemning you, but I have talked to an awful lot of people who have a board and the board members come into a meeting and they are told by the executive that here, here and here, and they don't have any idea what the rest of the organization is doing and how they are performing and the red tape, and frankly, the authority they have.

A girl sitting on a telephone answering questions probably has as much authority as you do if somebody isn't watching her pretty carefully. And I have run into some organizations, again, not yours, run into some organizations, not even under Professional and Occupational Affairs, some organizations where a secretary sitting at a desk at lunchtime has far more authority than has the chairman of the board. All she has to do is say no or not get back or not give a darn to research the problem and say, there is nothing we can do about it. Do you guys feel that you have a handle on this at all? Being there two days a week, what kind of supervisory capabilities do you have to see that the organization is really

working well?

A Number one, you are absolutely correct. The executive secretaries are there every day. They see more of the goings on and in order to accelerate the licensing of the dealers, rather than to hold all the applications for the Board for the Board to review them, the Board has set certain guidelines whereby the executive secretary can immediately issue them if they meet certain criteria. However, when I said I am on the telephone with our office every day, every day when she has a question and she advises the constituent to or the applicant to call me and I attempt to resolve it on the telephone and sometimes it is difficult because I am not looking at the file. I try to make it a point to get to Harrisburg rather than to hold them up for a meeting, try to resolve it before the meeting. And in cases where, as I said, if it involves a mobile home dealer, I try to conference the call to see what he thinks about it. In cases where the dealer is in the immediate area of a Board member, I will ask a Board member to go out and evaluate it. We do have the problem that you are talking about. Since I became chairman, I have been a very, very active chairman. When we send out an applicant pending, my telephone is listed on that, my telephone number, and the applicant is asked to reach me. I am a dealer. I have

been a dealer, my family has been in business for 40 years and I grew up in the business. I understand a lot about the dealers' problems. I understand what the Senator talked about when he said about offices, can you do this, can you do that. Most of the times we resolve that. Most of the times it is resolved. Did I answer your question?

Q Yes.

CHAIRMAN HUTCHINSON: Mr. Miller, the Commissioner of Occupational Affairs, he is there every day. You might ask him a question along that line. To say that somebody would maybe call him or what he has to do with the staff. If you want to ask Mr. Miller. Do you have an answer? Were you satisfied with that answer?

MR. MILLER: Very honestly, if we get a complaint, and frankly a lot of them do come through, you call me personally.

CHAIRMAN HUTCHINSON: I call you.

MR. MILLER: We get on the phone immediately. I am talking about my deputy, my legislative gal or myself. We discuss it first with a secretary to the Board, who is the executive you're talking about in the chair. If frankly, we can't resolve it there I would call the chairman and I have called him innumerable times. I wouldn't even try to guess.

There are problems of interpretation of things. I would like to offer, Mr. Chairman to possibly have the secretary of the Board, if you wanted her here, we obviously/^{would} call her.

CHAIRMAN HUTCHINSON: Maybe if we go after today we might have another --

MR. MILLER: Whatever you say.

CHAIRMAN HUTCHINSON: Any other questions? Paul.

BY MR. LANDIS:

Q Your regulations or the criteria that you use to accept, reject an applicant, are they all published in the Pennsylvania Bulletin, the changes you have made?

A They have honored, I think a few of them. They have not honored all of them but a few of them they have.

Q Are you enforcing any resolutions or regulations that haven't been published in the Pennsylvania Bulletin?

A Enforcing them, no.

Q Was there a regulation published dealing with a show in Pittsburgh where some mobile home or RV dealers wanted to come down and have a show down here and they were told they had to have an off premise license? Is there a regulation governing that?

A Yes, we do have that.

Q Was that published?

A That was published. I do have a copy of it here if you care to see it. I do have that, yes. They must have an off premise license.

Q I mean, was that regulation published in the Bulletin?

A Yes, it was.

Q I have heard you have been enforcing some criteria, things like that that have not gotten into the Bulletin?

A Well, I think I answered your question when you asked have there been regulations enforced that have not been published. My answer was no.

Q Now on prosecution you were talking about odometer rollbacks. You do know we just passed an act that gives the Attorney General the authority to prosecute under the criminal --

A Yes.

Q Are you working with him or are you going to work with him and let him do the prosecution?

A Yes, we will. We will ask him to work with us on the unlicensed activity which we have no jurisdiction over and there is a lot of it in the state.

BY MR. MARTINI:

Q On the \$25 fee you were charging for off premise licenses, and I did read the minutes where your Board counsel

even told you it was an illegal charge and you had not published it in the Pennsylvania Bulletin. How long did you charge that prior to, I don't remember ever seeing the publication in the Bulletin as yet. It may have been there and I missed it. I know for a fact that goes back at least 18 months it was being charged.

A I cannot go back to the exact date, but I would assume in that area, yes. We do not charge at this time.

CHAIRMAN HUTCHINSON: No more?

MR. LIPSI: No, sir, we do not.

BY MR. MARTINI:

Q That was under a class action that the fee was finally rescinded?

A No, sir.

Q It was my understanding that it was. Secondly, what happens if Clare Flinchum goes to lunch, what happens to the everyday duties of the Board?

A We do have another person in the office. I am glad you asked that question. We do have two people in the office.

Q It is my understanding that up until recently no one else could handle the everyday ordinary issues of licenses if Clare went on vacation?

A The Commissioner has handled that and the Commissioner has the second person in the office on the same level as Miss Flinchum. In fact, today she's not in the office and the office is still being run as efficiently.

MR. LIPSI: I would just like to add I erred in not giving you some stats. I would like to give you some statistics, Mr. Chairman, on the official complaint cases. In 1980, we had 131 cases open. In 1981, we had 206 cases open which is a 60 percent increase. In 1982, we had 240 cases open which is a substantial percentage increase also. For the first six months of 1983 we had 112 complaints open. So since 1980 we have a total of 689 complaint cases.

Of the 689, 469 cases have been closed. Two hundred twenty are still open. Since 1980, we have had 23 revocations. We have put 23 people out of business, 35 suspensions, three official letters of reprimand. By the year 1980, we suspended nine people, revoked two. 1981 we suspended 12, revoked 12. In 1982 we suspended seven, revoked five. 1983 we suspended seven, revoked four.

Now that is only up until June of 1983. Now I might point this out to you that in 1981, bureau-wide, in the whole bureau, 27 people were involved, 27 suspensions which brought us to 33 and third percent of that amount. In 1982 we

were at ten percent of the total suspensions where there were 72.

So as you can see we are doing our job up there and we are performing according to the letter of the act. We would like to continue. If there are no further questions --
BY CHAIRMAN HUTCHINSON:

Q You did mention, I have one, you did mention about a new car dealer and somebody that got a lemon or something. Now most dealers, under federal law, have arbitration. Do you step in and help? Instead of having a Lemon Act like in New Jersey and Connecticut.

A Yes, sir. What we do when we have a situation involving a dealer, maybe Carl would like to answer that one when you initially get a complaint.

MR. EMERSON: For the record, my name is Carl Emerson. I am the Board prosecutor assigned to the Motor Vehicle Board. I will preface my remarks by saying I have only been here since February. So naturally I can't testify to --

REPRESENTATIVE MISCEVICH: I don't believe the court reporter can hear you.

MR. EMERSON: And I cannot testify to anything occurring prior to that. But you are talking about a consumer

complaint filed against a new car dealer?

CHAIRMAN HUTCHINSON: Yes, when it goes into arbitration or before it gets there when they file what would you do?

MR. EMERSON: Well, what would happen, as with any cases filed with the bureau, an official complaint, these are the figures that Mr. Lipsi was quoting to you, 131 in 1982, 106 for 1982. What happens if an official complaint is opened. A file is opened and forwarded to my office and it is my function as prosecuting attorney to initially evaluate the complaint to see if there is any narrative there. To assist me in doing that we do have a staff of investigators who I can send out to interview the complainant, to interview the dealer involved to get their side of the story. Very often the complaint can be resolved at that stage. However, if as a result of the investigation, the consumer appears to have a valid complaint against the dealer and the dealer is not willing to comply or make good on the consumer's complaint, we have the obligation and the opportunity to haul that person in for a formal hearing.

CHAIRMAN HUTCHINSON: Stop right there. Do you call in the manufacturer, who has an arbitration case, where he can arbitrate this thing? Do you ever call in the dealer,

I mean, the dealer and the manufacturer at one time, because actually the manufacturer is the guy that built it?

MR. EMERSON: Right. In the time that I have been there we have not had to go to a formal hearing with any consumer complaint. We have been very successful in getting them resolved. So I can't really address that.

CHAIRMAN HUTCHINSON: Well the only thing is I would like to see something being done so that we don't slap a Lemon Bill like the other ones in New Jersey and Connecticut, there might be three or four states. New Jersey just did it two weeks ago. I wouldn't like to see that. But I would like to see you people, the manufacturers tell me that they do have a board set up at the federal level, and if you people could get in on it with both the dealer, threaten the dealer and the manufacturer, you both give them a license like Volkswagen and all the rest of them to force them, if somebody has a real complaint that they get their automobile fixed up.

MR. LIPSI: May I address that?

CHAIRMAN HUTCHINSON: Yes.

MR. LIPSI: If I may, I have been there longer than Carl. I have seen Volkswagen of America come in where they had attorneys carrying suitcases for attorneys. We made believers out of them. They were not servicing the dealers with the

proper products. They were not attempting to, but if we had not intervened, they would probably have caused some good dealers to go bankrupt because of lack of power. We have had cases just last week. I am a Chevrolet dealer. I called the Chevrolet Motor Division in Philadelphia because we read in the paper where a certain dealer went out of business. I called Chevrolet Motor Division. I told them that we were concerned about the consumer. We understood there were deposits received, automobiles ordered and I wanted to know what they were going to do about it. And of course, they said they would either return the deposits or they would furnish the automobiles. We do call them in.

BY CHAIRMAN HUTCHINSON:

Q You're not talking in the same vein I'm talking about. I am talking about if I bought a Chevy off of you and I took it to the garage and one of your mechanics would say, oh, I can't find anything and I call the manufacturer and they come out, do you intervene with the manufacturer and the dealer both so we don't get a Lemon Law in Pennsylvania?

A Yes, we do. Yes, we certainly do and I can cite some instances on that.

Q The thing is if you people do something, then we won't have a law that I think would be bad.

A I have talked to numerous factory reps. Every manufacturer has a representative.

Q I am asking is your Board helping to solve the problem where people think they have got lemons?

A That is why I am saying we do get in touch with the manufacturer and the rep and there are times when we go over the rep's head. We go to the central office.

We had a situation last month that arose and we handled that. We called Chrysler Motor Division directly and it was handled judiciously.

Q Chrysler?

A Chrysler Motor Division.

CHAIRMAN HUTCHINSON: Thank you.

MR. LIPSI: Thank you for the opportunity.

REPRESENTATIVE LLOYD: Mr. Chairman.

CHAIRMAN HUTCHINSON: Are there any questions?

REPRESENTATIVE LLOYD: Yes.

BY REPRESENTATIVE LLOYD:

Q One complaint which we have heard consistently from other boards which are under the Sunset Review, those of us who are both of this Committee and also the Professional Licensure Committee has been with regard to the inadequacy of staff. Not having enough of it, not having enough counsel,

having a surplus of funds. In other words, the fees bring in more than is being spent by the board. I understand you haven't touched on that issue this morning. Is that because you are satisfied that you have all of the staff you need?

A No, I'm sorry if I didn't address it and I thank you for giving me the opportunity to address it. The figure Mr. Dario mentioned was \$500,000 in excess. I feel, and we need your help. Without your help I don't think the Commissioner or the Board or any of us can do anything, for instance, with our investigators. Our investigators are probably being paid in the vicinity of \$15,000 a year. If the investigators were given more money, if the investigators had a little more serious requirement like two years of college and were paid more money and we were given additional investigators and if we were given additional prosecutors. You realize what state government is. You get some attorneys fresh out of school and the first place they want to go is work for the state. The state educates them, gives them a little knowledge and they are gone. Now we have to train another man.

CHAIRMAN HUTCHINSON: Even Bill Lloyd is in that.

(Laughter.)

BY REPRESENTATIVE LLOYD:

Q The next question is have you made requests, budget requests, to the Commissioner of Occupational and Professional Affairs to have additional staff hired?

A The man that handles the budget for the Board, I must apologize is not here today, and I am not totally familiar with that as far as that request is concerned.

Q Just for information, the members of the Transportation Committee, there have been discussions on both sides of the aisle and also with the Senate about proposing changes in the budget process for all of these boards to have the Legislature find out what boards are requesting. What we are finding is boards request, and for whatever reason the Commissioner doesn't approve it, yet there is a surplus of funds being charged to our constituents who are being licensed by those boards. So you may want to consider that at a later time.

A Our fees go into presently, I believe Mr. Dario testified that we licensed 32,000 people. So you can see there is quite a few people there. And our funds go into the general fund. Unlike other boards that goes to the board, like the Medical Board, for instance, they have their own fund.

REPRESENTATIVE LLOYD: The Commissioner is saying that is not correct.

MR. LIPSI: Okay, then I stand to be corrected.

MR. MILLER: Their funds go into the licensed professional augmentation. It does not go into the professional occupational fund.

REPRESENTATIVE LLOYD: Right. So it is the same issue basically we have discussed. We don't need to burden the transcript with that.

BY REPRESENTATIVE LLOYD:

Q In addition there is a question in my mind about how well publicized your availability is. Maybe you touched on that when I wasn't here this morning. If we have a surplus of funds, one thing that we could do is make a lot more members of the general public aware that you are in existence. That if they have a complaint they can come to you. What kind of public information program do you have or have you already discussed that?

A Well, no, Senator. I will address it. We are very close to the automotive associations, PIDPA. They are familiar with the Board and they notify their constituents, and PAA, they notify their constituents. But we do need more press.

Q But I am talking about the consumer, not the dealers themselves. I am talking about letting the consumer

know, my constituents know, in the case of chairman he wants to avoid the Lemon Law. I am not sure I agree with him on that. But at the very least both of us want to make sure that when our constituents go out and buy a car and have a problem and can't get the dealer to do anything about the problem, that they know where to go and we know where to send them. One thing that could be done would be greater publication or advertising, whatever, the fact that there is a state board to whom you can complain.

A I welcome that. I welcome that very much. Consumer Protection does notify the consumers when they do get there. They notify them that there is a state board.

Q Okay, now also there was a statement made, I guess in your initial rebuttal to the draft in Mr. Dario's report having to do with the problem of not being able to pursue unlicensed activity. In other words, here is a fellow who is out, doesn't have a license to sell cars, you can't do anything. Under the law, because of the independent elected Attorney General, the prosecutorial responsibilities are with the Attorney General and that has caused some problems for the other boards. We have been told that there are activities underway to get the board prosecutors deputized by the Attorney General so you can go directly into court. Has that happened?

MR. LIPSI: I'm going to ask the prosecutor for the Board to answer that.

MR. EMERSON: Yes, that is correct. We have started a selective program prosecuting unlicensed activity. The trouble with the Motor Vehicle Board is that there is so much of it involved. Myself, I would be running all over the state filing complaints in common pleas court, whatever is involved. So what we have to do is any time we want to request deputization or delegation from the Attorney General's office which involves filing papers with them and asking permission to be able to proceed in lieu of them, we have to justify why we are going to pursue this particular case of unlicensed activity as opposed to others. Because we just don't have the resources to pursue all the rest of the activities. So there is a pilot program that has been able to go ahead.

CHAIRMAN HUTCHINSON: Thank you, Mr. Lipsi.

BY REPRESENTATIVE LLOYD:

Q One more question. As with regard to the vacancies. Have those vacancies been filled?

A We did receive a new member the last meeting. The consumer member has not been appointed. I am not certain he hasn't been appointed. I will say he is not sitting on the Board. It could be in the process at this time, which I feel

it is.

Q How long has that vacancy existed?

A I couldn't say right offhand. It has not been that long that it has affected the Board any.

REPRESENTATIVE LLOYD: I guess that is a matter of judgment. Thank you.

CHAIRMAN HUTCHINSON: There is one thing, I don't think the banker sitting on your Board is a consumer, because the bankers have something to look forward to. When I go into buy a car and they get a loan. If you're going to say you're going to have a banker on the Board, you ought to have it lined that way because I don't think a banker could be a consumer advocate.

MR. LIPSI: I am not saying that the act calls for a banker. I am saying that one of our consumer members --

CHAIRMAN HUTCHINSON: I understand that, but I don't think he is a consumer. Because he has money, he has just as much money involved in that as anyone of these gentlemen sitting back there that owns an automobile --

MR. LIPSI: I'll tell you this that we do have an awful lot of violations in the consumer contracts for the purchase of vehicles and he does understand them. He has resolved many of them. I won't go through the criteria.

CHAIRMAN HUTCHINSON: You've done a good job.

MR. LIPSI: No more time?

CHAIRMAN HUTCHINSON: No more.

MR. LIPSI: Thank you very much, gentlemen.

CHAIRMAN HUTCHINSON: Mr. Miller, did you want to say something?

MR. MILLER: Thank you, Mr. Chairman. I will be happy to answer any questions that might be, ones that I can answer. I notice one thing that was discussed was more investigators and I felt that the Committee was entitled to know I have sent back on October 25, 1982 to the budget representative of the Motor Vehicle Board this letter. "Dear Art: This letter confirms the substance of your meeting of September 17th of which the budgetary requirements for the Motor Vehicle Board for the fiscal year 1983-84 were discussed. Your only concern was to obtain more investigators. We will hire," and we have by the way, "nine more inspectors very shortly which will substantially increase the available law enforcement resources.

You may also wish to contact the Chief of Law Enforcement and let him know of your needs."

We did hire those people in the fiscal year that just closed. We are in the process also of reviewing and

hiring more people and hoping to upgrade, because that was one of the questions that was raised. We are trying to upgrade our investigators and inspectors and things of this nature where needed and when needed.

Does anybody have any other questions?

CHAIRMAN HUTCHINSON: Gordon Linton.

BY REPRESENTATIVE LINTON:

Q One question I have. I understand you are hiring additional investigators, but the fact do you recall the statement the gentleman from the State Police made before. There seems to be some duplication of those type of services. I am wondering whether you can justify additional investigators without looking at whether they are doing some of the same things?

A Maybe I can try to explain it the best I can, Representative. First, our investigators do work functionally across the board for all the nonmedical or nonmedically related boards, nonhealth related boards. Beyond that the State Police are very helpful on initial investigations, but when it comes to citizen complaints, it is our people who go out. In other words, the complaints, if you go out, to use the word we used here, and bought a lemon, it is the investigators from our bureau who have the responsibility. The State Police do the

initial investigations and work with us very well. In fact, Commissioner Dunn, Mr. Lipsi, Miss Rhodes and myself had a meeting with Commissioner Dunn to even go into the auctions and check on these things because that is where the predominance of odometer rollbacks -- we started licensing by regulation the out-of-state wholesalers where people come into the auctions. So we cannot complain at all. We have had tremendous cooperation from the State Police and are getting better. But when it comes to a citizen complaint, we don't call them. Our investigators in effect do the full investigation of whatever crime that might be. So there isn't quite the duplication that you see per se. I mean, one comes into being at different times.

Q I still question why there is a need for additional investigations of consumer complaints. It is then picked up by an investigator from your office because of a problem because of the initial person handling the investigation?

A In the beginning they check for different things. If a dealer is in the business a longer period of time, let's say, a title isn't given or something, it may well be our investigators that will go out and check.

Q I'm talking simply in regards to a consumer complaint, solely that area.

A That is what I am talking about, too, sir. That when a consumer complaint comes in per se, normally, I am not saying all the time, you get complications and things like that, it is our investigator the prosecutor would send out to do the investigation at that point as opposed to the one initially. I don't know if I'm explaining it, I am trying to.

REPRESENTATIVE LINTON: Thank you.

MR. MILLER: Is there anything else, Mr. Chairman, I might be able to add. I will be here the rest of the day with my staff should there be anything we can help you with.

CHAIRMAN HUTCHINSON: Mr. Gene Stocker.

MR. STOCKER: Mr. Chairman, members of the panel, my name is Gene Stocker, for the record, and I am a dealer in Centre County. I am a member and Director of the Pennsylvania Automotive Association. I am here at the direction of my fellow dealers from Centre County. The remarks or questions that might be asked are not necessarily my own. They are from the dealers that I represent.

I think we have touched on probably the main point. Our dealers feel right now that the Licensing Board has done a very good job for them. They feel a great need for it. They feel an improvement is required. I think we have put some teeth into the law which I understand is going to be

forthcoming. However, at the same time the situation here on the tent sales and some of the impositions that have been put on the dealers, they feel is in the form of sort of a harassment. While the rules are out there working, they would like to see more emphasis put on the bad guys. Let's get out there and investigate people that need to be investigated and the dealers that hold the tent sales have been in the business for 20 years. Let's not harass them quite so much. This is the only complaint. I have been instructed by my dealers, I don't mean to jump down Gene's throat, but the new car franchise dealer is required to operate under a certain capital requirement with the factory. So basically, the dealer that is going to steal the sales tax funds and abscond with other monies, I don't think the Licensing Board is going to find the majority of this type of thing happening with the new car franchise dealer. Maybe you will disagree with this, but I think the majority of your problem is going to be with the curbstoners, the used car lots that do not conform to either the capital requirements or facilities, that do not serve the public. I think this is where we should really put the emphasis on. I think this is maybe initially what we started this thing out to do.

The tent sale thing, I am still a little bit in

the dark whether we do pay or whether we don't pay or whether we have to. But that was a big bone of contention with the dealers that I represent in Centre City.

If there would be any questions that the panel might like to ask me representing the dealers, or Gene, I certainly would be glad to.

BY CHAIRMAN HUTCHINSON:

Q I always have a question about the occupation boards, whether it was unionism by legislation. Since you are a dealer is that one of the main things that you looked at to give them a good mark, keep enough people out from giving you competition?

A Well, I cite only one case. We had what we call a broker type business move into the area, a pretty shoddy outfit, not well capitalized. Their main purpose in life was to collect money from the public and run. And that got stepped on very quickly by the Board and the dealers in the area appreciated the work that the Board did. So it is not all in favor of the dealer. The consumer at that point in time was the one that was really tightening the rod. Plus then we get to the facility end of it. They sell a car, they go back to that broker, there is no way that broker can service that car. So the facility becomes a very important thing in

the Board's inspection facilities.

Q Weren't some of the dealers using brokers to get off some of the unloaded cars that the manufacturer shipped to them?

A That undoubtedly took place, but I don't think in Pennsylvania, at least not in small areas. I doubt seriously if it took place in Philadelphia or Pittsburgh. I don't think we have ever been in a position of late.

CHAIRMAN HUTCHINSON: Bill.

BY REPRESENTATIVE LLOYD:

Q You were here, Mr. Stocker, when I was trying to get an answer from Mr. Lipsi with regard to why certain facility requirements are in the regulations. I am not satisfied that I got any answer other than about public health and safety. I can certainly understand the point the Chairman made what really is behind this is to try to prevent competition. Now I can see the difference between the guy who sets up a used car lot and runs away. The public has an interest in making sure that that kind of guy who may be selling hot cars or whatever and we want to keep that guy out of business.

Wouldn't you agree there is a significant difference between that guy and another fellow who maybe doesn't have the flashiest building in the world, but who has been in business

for ten or fifteen years selling used cars without ever having been investigated by the Board, isn't there a difference there?

A I would say there would be. However, at the same time the customer comes back, I think the Board wants to make sure that he has those two stalls. That he has a place for them to sit down. That he has the proper bathroom facilities that we are required to have.

Q Well I guess my question, some of those things I'm not sure you ought to be required to have. I mean, those are things that you do to make your place more attractive and bring in consumers. But when we start legislating that, either through statute or through regulations, what that does is mean that a guy who could do a good job and make a living, maybe could sell his cars for a little bit less, which I think all of us as consumers would appreciate, that we are making it harder for him to do that because we are saying before you can even be in this business you got to meet all these flashy requirements.

A Well, I might agree they should not be flashy, but very basic, they have to have a stall to take care of the customers.

Q Well, the regulations say that you either have to

have the facilities to take care of the customer's vehicle or you have to have a contract to get it.

A Right.

Q The constituent of mine has it. He has been doing it for 15 years. Now he moves from one location to another and now he has got to have a fence. Do you see any rationale for that?

A Not the fence, I can't understand that.

Q Do you see any reason why a fellow who has a substantial business and sells hardware and other things that recreational people might want to buy now wants to sell mobile homes ought to have to tear a side out of a nice brick building and put up a separate entrance so that that is somehow segregated to sell mobile homes?

A Well perhaps I'm not prepared to answer that question. I think maybe in the interest of better serving the public, if they come into a vacant lot and the only thing sitting there is a trailer, I might question where they might sit down and negotiate their business. How you would make a phone call to this place. They should have an office.

Q They do. They have an office for the rest of their business. We'll leave that aside. One final question. There have been comments about surplus and what we ought to be doing

with the surplus. Wouldn't you agree that counsel said, well, we really can't pursue all this unlicensed practice because we just have too much work to do. That if we did not impose quite such stringent, and I think harassing licensing requirements on people who are established businesses, we could allocate some of those resources to go after the bad apples?

A This is the reason I am here. We spend too much time on the good dealers who have been in business for 20 years. They are not going to cause you problems. Let's go after the people who are causing us the problems and spend money in that direction and you might get away without having to hire people. But we don't really need them down at the local tent sale in Harrisburg where you have got dealers who have been in business for 20 years and checking each and every salesman who was there talking to their customers. This was the point they wanted me to raise.

CHAIRMAN HUTCHINSON: Thank you, Mr. Stocker.

I have a letter from the Three A's I would like to enter into the record.

Hon. Amos K. Hutchinson
Chairman
Transportation Committee
House of Representatives
Harrisburg, PA 17120

Dear Amos:

This is in reply to your letter of June 27th inviting me as AAA's representative to testify before the House Transportation Committee in regard to the Sunset hearings on the State Board of Motor Vehicle Manufacturers, Dealers and Salesmen.

After consultation here among our staff we decided that the AAA Federation will not make a formal presentation to the committee. We thank you for the chance, nevertheless. Our main concern is that the Board continue to safeguard the interests of the motorist/car buyer in overseeing the automobile sales industry, and this is the main point that we want to make.

We appreciate having the list of the others who are scheduled to speak on Wednesday, July 13th. Hopefully they will have useful points to make from their various perspectives.

Thank you again for the invitation. We presume that this letter may be entered in the record as AAA's official response to the invitation to appear on July 13th.

Best Regards. Your sincerely, Robert J. Middleton,
Director of Public Affairs.

CHAIRMAN HUTCHINSON: Thank you very much and we will be back at 1:30, I think. We might have a budget ready

to go sometime this afternoon. So we might have to cancel, but as of 1:30 we will be here.

(Whereupon the hearing was recessed at 12:15 p.m. to be reconvened at 1:30 p.m.)

AFTERNOON SESSION

CHAIRMAN HUTCHINSON: This meeting will now be called to order and Mr. Eugene Lipsi has a couple of corrections he wants to make.

MR. LIPSI: Mr. Chairman, I would like to clarify one section of my testimony whereby Mr. Landis asked me if the facility requirements were ever published in the Pennsylvania Bulletin. I wish to correct my testimony in that we use guidelines and the guidelines were submitted to the Attorney General. He approved some, not others, but they were never published in the Pennsylvania Bulletin. I would like to make that clear. Thank you, Mr. Chairman.

CHAIRMAN HUTCHINSON: Thank you.

Ron Neithercoat.

MR. NEITHERCOAT: My name is Ron Neithercoat. I am Director of the Pennsylvania Independent Automobile Dealers Association for the State of Pennsylvania of course. Our membership consists of approximately 20 percent of all legitimate used car dealers registered in this state in addition to

all of the wholesale auto auctions in the state. We are primarily consumer oriented. What we will do, member or no member of our association, we do always look for the consumer first for his protection. We do this by advising our dealers through newsletters, seminars, and so forth. We follow closely with Consumer Protection, all the odometer laws and the sales laws, of course, are adhered to. We follow a rigid code of ethics in addition to this.

Consumer Protection, for instance, we tell our people you cannot sell a used car as is. You can do this, but you might have a \$50 used car on your back lot. You can sell it as is only if you disclose to the customer, in writing, accepted by him that it will not pass state inspection, that the engine is good, the transmission is good, and so on. In other words, you might have an old junk car, but this car has to do this to be as is. So as is really is not so.

In our state we have seven and a half million registered vehicles in the Commonwealth of Pennsylvania. Dealers, and I will go over the figures that Dick Dario had. He said there is approximately 32,000 with the Motor Vehicle Licensing Board. There are 4,000 new car dealers, these are approximate figures, that renewed this year. These include mobile home manufacturers, motorcycle dealers, and so forth.

There are 6,000 used car dealers. Now here is where the Licensing Board comes in and we do need help here and the Licensing Board needs help. Out of the 6,000 used car dealers 2,000 probably shouldn't be in business. In Harrisburg alone there are 40 used car dealers. Now I defy any investigator to go around and try to find 40 legitimate used car dealers. Our two surrounding counties, which are Lancaster and York County, there are over 600 used car dealers in these two counties. That is an unreal figure.

What happens with the Licensing Board, we do need regulations over dealers. We know this. But the dealer that already is in existence, he has a grandfather clause that protects him. This is why we were so adamant before, I know you went into this with Mr. Lipsi, on the signs or on dual business. A lot of these folks in the past put up a shingle. They had the old string of lights. This is gone. This business is a very professional business now. However, look for these dealers, look for 40 in Harrisburg, you will find them chicken coop garage, uncle's home, and so forth. We do need regulations to regulate these people. We have to have it.

To clarify a little bit the duplication of work between PennDOT and the Department of State, the figures are 16,000 dealers but 4,000 new and 6,000 used, the remainder of

these dealers are C dealers or miscellaneous dealers. These dealers are repair services, towing, wrecking, transportation, collect or repossess, and so forth. This dealer does not fall under the Department of State.

Here is what happens with the lag. If you want to be a dealer, you walk into PennDOT because it deals with automobiles. You say I want to be a dealer. The information will send you over to a counter at PennDOT. And it is the dealer one which issues temporary plates and dealer plates. They will say, fine, what kind of dealer do you want to be? Are you a garage? Are you a service station? They will in turn give you an application to be a dealer. There are three women at PennDOT plus a couple of counter people that will hand these papers out daily. Now, again, the C dealer does not come under the Department of State. Only the A and B or new and used dealer. It says there, Department of State, return to this address. But they got it from the Department of Transportation. They will in turn bring it back there. There are probably in excess of maybe 300 applications per month given out through the Department of Transportation. Probably, in all probability half of these are not returned. A lot of them are laid off millworkers and so forth just looking for a way to make a living. Also, a lot of these

people might have a little business down the road and they say, gee, I am able to sell cars, too.

Our biggest concern is unlicensed activity. We have no jurisdiction at the present time without new legislation being introduced for the Licensing Board. What this means is I can be a miscellaneous dealer or I can be an individual. I may go out and sell cars. I can buy and sell as many cars as I so desire and I do this with an application for title. We only have two forms in our state, whether it be an MV 1 or 4. All I have to do is put the big number one on front and say for a resale only. I can do this all I want.

Now Better Business Bureau, especially the Pittsburgh branch refers all their consumer complaints to our association. I reiterate a little bit, we do, member or no member, we look at what is law. If it is law, whether it's a member or not a member, we do turn them over to the proper authority. We use the Licensing Board constantly. Consumer Protection we use.

To get into the odometer thing, this is one of the biggest violations of our state right now. It takes money out of every consumer's pocket. Every time you keep a nice car to trade in again, if you have nice, low mileage, it doesn't seem to matter today. The high mileage man benefits

also because somebody will probably violate this vehicle. Now of course we know Consumer Protection has adopted new legislation which copies pretty much what federal law says. We increase the penalties which we need badly. But to follow one of our member auctions, and they are all members, but look at the auction and so many cars all have the same mileage on. We know the violation is there.

The Licensing Board also has 20,000 salesmen. There is where the 30,000 comes up. It is four new, six used and about 20,000 salesmen. I realize again there is only one full-time person. The secretary of the Board plus an assistant. It is just an impossibility to do this. It really is.

The Board, of course, meets two days a month. They are concerned about the consumer. We are aware of this and we do need regulations. We need it now. Not only against the licensed dealer to review the application for new dealer, but we need it for the existing dealer.

The State Police, by the way, when you apply for a dealership whether it be a miscellaneous or new or used, PennDOT will send for investigation any miscellaneous plate right directly to the State Police. But if you are a new and used application, it goes to the Department of State and is sent out for the same type of investigation. Now the State Police

really are not aware of the dealers in their area. An IBM run could be given to every garage inspector. In other words, there is a State Policeman assigned to an area. He watches for inspections, violations of dealers and so forth. But unless you have a sign out front saying, yes, I am a dealer, I am on a main road, in all probability he doesn't know you exist.

The C dealers, we are not regulating them any more. It is very easy for me to become a miscellaneous dealer. If I have a service station, I would like a miscellaneous plate. A miscellaneous plate doesn't entitle me to sell cars. I cannot issue T plates. However I can still do this. I can do this as an individual. I can use my miscellaneous plate to demonstrate a vehicle I have, whether it be on my service station lot or my home. I can show you my car and go out and drive it on my miscellaneous plate and I can sell it to you individual to individual. Nobody has jurisdiction over these people right now, including Consumer Protection. The sales right now, Better Business Bureau again tells us the automobile industry led the complaints with them again last year. The percentage was about 79 percent of complaints were against the new car. Not necessarily against the dealer because it is just the manufacturer/dealer type that weren't right. The

remaining 21 percent was against the used car sale. However, on used car sales approximately 60 to 65 percent of these were sold individual to individual. Consumer Protection has no jurisdiction here. The Licensing Board has no jurisdiction.

To come down to our 6,000 licensed used car dealers right now, they only have about ten percent of the total market period. We need badly new legislation if the Licensing Board is going to work effectively, frankly.

I believe it was in earlier testimony it takes about seven months is about the average time to bring anybody to any type of justice with the Board. This is fine and it is ahead of what it used to be but it is not fast enough. If I am violating the law, I am an unscrupulous dealer or a non-dealer, if I am doing an illegal act, seven months is too long. PennDOT, I will refer to them, schedules a hearing. Their State Policeman finds out there has been a violation in a dealership, he is called in for a hearing now. This means not now, but it might be two weeks to three weeks but it is within the same month. If there is any way we could possibly expedite these hearings, it is very, very much needed. An answer might be a full-time staff. Again, we are one woman. We know there is a problem there because think of the calls

she gets daily with the 20,000 licensed salesmen and the various dealers and everybody wants to be a dealer nowadays.

BY CHAIRMAN HUTCHINSON:

Q When you're on that point about hearings, most departments have law judges. Have they ever tried law judges in Occupational Licensing where they have a man like the PUC they are called law judges. They can do it and hand down a decision and that decision stands. I mean rather than have a staff, they can handle the whole occupation, two or three law judges.

A Representative, to my knowledge I don't know. Maybe Stanley Miller could help you with that.

CHAIRMAN HUTCHINSON: Did you ever look at that?

MR. MILLER: We do have it for some boards. Our Medical Board and some of our Real Estate Board. We tried to put a blanket bill in sometime during the last session and we were not successful in getting it through for several reasons. We tried to put through what we call the Hearing Examiner Bill. In effect, what we do with these people is they are lawyers, they are on contract as we need them so we don't have a large staff sitting around. We bring them in, they hear it, suggest adjudication which then goes to the Board for its affirmation. But, for example, in the Medical Board the decision of the

hearing examiner is final unless there is an appeal from that. The hearing examiner system can work and does work more or less well, depending on the hearing examiner.

CHAIRMAN HUTCHINSON: Continue.

MR. NEITHERCOAT: A lot of times the biggest complaint you folks in the House will have a lot of times from your constituents is the delay. What happened? Somebody said I didn't need photos and someone said I did. Put up a fence. The Licensing Board has no facility requirements passed by law. They do hang their hat on Act 144 in the very first section which says, "It provides for in regulating the registration and licensing of motor vehicle manufacturers, dealers and salesmen." In other words this gives them the power to regulate this.

Our association is very much in favor, we do need strict regulations. We are embarrassed and as you folks are aware, we don't enjoy the best reputation by the consumer. The used car dealer is synonymous with the string of lights and the loud suits and so forth. We need this cleaned up badly not only with the new people coming in. Somehow we cannot just let them open a shanty. A lot of them, for instance, will take an old service station. Some of these can be made into very nice dealerships. A lot of instances the pumps are

still there and so forth. We don't want to see that happen either, but we are also aware that we have to do it according to law and it should be spelled out and it really does have to be spelled out.

The investigating staff by the Board, for their 20 plus odd boards, these people are investigators for all the boards. Again, with seven and a half million vehicles in our state alone, these are just registered. There is probably another million that are going dealer to dealer or running on just titles or out-of-state titles and so forth. Our auctions, we have auctions in this state that run up to 2,000 cars a week at one particular auction. It is fierce the number we have right now. We used to say everybody drive a used car and there is seven and a half million used cars registered in our state right now. We definitely need regulations.

The Board to be more effective, of course, does have to have facility requirements. The investigators do not, at this time, have expertise for the automobile dealers alone. It just cannot be when they investigate for anything from the hairdressers to podiatry, etc. I know Commissioner Miller at this time is starting seminars. He started one last month for the investigators. It is much needed, but again the law would

just clarify what power the investigator has. We understand at this time he does not have the clout that is needed to do the proper job. He may come into my dealership if I had one and say, let me see your title, which is very much part of investigating. The dealer may say no. So back he goes to get a legal opinion. This ball game dies really early in the business. We do need immediate action. We do need clout for the Licensing Board. I mean, we do support them wholly if given the proper clout. Thank you.

CHAIRMAN HUTCHINSON: Any questions? Paul.

MR. LANDIS: No.

REPRESENTATIVE LLOYD: To pick up on the last question first, the one with regard to the investigator goes in and asks to see the titles and he is denied. I don't know if the prosecutor is still here. That may be because of the Supreme Court decision with regard to search and seizure. I am thinking of the Aushaw cases (phonetic). It is not something that we, on this Committee, can do anything about. Is that right?

MR. EMERSON: My understanding is we'll do something about that.

CHAIRMAN HUTCHINSON: Stand up so we can hear you.

MR. EMERSON: My understanding is that the new act

would allow investigators to have increased investigation powers and be able to get access. Because there is no real way of being able to regulate industry if you cannot get access.

BY REPRESENTATIVE LLOYD: (To Mr. Emerson)

Q Well now I am asking why when the investigator goes out and says I want to see the new title, why does the dealer have the power to say no? The investigator goes back for a legal opinion.

A That hasn't arisen since I have been there. In other words, fortunately, every time I have sent out an investigator I have never had to deal with that problem yet. They have complied so far.

Q If the fellow says I refuse you, the investigator is either going to have to go get a cop or he is going to have to go get something?

A Right.

MR. NEITHERCOAT: Close working with Consumer Protection is what ends this problem. They may subpoena records on the spot with or without a complaint. They just need a suspicion. They may subpoena records on the spot.

MR. EMERSON: They have a general administrative subpoena. They can go in -- they hear on the street that Joe Blow is clocking cars. they have an administrative subpoena.

They can go in there and look at the guy's records. Right now we don't have that authority. We have to issue a citation and then we can subpoena them. It is a major drawback to enforce things.

MR. NEITHERCOAT: It might clear the air also if everybody from PennDOT and the Licensing Board and the State Police would just get together. The State Policemen do not have the authority to say yes or no you are granted a dealership. Now in a lot of instances there is confusion there. The local state trooper will say, yes, it looks okay to me. When indeed the Board requested certain photos or an explanation of something.

Representative, I agree with you, fences, we don't necessarily agree with fences either.

BY REPRESENTATIVE LLOYD: (To Mr. Neithercoat)

Q To follow up on that point, the issue that Mr. Lipsi clarified this afternoon about how these guidelines have never been published in the Pennsylvania Bulletin, you said there is really nothing in the statute which spells out what those rules are. I would seriously question whether the Board is acting legally if it refuses a license based on guidelines which have never been promulgated as regulations and which are not required by the statute --

A You know --

Q If that constituent of mine says I'm not going to put up a fence, I am going to go to common pleas court or Commonwealth Court and get an order issued, I suspect he has a pretty good chance of winning. Now he's not going to do that. He doesn't want to spend the money. He'll put up a fence I guess. Hopefully, he won't have to.

A We agree with you in the sense that, again, they are hanging their hat from the board on Act 144, just the first paragraph saying they are regulating, but of course --

Q Legislate and regulate and regulate by regulations.

A I think the Board will agree with you also. They would love to have regulations that say, yes, these are the requirements.

Q Well, they are the ones that have to initiate that.

A Yes.

Q And then it would come over to us and we would get a chance -- I don't understand, what is a C dealer?

A A miscellaneous dealer. Right now, in PennDOT terminology, we use an A dealer for a new car dealer, B for a used and a C for all miscellaneous. I believe PennDOT right now is going to eliminate these letters because they don't really care. But a C dealer is not permitted to sell. He is

in the towing business, he is a transporter, he is a miscellaneous service station. He is permitted to buy cars. He's permitted to own cars, but he cannot go to an auction and buy. He has to fill out a normal application for title as would any other consumer. He will do this, of course, very simply by putting a number one on and not paying the sales tax. There are just about 6,000 of these dealers in our state. These are not through the Licensing Board. Here is the confusion again. The State Police investigates this dealer as well as the new and used. PennDOT handles C dealers and the Licensing Board has no authority whatsoever on these dealers.

Q What does a C dealer do with the car once he has towed it somewhere? He can't sell it. Can he junk it?

A He can do anything he wants to.

CHAIRMAN HUTCHINSON: He can get a title in his name. He might have ten titles in his name and then he dumps them or sells them or whatever he wants to do with them. There is nothing to say the guy can't get a title in his name to sell them. Some of them are selling ten and twenty of them.

MR. NEITHERCOAT: And hundreds.

BY REPRESENTATIVE LLOYD:

Q Where do you draw the line? If I want to sell my car to my next door neighbor, surely we aren't going to have

the state come in and require me to get a license?

A Absolutely not.

Q Where do you suggest we draw the line? How many do I have to sell before I ought to --

A There used to be the figure of five. In this sense it is no longer being held up at all. It is not law. There is no number. The Licensing Board has a number that they use the number five, again, not in the law. They can use the number one in reality. Anybody that holds themselves out to be a dealer. If I bought one for resale and this was my intent, but again you could pretty much say if I bought it and titled it and didn't register it and advertised it in the paper, I am holding myself out to be a dealer. Again, if I pay sales tax to put my personal plate on it, decide to sell it, that is perfectly all right. And this could happen a couple of times a year. When new cars were \$3,000, we did it every year, no longer.

REPRESENTATIVE LLOYD: Thank you.

CHAIRMAN HUTCHINSON: Any other questions?

BY CHAIRMAN HUTCHINSON:

Q Do you think the Board has served the purpose now for the dealers and the public?

A We need it very badly, Representative, we really do.

You're saying have we in the past, the Board?

Q Yes, has it helped everybody out, I mean, the Board?

A We pay a lot of attention to the Licensing Board. We do attend all their meetings. It is very necessary even with the lag. In the past sometimes hearings have been delayed a year or two years. But we do need that threat out there against that unscrupulous dealer. It is pretty much useless unless you can control the unlicensed dealer. Because this would encourage me, if I indeed have a real small investment and wanted to be a used car dealer, I would circumvent this. I would get a C dealer just for the license plate. I would be a notary or hire a notary, issue T plates and nobody could bother me. This way Consumer Protection would never bother me, the Licensing Board would have no jurisdiction over me, there is nothing could be done.

Q What can be done between PennDOT and the Motor Vehicle Code, how are you supposed to issue the license and the regulations?

A In all instances, the Licensing Board, when there is an application for a new dealer, they do send out, the one PennDOT form which is the application for your dealer plates. This is always done. The Licensing Board is for the dealer

lot license and the salesman. If indeed the license is lifted, they should really, they are starting to do this now is communicate. If PennDOT has a hearing and takes a dealer's T plates away from him and dealer's plates, they are starting to let the Board know that should be an automatic hearing for their lot license and vice versa. In the past, the communication wasn't there and nobody knew if I suspended a dealer from the Licensing Board, fine, I didn't have a lot license but I still had my dealer and T plates. I went and sold cars. This is the distinction. One is a lot license. That is with the Department of State. The other, of course, is dealer and T plates.

CHAIRMAN HUTCHINSON: Thank you very much. Mr. Moore. Give your name, rank and serial number.

MR. MOORE: I am James R. Moore. I am first testifying, I am the Executive Vice-President and I am testifying first on behalf of the Pennsylvania Recreational Vehicle and Camping Association. Mr. Chairman, I am also going to testify secondly on behalf of the Pennsylvania Manufactured Housing Association. If you so desire, I will go through both of them or I'll --

CHAIRMAN HUTCHINSON: Go ahead.

MR. MOORE: Members of the House Transportation

Committee, I have been dealing with this Licensing Board since 1970. In the past five years I have personally attended over 80 percent of their monthly meetings. I feel qualified to assess the pros and cons of this licensing body.

The dealers and manufacturers of recreational vehicles (travel trailers, fold-down campers, and motorhomes) are mandated to be licensed under Act 144. This testimony is on their behalf as directed to me by the Board of Directors of PRVCA.

Although I will specify and delineate the particular problems the PRVCA has with the Motor Vehicle Licensing Board, I will first set the table by generalizing.

I know that the members of the Motor Vehicle Licensing Board are as frustrated and concerned over some of the problems we have with Act 144. But, it is their attitude that it is business as usual when the whole intent of the Act is missing that infuriates honest, licensed vehicle dealers.

Furthermore, there are four parties comprising the actual machinations of the Motor Vehicle Licensing Board:

(1) The Board members as a body, (2) the Board executive secretary, (3) the attorneys representing the Board, and (4) the administrative agency, the Department of State, Occupational Affairs. There appears to be no system that these four

individual factors feel a responsibility that they need to coordinate with each other. I would like to interject that I don't feel that is the purpose. I feel that is just business as usual. Simplified it means that (1) Occupational Affairs has its rules and guidelines most often mandated by the Attorney General's office, (2) the Board has its own set of rules and guidelines, (3) the attorneys have their legal opinions of what the rules and guidelines must be, and (4) the Board executive secretary finally has her own ideas of what the rules and guidelines are based on both directives from the Board and directives from the attorneys and usually deciding to side with "Board resolutions" even if they conflict with legal opinion. The written parameters of Act 144 are seemingly unimportant. The result is frustration and chaos ... especially by the affected dealers and manufacturers.

PROBLEM 1...this problem is larger in magnitude than all other problems combined. Presently Act 144 does not apply to unlicensed dealers and manufacturers. Therefore it only applies to dealers and manufacturers who willingly pay the fees, fill out all the lengthy forms, and subject themselves to the rules and wrath of the Licensing Board. This fact appallingly is true and basically makes honest vehicle dealers and manufacturers appear to be stupid to submit to Act 144.

Anyone who wishes to sell automobiles, trucks, RV's, and mobile homes can do so where they want, when they want, and how they want ... and this Motor Vehicle Licensing Board can do nothing to them. They can't even call them in for a hearing no matter how unscrupulous or dishonest they may be. The constituents of Pennsylvania are presently unprotected against fly-by-nighters, crooked operations, or even professional vehicle scams.

The Attorney General's office has repeatedly told this Licensing Board they do not have the authority to do anything to people who have not willingly licensed themselves.

Members of the House Transportation Committee, I suggest on behalf of PRVCA that if you cannot legislatively alter Act 144 to give this Motor Vehicle Licensing Board authority over unlicensed activities, this Board should be done away with. Licensing only the voluntary honest of any industry makes no sense whatsoever. I again stress the importance of a solution to this problem.

Fortunately, there is a legislative attempt to alter Act 144 against unlicensed activity in H.B. 829 which is being promoted by PAA. We ask your strong consideration to H.B. 829. Furthermore, since H.B. 829 is essentially a lengthy omnibus bill, we stand prepared to introduce a bill dealing

only with the unlicensed activity authority.

Some lawyers may feel they have uncovered a heretofore overlooked solution by stating that local district attorneys could enforce Act 144 against unlicensed activity. Forget it. It hasn't happened and it won't happen. The caseload priority of any district attorney puts vehicle unlicensed activity so low on the totem pole, it is for all intents, not on the priority list.

Give us relief against unlicensed activity or get off the backs of honest, law-abiding dealers and manufacturers.

And I stress off the written record that we are so convinced that we need relief with the unlicensed we feel that otherwise it just makes no sense for the rest of us to be licensed.

PROBLEM 2 ... like everything written hereafter, it is assumed that problem 1 is solved by giving the Motor Vehicle Licensing Board authority over all unlicensed vehicle activities.

Problem 2 is eliminate subjective parameters for facility requirements and rules of dealership conduct by legislation ...

and therefore remove the Motor Vehicle Licensing Board from constantly interpreting the rules and also mandate that "the Board says" or "Board resolution" can never override or supercede the printed rules unless it is formally printed in the

Pennsylvania Bulletin and formally approved as all other regulatory agencies must presently do.

It is probably an inherent problem with all licensing boards for all industries to set up rules and regulations to inhibit more competition rather than set up minimum standards for the good of the buying consumer.

Perhaps if the PRVCA represented only dealers and not manufacturers, we would lean that way, also. But our manufacturers would not allow us to create an atmosphere of perpetuating the existing dealerships at the expense of individuals desiring to start up a new RV dealership. Frankly, the balance we promote is healthy for the buying consumer as well as the RV industry.

We support the essence of the MV Licensing Board's desire to have newly licensed dealerships to be professional looking to better serve the public ... even though the Attorney General's office has disallowed their authority to mandate specifics of facility requirements.

In essence, if someone wants to start up an RV dealership, he should be furnished a written finite list of requirements and as soon as he meets all those requirements, he must be granted a license immediately.

We do not support any legislation to give the MV

Licensing Board a blank check to work out the details of facility requirements. We want you, the legislators, to determine those parameters and only allow change via legislation or the Pennsylvania Bulletin which you still have the opportunity to approve or disapprove. We want politics removed ... we want opinions of board members eliminated. This will also allow the Board to spend more time on legitimate problems.

Although these recommended minimum facility requirements may seem stringent to the novice, they may seem too little for existing RV dealers who obviously have much more invested than these minimum requirements. Nevertheless, it is our association's recommendation to the legislature as a minimum requirement for an aspiring RV dealer to be able to provide the Pennsylvania consumer a safe, serviced recreational vehicle.

Therefore, our recommended minimum RV dealership facility requirements are:

1. A lot with a minimum of 5,000 square feet. A copy of a deed of ownership or a copy of a lease must be available. By the way, what I am about to read are essentially what this Motor Vehicle Licensing Board presently requires. We do not agree with the essence of what they are doing, we

want everything finite.

2. A written notice from their municipality that the municipality has given permission to the owners to operate an RV dealership in their municipality and under what name and address the municipality understands the business to be.

3. An office on or relatively close (within 100 feet) to the lot of a minimum size of 240 square feet. The office may be a building, a mobile home or a trailer. It must be approved by the Department of Labor for public occupancy safety. A copy of L & I approval must accompany application.

Again I would like to interject this is already law. Any public building must have L & I approval right now. So that is not a change in the law.

4. A copy of a franchise agreement from an RV manufacturer showing that proposed dealer will handle their line.

5. Documentation either showing that said dealer has a trailer inspection station from PennDOT or a letter of agreement from another trailer inspection station stating they will inspect the proposed dealer's trailer.

NOTE: if dealership is planning on selling motor homes only, then a letter of agreement from any inspection

station qualified to inspect automobiles will be required.

6. Either an LP gas dealer license or LP gas bulk license from Boiler Division of Labor and Industry must be available at or relatively near the dealership lot. Only unusual facility safety conditions will allow an RV dealer to operate an RV dealership without an LP gas license.

7. A sign must be at least 12 square feet or comply with local municipal ordinance whichever is greater. The sign must be neat and legible as judged by the inspecting official.

And again I go away from the written comments, we concurred that there should be a sign. We feel the technicalities of some of these signs are not worth turning a dealership down.

8. The name of the dealership ideally should stress camping, RV sales, trailer sales, motor home sales, or truck camper sales, but this rule shall not inhibit the granting of a dealership license specifically because of the name ... providing the name is not purposely misleading and meets the intent of Federal Trade Commission rules. Conversely, no one shall be prevented from a livelihood because of restrictive name requirements falling under FTC's definition of "restraint of trade".

9. The display lot should be level enough for RV's to be displayed to allow absorption refrigerators to function. The surface may be pavement, gravel, or manicured grass. Surface that will become muddy when wet is not acceptable.

10. The office shall contain a desk, file cabinet, at least three chairs, a telephone and a telephone number listed in the name of the RV dealership, but may be listed as a personal number also or as another related business such as a campground, LP gas service, inspection station, or other type of vehicle dealership.

These RV dealership facility requirements are subject to review by the Legislature. The PRVCA feels they are the minimum needed to adequately and safely put customers in safe RV's.

These RV dealership facility requirements will be printed and furnished with each application for a new RV dealership. Once passed by legislation, no change can be made to them other than legislation or proper Pennsylvania Bulletin notification and approval.

Again, off the written testimony, we would even suggest once this occurs get telephone recording listing all parameters and a number. Anyone that wants it can call in and

listen to that recording as many times as they want to. Get personalities or I didn't understand how.

PROBLEM 3 ... THE ONLY PREREQUISITE FOR PARTICIPATING IN A VEHICLE SHOW OR EXHIBITION SHOULD BE THAT THE DEALERSHIP IS LICENSED AND THE SALESMEN ARE LICENSED

Presently, the voiced opinion of the Motor Vehicle Licensing Board members is that Act 144 does not address the ability of a vehicle dealer to sell vehicles anywhere except on his own lot. Therefore, allowing vehicle dealers to display in shows, fairs, or malls is strictly their prerogative to rule on and set whatever rules they see fit. These rules continually change by the way.

Therefore, PRVCA suggests legislatively including the following in Act 144 to alleviate the Motor Vehicle Licensing Board of accepting responsibility of an uncovered area, and also eliminating rules which could be looked upon as roadblocks to prevent a dealer from realizing his full business potential.

1. Any licensed dealer may participate in any vehicle show, exhibition, fair exhibit, or mall exhibit by notifying the MV Licensing Board in writing with the following information at least 30 days prior to the opening of the show, if possible: (a) Name and address of dealership, (b) PennDOT

dealership identification number, (c) dates of show, (d) address of show, (e) name of show promoter, (f) name of show, if known.

2. The dealer does not need to receive authorization back from the Licensing Board. Upon receipt of this announcement by a dealer that they are participating in a show, the Board office need only concern themselves with (1) the fact that the dealer is licensed, (2) they are notified that everyone participating in the show is licensed, and (3) investigate the show promoter.

NOTE: This will accomplish several things. First, it keeps the Motor Vehicle Licensing Board doing what they are supposed to be doing ... licensing vehicle dealers, not telling them how they can market their vehicles. Secondly, it saves their one and a half person office staff the time and trouble to notify every dealer in writing after taking the entire Board's time to approve it. This will allow the Board to spend more time on genuine vehicle dealer problems. Furthermore, the monthly agenda is often overlooked with these types of minor problems that ultimate notification becomes a genuine workload. A recent case in

point where an RV dealer was approved to have an open lot show including to be open on Sunday, the dealer was not notified in writing that he was approved until 18 days later. The reason given was that they did not receive board minutes back until sometime two weeks after the meeting. My complaint that this was another example of bureaucratic government red tape making life more difficult for the small businessmen was met with rebuke by the entire Board. They pointed out, rightfully so, if the dealer had notified them with 60 days' notice it wouldn't have been a problem. Therefore, doing away with the Board notifying the dealers will eliminate this situation.

3. If the dealer has indicated show dates including a Sunday, the Licensing Board has the option to send an investigator to assure vehicle Sunday Sales laws are not broken.

I wish to comment that the Motor Vehicle Licensing Board has always been overly exuberant to investigate vehicle shows to enforce Sunday Sales.

For instance, an RV dealer asked permission in writing to be open on Sunday for a four-day show on his own

lot. The dealer was being above board. The Board sent an investigator to check if the dealer was "selling" rather than "exhibiting" his RV's on a Sunday. The dealer told the investigator that the mobile home dealer 200 yards up the road was open on that same Sunday and asked the investigator if he was going to check him out for breaking the Sunday Sales Law. The investigator said no, he "had no instructions or written complaint to investigate that dealer."

Members of the House Transportation Committee, the dealer who voluntarily asked permission for being open on Sunday was harassed. The blatant dealer who didn't ask was not investigated.

I brought this situation to the attention of the Licensing Board and they expressed impatience and even righteousness that their investigator didn't check out the other dealer because they didn't have a written complaint. It is this kind of action/inaction and this kind of attitude that have created a completely negative feeling toward the Motor Vehicle Licensing Board. And the amazing thing is that the Board seems oblivious to it.

Enforcement of Sunday Sales laws at shows while unlicensed activity flourishes around them stick in the craw of nearly all vehicle dealers.

4. Regulate the show promoter. Put working into legislation, perhaps H.B. 829, which sets rules for the show promoter. And I interject also that I am a show promoter.

For any show or exhibit or mall display, require the promoter to pay a fee as high or low as deemed necessary, perhaps based on the number of days the show is open to the public, coupled with providing data to the Board office before the show promoter has authority to hold a show anywhere except a licensed dealer lot.

The promoter should be required by law to provide (A) name of show, (B) dates of show, (C) location of show, (D) names of participating dealers and manufacturers and their D.I.N.'s, which is Dealership Identification Numbers, (E) names, addresses, and \$25 fee for every out-of-state dealer participating in his show, and (F) a statement from the promoter explaining how they plan to operate the show on Sunday, if applicable.

Do not allow the MV Licensing Board permission to require dealers who participate in shows to fill out additional forms and paper work. If the dealer is licensed, that should be enough.

During the past two years, the Licensing Board has required dealers to obtain off-premise licenses every time

they participate in a show or exhibit. The nature of marketing RV's is to participate in various shows. Some of our dealers are in five-six shows per year.

The Licensing Board has required our dealers to pay a \$25 fee, plus fill out a long involved form which has to be notarized ... every time they enter a different show.

From their initial inception of the "off-premises license" I have directly objected and continually told the Board they were illegally charging fees which Act 144 did not address.

At the Board meeting in December of 1982, Bob Fenton of the Pennsylvania Automobile Association and I met with the Board, jointly asking them to immediately cease the illegal off-premises license. We expressed that to our knowledge all automobile, RV, and mobile home dealers were upset with the Board over it.

The Board asked us to leave while they went into executive session. They called us back in, told us they had a discussion on the "off-premises license". Then a motion was made, seconded and approved by every Board member present with Stanley Miller, Commissioner of Occupational Affairs voting "nay" for the record in his objection. The motion that was passed was that they would continue the "off-premises

license" fees and forms through May 31, 1983, whereby it would then be cancelled, which meant charge the fees throughout the 1983 show season. Their Board attorneys always advised them they could not charge an off-premises license fee.

Presently, that means the illegal "off-premises license" does not exist. However, at any future Board meeting they could vote it to be effective again.

In the last session I had a legislative bill sponsored by Jim Burd and a host of other legislators which would outlaw the Motor Vehicle Licensing Board from charging an off-premises license fee and requiring voluminous red-tape forms for vehicle dealers. Perhaps this bill should be reintroduced to take away that legislative power of the Board.

PROBLEM 5 ... presently if a vehicle dealer changes his business name, even minutely, or has any change in ownership, the Motor Vehicle Licensing Board requires that dealer to fill out new dealership licensing forms, submit all the requirements like photographs of dealership, etc., like they have never been in business before. Then the State Police must investigate the business like they do for a new dealer.

Often a dealer drops a partner or adds a son or daughter as a partner or officer of their corporation. The above procedure must be followed when these changes happen.

Why can't the Board be satisfied with a piece of paper updating the ownership of the business or changing the name of the business.

The dishonest people with criminal records they are trying to catch are not going to get caught in this system. Yet the honest dealer must be subjected to this time-consuming, costly bureaucratic red tape. I cannot believe the constituents of Pennsylvania are being served better by this requirement. Furthermore, it is a waste of valuable state policeman's schedule.

PROBLEM 6 ... No recreational vehicle dealer is authorized to sit on the Licensing Board. We ask that an RV dealer be legislatively authorized to become part of the Manufacturers, Dealers and Salesman's Licensing Board.

H.B. 829 presently has wording that would accomplish this.

Truly, we have not been poorly represented in the past. The mobilehome dealer Board member is a former RV dealer and fully understands the industry.

Nevertheless, we ask strong consideration to have an RV dealer appointed to the Manufacturers, Dealers and Salesmen Licensing Board.

PROBLEM 7 ... No decisions, opinions, or resolutions that are

not part of Act 144 or have been approved through the Pennsylvania Bulletin shall be enforceable on dealers, manufacturers and salesmen of this state.

This really shouldn't have to be said, but since Act 144 was last amended in 1973, the number of times they have had anything approved in the Pennsylvania Bulletin is incredibly small. No other state agency can operate otherwise, so why can the Manufacturers, Dealers and Salesmen Licensing Board.

Several months ago, I learned that by Board resolution they had decided that no show or exhibit could be open on a Sunday for any reason. I went in the next Board meeting and strenuously objected and they relented. The result is they are upset with me and are probably going to put harassing any show open on Sunday as one of their top priorities.

What I ask is simple. The Board be forced to operate that they understand that their "Board resolution" means nothing if their attorneys tell them it's illegal or it has to be approved in the Pennsylvania Bulletin.

Secondly, the Board secretary understands that "the Board says" has no authority if it is not in the parameter of Act 144 or approved in the Pennsylvania Bulletin.

Thank you for your time and consideration.

And I'll stop here for questions for the RV industry if I may, sir.

CHAIRMAN HUTCHINSON: Any questions?

REPRESENTATIVE LLOYD: I would like to comment.

This is a horror story. You know, I thought as you were going through this, gee, what these people need is a good lawyer. What you are alleging is they don't listen to their lawyer. I will give them an opportunity to respond. But there is so many points here, trying to do things without following the regulations. I would suggest on the Sunday Sales they might want to talk with somebody who's familiar with the Supreme Court decision on the blue laws.

CHAIRMAN HUTCHINSON: See, well, they asked for a law so they wouldn't be open on Sundays, the dealers, only for shows. We passed a law especially for dealers to keep them all honest so they wouldn't sell on Sunday. So I mean this is --

REPRESENTATIVE LLOYD: Was that constitutional?

CHAIRMAN HUTCHINSON: Well it was held constitutional. They wanted it. We passed it right after the Supreme Court ruling.

MR. MOORE: If I may comment, the intention of the Board is very honorable, each member as well as the total

Board. Their main intention is to do away with unethical business practices. There is no doubt in my mind to this. It is just, I don't like giving this testimony, but I am directed to by our membership and our Board of Directors because we have so many cases of people trying to become a dealer and it depends who they talk to, or as you said before, three or four times before you get the whole game plan. I think it is disorganization and they are trying to operate with a blank gun. They really don't have the legal requirements for the facility requirements. I agree, by the way, with the facility requirements. All I am saying is let's legalize it, put it in black and white and then you don't have to hire a lawyer, hey, you need so many things you got to have. Once you have them you should be allowed to have a dealership.

BY REPRESENTATIVE LLOYD:

Q See, my problem is that they have the moving party in putting into place the regulations is the Board. There may be some reason that they can give that would justify why they haven't done that. But we have given them the authority, I assume they have the authority under Act 144, to promulgate regulations. They have chosen for whatever reason not to do that, I think, for instance, you say on page three of your testimony, that the Attorney General's office

told them they don't have the authority to mandate the specific facilities' requirements.

If they don't have the authority to do it with RV, I would question whether they have the authority to do it with any other kind of motor vehicle.

A Well let's go back to 1973. That is when the law was changed. The people who were on the Board, with the exception of two people are gone. The people who were in Occupational Affairs, Department of State, they are gone. All those attorneys who should have done something 73-74 did nothing. These new Board members come on, they make the assumption that it has already been done. You know back at the ranch the errors of the people prior to them are still going on. It is really -- you cannot put the blame on the people right now because it goes back a long way.

CHAIRMAN HUTCHINSON: If you leave it go over six months, you are at fault. I mean, if there are no regulations in the Bureau of Occupational Affairs, then right now it is their fault. The same way a couple other boards try, and you can't do it. It is like a woman's poker game. You change the rules every day.

MR. MOORE: Well it seems the enemy though is the Attorney General's office. I know they have tried and they

just go down in flames every time.

CHAIRMAN HUTCHINSON: Can I ask the Board members, and Mr. Miller, do you have regulations for any of the boards?

MR. MILLER: Yes, sir.

BY CHAIRMAN HUTCHINSON: (To Mr. Miller)

Q How comes this board doesn't have any?

A This has some. It does not have, the regulations which you are referring to, I would have to refer to Mr. Lipsi. You have asked for regulations?

MR. LIPSI: Yes we have asked for regulations. Every time we have submitted them they have always been rejected. We need your help very badly.

BY REPRESENTATIVE LLOYD: (To Mr. Moore)

Q On what basis have they been rejected? What is the reason that the Attorney General gives you?

A They can't legally do it, then I don't know what that means. But I have been dealing with it long enough that they just, I recall one time about four years ago we sat with the Licensing Board and had a whole list of things for facility requirements. The State Police sat in on it, PennDOT sat in on it, we spent about four months doing this and we ended up with about 20 pages. It stayed with the Attorney General's office about six months and they came back and they

just went down the list and said no, no, no. They just went right down.

CHAIRMAN HUTCHINSON: Mr. Lipsi.

MR. LIPSI: The only regs we do not have are the facility regs. Others we do.

CHAIRMAN HUTCHINSON: You have all the regulations like the rest of them? I have seen the ones for Cosmetology Board, they all have the regulations.

MR. LANDIS: Do you have them for tent shows?

MR. LIPSI: No.

MR. MOORE: In the Pennsylvania Bulletin there is something that has been printed regarding the shows. That is correct.

CHAIRMAN HUTCHINSON: Regulations?

MR. MOORE: Yes, sir.

BY CHAIRMAN HUTCHINSON:

Q Do you have a chance, 30 days, to go in and give your opinion?

A Yes, sir. I don't say I like what is in there, but it is legal, yes, sir.

Q They have 30 days?

A Yes, sir.

REPRESENTATIVE LLOYD: I would appreciate if we

could get a copy of some letter from the Attorney General which told you that. Now, I can see a number of reasons why he might say that we can't do this. One is that the statute doesn't give you the authority to set facility requirements. You are shaking your head. Maybe that is the problem. I am not sure I disagree with that policy. I am not particularly happy with your facilities' requirement, but if that is the problem at least get an understanding, if you got a piece of paper the Committee can look at so we know -- if we are going to be asked to pass a statute that says the Board shall have the authority to promulgate regulations on facilities, I am not so sure I am going to vote for that. But I would like to know a little bit more on paper what the Attorney General has told you.

MR. LIPSI: We will submit it.

CHAIRMAN HUTCHINSON: Somebody sent us the regulations that you have already written and are okayed through the Bulletin, signed by the General Assembly.

MR. LIPSI: Yes, sir.

CHAIRMAN HUTCHINSON: Today it is a lot harder to get a regulation, a lot more paper work, because it goes through the Commission. But if you can get about ten or fifteen copies to my office in care of Jim Martini, I would

like to look at them.

BY REPRESENTATIVE LLOYD: (To Mr. Emerson)

Q One other question on this unlicensed activity. You are satisfied -- I have not had a chance to look at the statute that closely, but this statute does not give the Board the same authority most other boards have on unlicensed activity. But I thought the prosecutors said that they did have the authority to pursue unlicensed activity?

A It is a result of the Commonwealth Attorneys Act. We have to request deputization or delegation from the Attorney General.

Q Okay, so this is the same issue where it really isn't a situation in which we have to pass a law giving somebody in the state the authority to go out and prosecute unlicensed activity?

A The Attorney General has the final authority.

Q Okay, so this is just a bureaucratic problem of the elected Attorney General and you are working that out?

MR. MOORE: Sir, if I may interject, we have been trying to deal with the Attorney General's office for five years getting through this bureaucratic scenario. When you go back to the ranch, we are still at square one. If this Licensing Board calls me ⁱⁿ as a dealer and determines that

I have cheated the constituents of Pennsylvania and they came up with an odometer and everything else, I pay the fines or whatever. So I say, okay, here is my license. I don't want to be licensed any more. I won't pay the \$25 fee.

Now I can go out and do whatever I want. You can say, well, you can't do that or the district attorney will jump all over you. It doesn't happen, and that is my point why I disagree. We do need legislation.

Q See, there are two ways you can approach that problem. One would be to give the Board the authority to call you in if you are an unlicensed practitioner and levy a fine or put you in jail?

A Right.

Q The other way to do it is to give the Board the authority to take you to court over that and that is a classic, philosophical argument as to whether boards ought to have that authority or whether they shouldn't. But what I want to make clear is that we are satisfied that this Board does have the legal authority to take you to court. The question then becomes whether they have the manpower to do that, and they haven't been given that manpower up till now.

A When you go back to the ranch, it is never being done. My people, along with others, they are very upset over

little things like Sunday Sales and all this. When they know that there is people surrounding them who aren't licensed, they are laughing at this. They think we, the ethical people, who believe in facility requirements are dumb because anybody can get away with it.

Q See, what these people are trying to say though is that this Board if it were given adequate staff could today be out prosecuting those people. Had it not been for the fact that the people of this Commonwealth decided that they wanted an elected Attorney General and the Legislature decided that meant the Attorney General was going to be the Commonwealth representative in certain court cases.

A Sir, if I may add, in lieu of the budget scenario that we have now, it doesn't sound feasible that we are going to get more money to put more staff on this Board to do this. Therefore, it would be much easier financially, give them the authority to call unlicensed people in without the additional manpower and let them do it. They can do it. They used to do it many years ago, in the early '70's and it was very effective. Once they quit bringing in the unlicensed people, my membership says, why do we pay this license fee when the unlicensed people laugh at us. And it is a legitimate question.

Q Well, your position would be that what we ought to

do is give this Board, and presumably other people would argue the same for other boards. the authority to bring in the unlicensed practitioner and define him for unlicensed practice.

A Not only is this definitely needed, I suspect some of the complaints I have put down here would probably disappear because they would have something more legitimate to be doing rather than worry about these petty things. The petty things are people would not object to if they felt there was a system that was keeping a dishonest person from attacking the consumers.

REPRESENTATIVE LLOYD: Thank you.

CHAIRMAN HUTCHINSON: Go on to the other.

MR. MOORE: The next is on behalf of the Pennsylvania Manufactured Housing Association.

On behalf of the Board of Directors of the Pennsylvania Manufactured Housing Association, we ask your consideration for the following:

1. Legislation removing mobile homes from Act 144 completely and instituting a Manufactured Housing Licensing Board.

The state of the art of the manufactured housing industry is such that the common ground the industry has with the automobile industry and the recreational vehicle industry

is nearly nonexistent. We recognize that the unique size of our homes requires special attention and consideration in the Pennsylvania Vehicle Code. We have no dispute with this.

However, the marketing and servicing of a manufactured home is no longer "vehicle" marketing. Land location, zoning, and home financing are the three biggest factors before a sale is consummated -- while these same factors have nothing to do with normal vehicle sales.

Every manufactured home must be built to a stringent Federal HUD standard. Every aspect of construction from insulation to fire-retardant materials to finite-sized proportioned designs to mandatory smoke detectors to exact type and size of building material to undercarriages is covered by the federal standard.

Furthermore, our industry still has problems such as proper leveling installation, freeze-line knowledge for plumbing as well as insulation factors, transportation safety of oversize movements, sales tax and use tax laws completely unknown to any vehicle dealer, financing problems of 15-year installment loans with VA and FVA requirements, parameters of 30-year mortgages now offered by VA, federal laws affecting only mobile home salesman, but not vehicle salesman, an understanding of appreciation rate schedules versus

motor-controlled vehicle depreciation schedules.

This list could go on. The point is that vehicle dealers and salesmen do not understand these issues because they don't have them in their industry. It is not a criticism of vehicle dealers, past and present. On the contrary, they have been extremely open-minded. The mobile home Board member, Art Loch, has done an admirable job. We would seek to have his experience and guidance spearheading a new Manufactured Housing Licensing Board.

Furthermore, the Department of Community Affairs presently is Pennsylvania's legal HUD representative through the Office of Mobile and Industrialized Housing. They have experienced professionals who know the manufactured housing industry and the federal standards intents.

Therefore, we of the Pennsylvania Manufactured Housing Association, ask that a Manufactured Housing Licensing Board be created with a group who can assure that Pennsylvania consumers are not only being treated fairly, but have a Board technically knowledgeable to handle the actual problems of the industry.

We would ask guidance of both your Committee and the Commissioner of Occupational Affairs to set up the proper parameters and assure that formation of a new licensing board

is fiscally sound. The most conservative estimates of proliferation of manufactured housing products predict a large increase -- which we feel means the timing is now right to have Pennsylvania progressively regulate our industry to protect the consumer and the legitimate retailers and manufacturers against unscrupulous business practices.

We would suggest the Board be composed of perhaps three to five licensed mobile home dealers, three to five owners of mobile homes, two manufacturers of mobile homes, a representative of the Office of Mobile and Industrialized Housing of the Department of Community Affairs, and a representative of the Bureau of Consumer Protection.

There is no hidden motive within our proposal for a Manufactured Housing Licensing Board. If anything, more industry trade associations naturally promote less government control and less regulation. Our goals are long-range. We recognize we have a poor image in some minds. But we're confident enough in our new HUD standard product to let it stand on its own merit and show the Pennsylvania constituency that we are a viable and honorable industry -- striving to better our image today to enhance and challenge our manufactured housing industry of tomorrow.

Please consider legislation for a Manufactured

Housing Licensing Board.

2. Legislation giving authority to the Manufacturers, Dealers, Salesmen Licensing Board to have authority over unlicensed activity. We concur with the essence of comments from the Pennsylvania Recreational Vehicle and Camping Association licensing only voluntary honest businessmen makes no sense.

3. Facility requirements for a mobile home dealership (as long as mobile homes are still under the jurisdiction of Act 144) would be the same as RV dealerships with the following changes:

- a. No requirement for L.P. Gas License or L.P. Gas monitoring equipment.
- b. No requirement for a PennDOT inspection station.
- c. A minimum of 10,000 square foot lot for a mobile home dealership.
- d. A letter of authorization from a manufactured housing manufacturer stating that proposed dealer will be a franchised dealer for that manufacturer.
- e. A letter stating the proposed dealer has either the capability or name agency he would contract to move and properly install a manufactured home.

4. We completely concur with the testimony given

on behalf of the Pennsylvania Recreational Vehicle and Camping Association. Our Board of Directors met jointly with their Board of Directors to discuss the areas of difference and agreement. Our areas of difference are noted in our aforementioned three comments. For the record the Pennsylvania Manufactured Housing Association officially reiterates the Pennsylvania Recreational Vehicle and Camping Association's comments, but in the interest of time of this Committee we do not feel it necessary to waste your valuable time repeating them.

On behalf of the Board of Directors of the Pennsylvania Manufactured Housing Association our President, Larry Normandeau of Quakertown, Pennsylvania, asks me to convey our sincere thanks for the opportunity to express our views.

CHAIRMAN HUTCHINSON: Any questions?

(No response.)

CHAIRMAN HUTCHINSON: Thank you, sir. Michael Pekula.

MR. PEKULA: On behalf of Attorney General LeRoy Zimmerman, I appreciate the opportunity to comment on the recent Sunset Performance Audit of the State Board of Motor Vehicle Manufacturers, Dealers and Salesmen.

I would like to limit my comments today to the overlapping enforcement responsibilities of the Board and my office in the area of consumer protection.

As the Sunset Audit indicates, the Bureau of Consumer Protection has been and continues to be active in the investigation of both licensed and unlicensed motor vehicle dealers. As a civil law enforcement agency, charged specifically with enforcement of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, the Bureau has in the past concentrated on the advertising and promotional activities of motor vehicle dealers and has brought injunctive actions to halt those practices which lead to confusion, misunderstanding and actual and potential fraud. Among these practices are "bait and switch" tactics, illegal tie-ins, nondelivery, breach of warranty, exorbitant financing, and on and on. In 1978, the Bureau promulgated the Pennsylvania Automotive Trade Practice Industry Regulations which provide comprehensive guidance for both new and used motor vehicle dealers in the area of advertising and sales disclosure. A copy of these regulations have been provided for your review.

More recently, Attorney General Zimmerman has initiated a crackdown on a consumer problem which he has characterized as "consumer fraud out of control." That is the

problem of odometer tampering. With the assistance of many different state and local law enforcement authorities and regulatory bodies, including the State Board of Motor Vehicle Manufacturers, Dealers and Salesmen, our office has attempted to vigorously enforce, and indeed, rewrite the civil and criminal sanctions for those engaged in such activity. As a result, on August 14, 1983, a brand new anti-odometer tampering law will go into effect which will authorize both the state Attorney General and the county District Attorney Offices to bring civil and criminal actions against such individuals whether they be licensed dealers or otherwise.

At this time, the Bureau of Consumer Protection has been the only law enforcement agency in this Commonwealth which has actively investigated and penalized acts of odometer tampering. This year, our office has already filed legal actions against 26 used car dealers resulting in the recovery of civil penalties totalling over \$140,000 for such activity.

I bring this information to your attention simply to demonstrate for you the extent to which consumers in Pennsylvania are already protected by the Office of Attorney General. It is therefore our conclusion that the public welfare and safety would not be jeopardized within these specific areas of consumer protection were the Board to be

terminated.

As I have already indicated, the Bureau of Consumer Protection has also been actively involved in the investigation of unlicensed motor vehicle sales activity. Clearly, for our purposes, the mere failure to obtain a license does not automatically rise to the level of fraud or unfair practice which would automatically mandate legal action under our statute. However, from time-to-time our office has, in fact, pressed for and obtained legally binding assurances from unlicensed dealers to refrain from sales until complying with state licensing requirements. With respect to this issue, we recommend that any regulatory body which is to be charged with a licensing function should have concurrent enforcement authority to prosecute those individuals who choose to avert the licensing mandate. Such an anti-competitive situation clearly puts legitimate businessmen at a competitive disadvantage and we believe that the licensing authority should have the ability to eliminate this particular disadvantage.

I now invite questions from the Committee.

CHAIRMAN HUTCHINSON: Any questions? Mike, Paul?

MR. LANDIS: No.

CHAIRMAN HUTCHINSON: Bill.

BY REPRESENTATIVE LLOYD:

Q Mr. Pekula, you heard the discussion with the spokesmen for the RV Associations discussing the possibility of giving this Board and perhaps other boards the authority to call to a public hearing those people charged with unlicensed activities and then to fine them or something that would give the Board maybe cease and desist powers, some kind of authority that they would not necessarily have to go to the court first. Is that basically what you are suggesting?

A That is basically what we are suggesting as well. It seems to us that licensing boards probably have more access to that information, that is, who are the people out there who are not complying with the basic requirement of getting a license. That is not the kind of information that the Office of the Attorney General would receive. Private individuals are not going to complain to, say, the Bureau of Consumer Protection if the guy selling cars on the street hasn't filed to get a license. The way the bureau finds out about these operations is from the Board itself or from rival businessmen who feel that they are being placed at a disadvantage with these unlicensed people. The curbstoners or in the case of the RV dealers, the gypsy, the so-called gypsy RV dealers who travel up and down the state.

So I think the key here, especially with respect to the gypsy people, is that there be some very quick, competent way of addressing the problem without having become involved in the procedure and timeliness of having followed through.

Q In your office, in the Office of the Attorney General, is not the one involved, is it, with this deputizing, etc.?

A I understand the problem. I am familiar with the problem. There is a procedure that I am somewhat familiar with. The Board would allow or authorize the prosecuting attorney for the boards and does he need the authority to enforce these criminal statutes. I guess if you would ask someone in the Attorney General's Office, I am really not the guy to ask because I don't know about the problem. I think the answer would be the board probably has not come forth recently, at least in recent weeks with any specific requests to have that deputization made. And I think there are some very good reasons for that. Primarily being that very limited as far as manpower and staff to prosecute those kinds of cases.

Q Do you think as far as odometer enforcement if we eliminated this Board --

A I could be --

Q You are not recommending that we terminate the Board because you see other things that they have to do?

A Correct.

Q Are there other things other than just odometer turnbacks that your office could be regulating that the Board doesn't have the manpower to regulate?

A Yes, exactly. And I think, as I have noted in my comments; namely, many of the sales practices, the deceptive advertising, bait and switch, the types of complaints that people, individuals really feel the impact, experience them firsthand, they feel that they have been misled, confused or simply ripped off. They know there is a Consumer Protection agency. There are offices, places to go for help. The average citizen doesn't even know that there is a licensing board to go to when you have that kind of problem. So I am not sure taking that responsibility authority away from the Board would have any real impact. Nobody really necessarily goes to them in the first instance. They come to us or they go to the state or county offices or some local body to try to get some help.

Q Do you think you ought to have exclusive jurisdiction over those kinds of things?

A Well, as it is now jurisdiction is pretty well shared between the Attorney General and the district attorneys of local counties.

Q Well, I should rephrase that. I mean, do you think the DA's and the Attorney General should have exclusive jurisdiction as opposed to the Board also out there trying to prosecute somebody for bait and switch and those types of confusion?

A Well, I am not sure that it is a question of whether or not we should have exclusive jurisdiction. I guess it is a question of how many different responsibilities and jobs you want to assign to a regulatory body which is already limited as to resources and staff. It seems to me if you can pinpoint specifically those areas that you feel are a licensing board should address to the exclusion of others, it probably would more than help to allow the board to set up their own priorities as to the kinds of activities they should be targeting. For example, the unlicensed activity which, because of many of these other areas of responsibility, I am sure the boards themselves have not bothered to get into. And as Mr. Moore has indicated, I think it really is an area that the boards could really be of service to the citizens of the Commonwealth.

Q Finally, when you have somebody that you have gotten for bait and switch, and so forth, or odometer turnbacks, do you share that information with the Board so that they can revoke a license?

A Not necessarily. It will depend on the severity of the case, the nature of the offense that we proceed and whether or not we, in the bureau, feel it is something that rises to the level of severity that perhaps the question rises as to the legitimacy or the purpose of that person having a license. There are many very technical violations about automobile regulations which many of the new and used car dealers are probably in violation of right now. Well, we could legally go after them, in fact, we do extract all sorts of legal agreements from these people relative to these technical violations. In many cases they really don't rise to the level of degree of offensiveness. So we feel it would be mandated to board attention. To the extent, however, that it does, for example, involve odometer rollback, our regional office has been instructed to make those cases known to the Licensing Board. It really is a matter of discretion involved.

BY CHAIRMAN HUTCHINSON:

Q Don't you think it is as much right for you to tell them if you have somebody did something wrong than them

tell you or I tell you? You are withholding evidence where they have a right to withdraw the license from the person.

A Well again --

Q Why should you make that decision?

A Well, I guess maybe we shouldn't. I think from a practical standpoint though, again, as I mentioned, there are a lot of technical violations.

Q You want to get a conviction so you do anything to get a conviction.

A Well one problem that we have is that a lot of the cases which we resolve are resolved prior to any real litigation. We extract the agreement with the businessman, say, a motor vehicle dealer and let's say we use the bait and switch example. We see their advertising going on. We shop the dealer. We find out you can't get the car that is advertised, classic bait and switch. We go to the dealer and say, Mr. Dealer, you violated the law. You are conducting yourself in an illegal way. It is going to have to stop. We are prepared to sue you. So we'll advertise this fact in the local media. You will have to pay the fine and restitution, whatever the remedy is. Are you prepared to defend yourself in a lawsuit? No, no way. How about if we settle it in some other fashion. We have in our law a procedure, by the way, it is assurance of

voluntary compliance by which the dealer, rather than admit to doing anything wrong now, it is sort of a plea bargain, agrees in the future not to conduct himself illegally. Now, that is not an admission of any wrongdoing. So I am not sure to that extent that legal action, that document is really proof of anything that the Licensing Board could use to revoke the license.

Q One other question then. They said this afternoon, and I don't know whether you mean in Consumer Affairs, they said that the Attorney General has turned down some regulations that they have put in. Could you check for us?

A I would be happy to do that. You are talking about the facility requirements?

Q Any regulations that have been turned down.

A I'll be happy to find out. But you want, I think the question is whether or not there has been some letter or correspondence officially prohibiting the bureau or Board from acting.

MR. MARTINI: A legal opinion, what the reasons were, the reasons for turning them down.

CHAIRMAN HUTCHINSON: Yes.

MR. PEKULA: I'll be happy to get that information for you.

CHAIRMAN HUTCHINSON: Go ahead, Charlie.

BY REPRESENTATIVE NAHILL:

Q I want to follow up something that I think several people said this morning and you brought it to light when you said you don't necessarily deal with the Board and don't necessarily keep them advised of matters. And I forget who it was this morning, I guess it was Dario, that said that they had found that the Board was notified of a problem they were investigating and you were notified and you were investigating then PennDOT was notified of a problem and they were investigating and you found three investigators almost investigating themselves at the same premises. I think somebody else reiterated that. That sometimes they'll show up and find that somebody from PennDOT has already been there. The State Policeman I believe said that. I think it is almost imperative that you have to let them know if you're out there. How do you know that they haven't been notified of a bait and switch and the State Police haven't been notified of a bait and switch and PennDOT hasn't been notified and you got four guys sitting out in the office investigating the exact same offense. I think there really has to be an awful lot more coordination here to let everybody really know what is happening. And if you are handling it, then they can wash their hands of it. Say,

that is great, but now we know it is being taken care of or the same thing with the State Police.

A Well, I guess in response, the different agencies are really looking at different types of remedies I guess. Our concern is not so much with necessarily the businessman staying within the licensing function, but really with respect to how the end user, the consumer has been affected. When we go to court, it is not necessarily to put a businessman out of business, it is more or less to try to recover or restore for the consumer either money or damages or what have you.

Q Well I'll tell you, you talk about bait and switch, that is really almost an illegal advertising practice. They are working on that. You are working on bait and switch. To me they are almost the same thing. So you got somebody out investigating which costs money. They have got somebody out investigating. That seems to be an awful waste of time when if you have the facility or if the State Police have facilities, then you know that they are doing it and they know that they are doing it. Everybody knows they are doing it. So you don't have four different people show up four different days investigating the exact same offense.

A That is correct. I guess my question would be what prosecutorial authority the Board would have other than

revoke the license to develop that information. It seems to me that whether or not they revoke the license or not, that is information the Attorney General's Office probably should have.

Q Sure. You should know what they are investigating, but they should know vice versa.

CHAIRMAN HUTCHINSON: That should be the other way around.

REPRESENTATIVE NAHILL: I think there ought to be a lot more coordination. I just see four different agencies going in four different directions and I don't know about the rest of you, but I get letters from people. They send them to the Governor, they send them to the Chairman of the Committee, they send them to the janitor and the U.S. Senator and the President and 80 different people get the same letter. We are all investigating it and wasting a helluva lot of time when none of us know that anybody else is doing it.

MR. PEKULA: That's a very good point.

REPRESENTATIVE NAHILL: You know, an extra xerox copy machine --

CHAIRMAN HUTCHINSON: It is all taxpayers' dollars. Whether it is license fees or whatever it is. I think somebody ought to get together like we did on the elevator thing and we

had one passed real quick. I think we ought to have everybody on a bill like that because there is no use of wasting my money or your money.

MR. PEKULA: I agree.

CHAIRMAN HUTCHINSON: Any other questions?

(No response.)

CHAIRMAN HUTCHINSON: Thank you very much.

MR. PEKULA: Thank you.

CHAIRMAN HUTCHINSON: Is Mr. Davidson here yet?

(No response.)

CHAIRMAN HUTCHINSON: Mr. Tom DeWall, would you come up? Tell the lady who you are, rank and serial number.

MR. DeWALL: Mr. Chairman and members of the Committee: I am Thomas DeWall, Executive Director of Common Cause/Pennsylvania. On my right is a researcher for Common Cause, Martin Toth. We appreciate the opportunity to testify at this public hearing on the State Board of Motor Vehicle Manufacturers, Dealers and Salesmen. Common Cause advocated for many years the adoption of sunset legislation. We were pleased to see it enacted and we are pleased to see the review and evaluation process in action.

We have read the performance audit done by the staff of the Legislative Budget and Finance Committee. My

associate, Martin Toth, and I have conducted numerous personal interviews to understand better the scope of the Motor Vehicle Board. In contrast to all of the other work of the Budget and Finance Committee that I have seen, this performance audit was not in depth and failed to address key issues. I will try to address some of them here.

The Motor Vehicle Board seems to be duplicated in many of its functions by PennDOT, the Bureau of Consumer Protection, the State Police and the Corporation Bureau in the Department of State. The Sunset Act requires this Committee to consider "whether there is overlap or duplication of effort by other agencies..." The primary functions of this board are to register or license motor vehicle manufacturers, dealers and salesmen, inspect their facilities, conduct investigations, mete out discipline when necessary and transact the necessary paper work for all of these functions.

Almost all of them are duplicated elsewhere in state government. Although only the Board licenses dealers and salesmen, PennDOT registers them and grants dealer license plates. The Corporation Bureau regulates motor vehicle manufacturers. The State Police inspect the properties -- in fact, they do 95 percent of the initial inspections. Investigations are conducted by the State Police and the Bureau of Consumer

Protection, especially with regard to odometer rollbacks. Motor vehicle dealers and salesmen can be disciplined by PennDOT (by revoking their registration) and by district attorneys and the Bureau of Consumer Protection, through litigation. PennDOT and the Board each handle the paper work to support these activities, but the files which the Board generates in their licensing process are sent to PennDOT for storage and future reference.

Common Cause/Pennsylvania encourages this Committee seriously to consider allowing the Motor Vehicle Board to terminate on December 31, 1983, as scheduled in the Sunset Act. Almost all of their functions are duplicated, as noted above. Although it is necessary to continue to license or register motor vehicle manufacturers, dealers and salesmen to protect the public, PennDOT should be able to do it without much trouble. They already register motor vehicle dealers and license motorcycle dealers and others. Even PennDOT officials have indicated to us that there is no need to have two agencies performing such similar functions, and that PennDOT would not have much difficulty doing it themselves. The State Police could do all of the inspections instead of 95 percent of them. The Bureau of Consumer Protection could do all of the odometer inspections, since they have the expertise.

In doing so, Pennsylvania would not exactly be breaking new ground. Only about half the states have independent boards to regulate this occupation. It makes sense for impartial officials to regulate motor vehicle manufacturers, dealers and salesmen.

If the General Assembly decides that the Motor Vehicle Board should be continued, we have several recommendations concerning its composition and operations.

First, the Board should be made up of a majority of public members, rather than members of the occupation being regulated. Licensing is the most restrictive form of occupational regulation. It is incumbent on the General Assembly to make sure that this power of the state is used to benefit the public at large and not just the practitioners being regulated. We do not claim that any of the members of the Motor Vehicle Board are less than ethical. However, it is an inherent conflict of interest for motor vehicle manufacturers, dealers and salesmen to be setting policy on behalf of all of the citizens of the Commonwealth when they have a direct economic stake in those decisions. Furthermore, the Governor should appoint people who will take their responsibilities as public members seriously, attending training sessions, and so on. We are concerned that the public members

currently on the Board have apparently not attended any of the orientation and training sessions designed specifically for public members, as called for in Act 292 of 1978. That act mandated the appointment of at least two public members to all of the licensing boards in the Bureau of Professional and Occupational Affairs and provided for their continuing training as public, rather than professional, members.

Second, there should be better coordination with other agencies. There is a need for better coordination between the Board and the Bureau of Consumer Protection with respect to odometer rollbacks. All bureau staff, that is, Bureau of Consumer Protection, members should be required to submit all investigations to the Board. Likewise, the Board should be required to submit all information on odometer rollbacks to the Bureau of Consumer Protection. At present, only informal communication exists.

There is also a strong need for coordination between the Board and PennDOT. Presently, all licensing forms are sent to PennDOT for filing after the initial work is completed. Licensees who have a question for the Board are sent to PennDOT because PennDOT stores the files. This not only promotes confusion and frustration but also duplication of work between PennDOT and the Board.

Better coordination is needed with respect to license revocations. Common Cause/Pennsylvania has received testimony that although the State Police uncover a violation and PennDOT revokes the dealer's registration, the dealer continues to operate. The reason is apparently that it takes the Board up to six months to act on the matter. In the meantime, the dealer still has his license which can only be revoked by the Board.

Common Cause in its investigations has also heard complaints concerning administrative personnel on the Motor Vehicle Board. These complaints came from licensees, State Police and PennDOT. Administrative personnel, it is alleged, have been uncooperative and lax in their duties.

Third, the Motor Vehicle Board has done little to educate the public on its operations and there is no evidence that they have done an adequate job of educating its licensees. The Board should be required to provide better public information and education, especially to notify consumers where and how they can file complaints.

Fourth, the Board should be given additional authority to prosecute unlicensed activity to make it more effective in promoting the public interest.

Fifth, many routine inspections are being carried

out under Act 144 regulations (2021 in 1982), but it is unclear that they are effective in bringing about changes among licensees which have enough value to the public to outweigh the costs involved. Common Cause/Pennsylvania recommends that routine inspections be terminated and total emphasis be placed on complaint investigations.

Sixth, the Board should actively promote the interests of consumers. There are probably many ways in which it could do this, but one is to require used car dealers to notify potential buyers of significant defects in the used cars they sell.

We recognize that the Sunset Act places a burden on members of the General Assembly and staff. It takes a lot of time and effort to consider restructuring important boards and commissions in state government. But it is an important endeavor. The General Assembly over the years has placed many responsibilities concerning the regulation of the motor vehicle industry on the Bureau of Consumer Protection, PennDOT, the Corporation Bureau, the State Police, the Board of Motor Vehicle Manufacturers, Dealers and Salesmen, and the Bureau of Professional and Occupational Affairs. We urge you to continue your careful scrutiny of these numerous agencies and related laws to make sure that the system works the way you as lawmakers

intend it to work. I'll be happy to answer any questions.

CHAIRMAN HUTCHINSON: Bill.

REPRESENTATIVE LLOYD: Thank you.

BY REPRESENTATIVE LLOYD:

Q You made quite a few recommendations. The first is that you allow termination and my suspicion is that probably isn't going to happen. Wouldn't one way to end some of the duplication be to have PennDOT rely upon the finding of the Board that the particular dealer is qualified to be a dealer. Once you have that piece of paper from the Board then you get the authority to issue temporary licenses, you get a dealer's license. Till you get that from the Board wouldn't that end a lot of duplication?

A I would think so or possibly or not even have to deal with PennDOT at all. PennDOT apparently has their own criteria for granting the dealer's license. I guess PennDOT would have to come here and testify themselves to see what they've got. But I agree that should take care of the problems.

Q If we were to say in our report that we wanted all these players to sit down and get back to us within six months or a year or whatever we decide is an appropriate time some specific, either they cleaned up their act or they are going to explain to us how they streamline things and how the

sharing of information or they got some specific legislative changes to bring that about. Do you think that would be a reasonable approach to this problem?

A I certainly think that is needed and that would definitely be a move in the right direction. It is conceivable that all of these different players could be coordinated but it will take a concerted effort.

Q One thing I want to ask you, I'm concerned about the public members. In fairness to the people who are public members of this Board, they aren't here and we don't have an opportunity to make any judgments. There have been statements made by you and a witness earlier today that public members may not really be interested public members. Do you think and agree with the Chairman, I think, who said one of the public members is a banker and that is not appropriate because bankers are involved in financing car loans. Do you agree with that?

A I would say that that is not appropriate because of the association of banks with the automotive industry.

Q Then there is a vacancy of a public member. We weren't able to get any indication as to how long that existed. Do you know by any chance how long?

A I don't happen to know although I think you should

be able to get those records from the Board or from the Bureau of Professional and Occupational Affairs.

Q What do we do to make sure that the consumer members that we put on these boards are true blue consumers and don't have some kind of an interest and that they will go to the meetings? When you say everybody ought to go and take the training, are you saying that we ought to have continuing education requirements for consumer members and if they don't show up at those meetings, they can't sit on the board?

A Act 292 which placed two public members on each of these boards, three on this particular board, specifically requires two training sessions per year for public members. It doesn't require public members to go there --

Q There's no penalty?

A -- and penalize them for staying away and it has been disappointing to me to go there and see 12 to 15 public members there instead of 44 or however many there are.

Q How about the way public members are chosen. Do you have any recommendations on that?

A I guess not formally other than the Governor needs to look for people who have had some track record in working with consumer organizations, citizen organizations that are

concerned about these matters rather than just any person off the street. I am not sure of what the Governor uses in determining who should be a public member.

Q You're not recommending any kind of, certain organizations make a recommendation and he has to appoint them from a list.

A We are not recommending that, but we are recommending that we had before that organizations that represent consumers or at least the public at large be consulted and some of their nominees chosen. Now, we have been asked for names and other organizations have also. Very few of those people have ever been appointed.

Q Finally, do you think that these visits that these investigators make to find out if the sign is right or still where it is supposed to be, etc., would be a whole lot better serving the consumers of this state to stop those kind of trips and have those same people going after bait and switch and odometer rollbacks and lemon vehicles and unlicensed practice, is that --

A I couldn't say it better myself, Representative.

REPRESENTATIVE LLOYD: Thank you.

CHAIRMAN HUTCHINSON: Mike.

REPRESENTATIVE GRUITZA: Thank you, Mr. Chairman.

BY REPRESENTATIVE GRUITZA:

Q Mr. DeWall, I am interested in your comment concerning the members, of the composition of the Board as far as having salesmen and dealers sitting on this Board. I guess specifically my question is why single out the motor vehicle salesmen and dealers when we have several boards. We have architects, who certainly go back home and benefit by their membership on the board, engineers, CPA's, right down the line. Why single out these individuals as opposed to all these members who sit on these boards?

A We don't single them out. I have given testimony in Sunset hearings like this concerning the Real Estate Commission, the Funeral Directors Board and the Auctioneers Board and we have made the same recommendation in each of those cases. We think that all or almost all of these licensing boards ought to be dominated by public members rather than professional members. They can call upon the professional members for the expertise that is necessary, but that doesn't mean that the professional members need to be in the majority.

Q Well, I have sat on some professional licensure hearings and I did not hear any testimony like that.

A We have not attended all of them, but that would be one of our recommendations for any of them.

CHAIRMAN HUTCHINSON: They pushed for the Sunset Bill, Common Cause. Does anybody have any questions?

(No response.)

CHAIRMAN HUTCHINSON: Thank you very much, Mr. DeWall.

MR. DeWALL: Thank you for allowing us to testify.

CHAIRMAN HUTCHINSON: Is Mr. Davidson here yet?

MR. DAVIDSON: My apologies to the Committee for being late.

CHAIRMAN HUTCHINSON: That is all right.

MR. DAVIDSON: My name is Joe Davidson, I was, from 1972 to 1977, the Automotive Investigator Mediator for Allegheny County Bureau of Consumer Affairs from 1976 to 1980, a public member of the State Board of Motor Vehicle Manufacturers, Dealers and Salesmen. I would like to be very brief in offering my feelings based on that experience. Running through the criteria whether the determination would significantly harm and endanger the public health, safety and welfare, I think the automobile sales industry does need regulation very definitely. It is subject to abuse as we all know and I think there is a great deal at stake for the consumers of the Commonwealth and for the Commonwealth itself.

Two, whether there is overlap or duplication of

effort by other agencies. There appears to be a certain amount of duplication with the dealer registration section of PennDOT which I think could be resolved. I think PennDOT has very definite functions, particularly, for example, when issuing dealer license plates, dealer registration plates which is properly their function, title work, sales tax, etc. I think the Board's function is to oversee the professional conduct of the industry which is, I think, a separate function.

Is there a more economical way of accomplishing the objectives of the agency? In my judgment, no. I think that the Board should be self-supporting based on revenues generated by license fees which should be extended in the enforcement of the Board's obligations under the law. If the revenues aren't sufficient, perhaps the license fees need to be raised somewhat. But I think that is entirely possible and within the meaning of the act.

Whether there is a demonstrated need based on service to the public for continuing the existence of the agency. That is an open question because I don't think the Board has ever functioned at the level of effectiveness that either the Legislature or the Board itself has desired. I think primarily that is a problem of staffing. Motor vehicle investigations are kind of complicated and require detailed

knowledge of the transactions and of the documents involved and probably requires a specialized team of investigators rather than within the general license inspection program. Maybe within that, but people with special background and training.

Whether the operation of the agency has been in the public interest. I feel that it has. That is my personal opinion. Having watched the Board operate for four years I think there is a sincere commitment on the part of the Board and staff. I think it is correct that the agency has not encouraged public participation to the degree it should have which is also part of the problem, making the Board's operation known to the citizens of the Commonwealth so they can take advantage of its protections. I don't feel that the rules and regulations that the Board has developed are not in the broad public interest. The reasonable operation of the industry is in the public interest.

Criteria seven, whether there is an alternate, less restrictive method, I don't believe so and I don't believe that the licensing function, as carried out by the Board, is particularly restrictive. The requirements are quite nominal and I think entry into the profession either as a salesman or a dealer has not been significantly restrictive.

That winds my comments up and I would be happy to answer any questions.

CHAIRMAN HUTCHINSON: Any questions? Bill.

BY REPRESENTATIVE LLOYD:

Q So I don't disappoint the Chairman. I don't know when you came in. There have been a number of issues which were raised and I would like to have your response to. One is that in Mr. DeWall's testimony, did you hear his testimony?

A Most of it.

Q He said that he believes that the Board ought to stop sending its investigators out to look and see whether signs are located in the right place and the fence which we went through this morning with regard to used car lots, whether they are all at the right place. Instead concentrate the limited resources on trying to police unlicensed activities, trying to police odometer rollback, trying to police bait and switch, lemon cars and all of those kinds of things. Would you agree with that?

A Yes, and I feel, as I mentioned earlier, that it requires a very specially trained investigator to handle these automotive complaints because they are, as I say, quite complex and the documents are manifold. You purchase a car and right away they shove a pile of papers at you, sign here,

sign here. I think it would require specially trained investigators from the BPO & A investigating pool.

Q So we would have to hire more people?

A I think so.

Q To the best of your knowledge we asked the Chairman this morning whether he knew any requests like that have been made and he said he didn't know. When you were on the Board were there ever any requests to hire additional staff?

A I think there was constant communication back and forth. It was a matter of budgeting, and so forth and so on, but there was constant communication with the Commissioner's office trying to expand that capability.

BY REPRESENTATIVE HUTCHENSON:

Q What year were you on the Board?

A '76 through '80.

Q You were there after we passed the law and raised the fees and gave the Commissioner more power, took it off the Secretary of State?

A Yes, I'm quite certain of that.

Q Before that they always had a hard time getting money. Now do you know anything about it?

A It is somewhat better, yes. There is some improve-

ment, but I think we need even more to do the job.

BY REPRESENTATIVE LLOYD:

Q Another problem which has been raised by a host of people is lack of responsiveness by the administrative staff. Based on your experience as a public member, presumably one who might be more sensitive to the kinds of treatment that prospective dealers, people with complaints or whatever is received from administrative staff. Do you have any comments on that issue?

A Here again, I think it is a problem of staff shortage. The Board has a full-time employee, Mrs. Flinchum who tries to answer questions and complaints from the dealers and do all the paper work, and so on, and has a part-time helper. Now there probably, in my judgment, should be a full-time liaison person to deal with these issues and to assist the public as well as the licensees. It sounds like Empire Building, but I think there is an important function to be fulfilled and I believe it requires adequate staffing.

REPRESENTATIVE LLOYD: Thank you.

CHAIRMAN HUTCHINSON: Any other questions?

(No response.)

CHAIRMAN HUTCHINSON: Thank you very much. Is there anybody who would like to appear? Mr. Miller?

MR. MILLER: Only one quick correction. There are two full-time people assigned to that Board. That is why Mrs. Flinchum is on vacation such as today. There is a full-time person over there, not just a part person and there is no backlog whatsoever.

BY CHAIRMAN HUTCHINSON:

Q How long have you had them on full time?

A The answer is a couple of years.

BY MR. MARTINI:

Q I read your minutes from 18 months back and as recently as 13, 14 months ago you only had one person with part-time help for Mrs. Flinchum?

A There is a disagreement.

Q It is in your minutes from 1931, discussion of there being only one person there who had the authority to handle day-to-day problems and it was Mrs. . . . statement that the girl that was there part time at the time was able to handle possibly now car dealers but that was it.

MS. RHODES: If I could say something?

CHAIRMAN HUTCHINSON: Yes. What is your name?

MS. RHODES: I am Jan Rhodes, Deputy Commissioner.

At one time the Board insisted that there would only be a Clara Flinchum running that Board. We insisted there would be

two people.

MR. MARTINI: I saw your statements.

MS. RHODES: If Clara Flinchum was not there, we would close down. So we insisted there be two people and there are two people running that Board.

MR. MARTINI: It has been significantly less than a year ago.

MS. RHODES: Pardon me?

MR. MARTINI: It has been less than two years since that occurred. There have been discussions that took place in the minutes in the last 18 months.

MS. RHODES: There have always been two people, but the second person was never allowed to do anything.

MR. MARTINI: Right.

MS. RHODES: She was only allowed to do clerical work.

MR. MARTINI: The basic clerical work.

MS. RHODES: There have always been two full-time people. Now during one period of time we suspended a person until we got a person to replace her. There was a shortage. We took someone and floated them over until we replaced her.

CHAIRMAN HUTCHINSON: Anybody else?

MR. MILLER: Only one more point. We agree entirely

with the Committee that there should be closer cooperation with the various entities involved, with the Motor Vehicle Board and others, and we are working toward that point. I think Mr. Cole even said it has been much better lately and we are working to achieve a more harmonious working relationship.

CHAIRMAN HUTCHINSON: Mr. Deemer, do you have anything to say, I mean, add to it? You've been sitting there. You have heard the pros and cons.

MR. DEEMER: There were some points I think that were either incorrect or a little bit confused which I would be happy to clarify. But I don't have any specific comments. I work, first of all, in the Bureau of Motor Vehicles.

CHAIRMAN HUTCHINSON: Tell the lady what your name is?

MR. DEEMER: My name is Phil Deemer. I work in the Bureau of Motor Vehicles and Licensing in the Transportation Department. The comments about the duplication are the ones that I would like to clarify. We do not duplicate investigations of applicant dealers. The cases where duplication occur is where the potential suspension or a violation is being considered, in which case we must send out to determine if there was an infraction of our rules, take appropriate action, notify the

Board and they subsequently take action which may include an investigation. At the same time, if the Board suspends or revokes a dealer lot license, we do not have to send out for an investigation. According to section, if I have my numbers right, 1336 or 1335 of the Vehicle Code, if a person doesn't have a lot license, they don't have dealer registration. So we'll have a hearing to determine that. I think that is the one point that perhaps there was some confusion about.

CHAIRMAN HUTCHINSON: Maybe if you have it printed we could read it so we can sit down and determine what we want to do we have an interpretation of what you have.

MR. DEEMER: Sure.

CHAIRMAN HUTCHINSON: Because one thing I have heard here today, I would like to see the State Police, PennDOT, the Attorney General, everybody working together rather than everybody going out in left field.

MR. DEEMER: One of the concerns that we have had is that we cannot suspend or revoke someone if we don't have proper regulations or laws to back us up unless the State Board takes action first.

CHAIRMAN HUTCHINSON: We might have to change the Motor Vehicle Code, too, when we find out some things here.

MR. DEEMER: You are probably aware of the fact,

the law that we are considering today, Act 144, 1973, the Vehicle Code was amended in 1977. Many references in Act 144 are no longer relevant. So therefore to administer the two laws is very difficult.

In any case, there was one point made today that I do want to clarify also. There are certain dealerships that are not licensed by the state. I mean by that I do not mean that "C" dealers that Ron Neithercoat made reference to. C dealers are miscellaneous motor vehicle businesses, they are provided for in Section 1337 of the Motor Vehicle Code. They are not dealers. They are businesses that provide motor vehicle related services. But there are types of dealers that the State Board is not now licensing.

The best examples are utility trailer dealers, motorcycle dealers, moped dealers, etc. Since the State Board does not license them, we have always felt that it was clearly the intent of the Legislature that they would have dealer registration plates nevertheless. So that we are providing dealer registration privileges to those dealers even though there is no provision in the Vehicle Code directly for them to receive dealer registration. So that that overlap, I'm sorry, that oversight that the fact it is not provided for in Act 144 is a concern certainly of our department, because there seems to

be no legislative basis for an action we are taking. But we have been providing registration to those dealers for years and we are certainly not going to yank it away from them now. But they are not now licensed by the Department of State.

BY REPRESENTATIVE MISCEVICH:

Q If you do that, how would you handle somebody like Sears and Roebuck and Montgomery Ward with the catalogues that has utility trailers?

A Theoretically, if Sears Roebuck were selling a utility trailer and came to us for dealer registration, the way the Vehicle Code is written now they could get dealer registration plates for \$24 each and put it on all of their Sears Roebuck trucks and if the truck was ever used for delivery of a utility trailer it would be legal. It is one of the problems that we have with the way the Vehicle Code is written now. We are promulgating, proposing regulations I should say, which you will soon be seeing, hopefully within the next few months, Chapter 53. So that you will have a chance to look at things that we would like to do to give ourselves a little more power than we have today.

BY REPRESENTATIVE LLOYD:

Q Why don't you give us a bill that changes the Vehicle Code that gives you the legal authority to do those

things?

A Well, we have several pieces of legislation drafted over a period of time. We will be more than happy to share it with the Committee. I assume John (inaudible) has done that. Beyond which the bill you are considering to amend Act 144 does place the responsibility for the licensing of motorcycle, moped and other types of dealers who are not now licensed by the state under their auspices which is fully what we support.

BY REPRESENTATIVE LLOYD:

Q Some people have said earlier today that PennDOT is agreeable to taking over the Board's function of licensing. Maybe I am overstating it a little bit, that PennDOT says it wouldn't be much of a problem to take that over to terminate the Board. Do you agree with that?

A The official view of the department, to the best of my knowledge, is not that we would look forward to or eagerly anticipate taking over that function. I think I can better interpret what was said in that we are currently investigating dealers, like moped and motorcycle dealers who are not licensed by the state. Since we are doing that now, to take on further licensing activities would not be a strange, new experience for us. However, there would certainly be a

whole new range of dealers to take a look at. We are not doing the kinds of things that the Department of State is doing now related to economic regulation. We don't feel that that is our responsibility.

Q I don't feel it is their responsibility either.

CHAIRMAN HUTCHINSON: Thank you, Mr. Deemer. This meeting is now adjourned.

(Whereupon at 3:35 p.m. the hearing was concluded.)

I hereby certify that the proceedings and evidence taken by me in the within matter are fully and accurately indicated in my notes and that this is a true and correct transcript of the same.

Dorothy M. Malone
Dorothy M. Malone
Registered Professional Reporter