

- Administration
- **Bureau of Motor Vehicles**
- Emergency Management Agency
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- Office of Criminal Justice Services
- Ohio Homeland Security
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- Ohio State Highway Patrol



## **TDR Sub-Committee Minutes September 11, 2009**

Michael Sliwinski called the meeting to order at 1:05pm.

Nancy Crespo began with roll call of the attending members. All were in attendance except for Adam Coridan, Budget/Management Analyst, General Government, Ohio Office of Budget and Management. Jeffrey Coleman, Assistant Registrar, Ohio Bureau of Motor Vehicles; Anne Vitale, ODPS Legal Counsel; Noreen Saunders, President, Ohio Clerk of Courts Association, Rae Ann Estep, Director of Consumer Advocacy, Ohio Attorney General's Office; Michael Sliwinski, Assistant Attorney General, Ohio Attorney General's Office; Joe Cannon, Vice President, Government Relations, Ohio Auto Dealer's Association; Tim Lynch sat in for Senator Tom Patton, 128<sup>th</sup> Ohio General Assembly, Ohio Senate, 24<sup>th</sup> District.

Mr. Sliwinski welcomed everyone back to the second TDR Sub-Committee. He started off by reviewing the action items from the last meeting.

1. Funding of the TDR fund,
2. Enforcement,
3. Expanding consumer protections.

Mr. Sliwinski reminded the members that Ms. Vitale was to find out the status of making the \$.50 title fee a permanent source of funding for the TDR fund.

Ms. Vitale stated that DPS does not want to make the temporary law permanent. She looked at that in two ways:

1. Monetarily affects the ATPS fund,
2. Constitutional issues.

Ms. Vitale told the committee she wrote the DPS opinions but forgot to include them in the e-mail so Mr. Long will distribute them via e-mail to the members. She said the opinion states that they must be careful where the money comes from. Registration fees are constitutionally protected they can only be used for reasons specified. She continued with titles. Since you need a title to register a vehicle the titles fall into that constitutional protection as well. And because the titles are protected, the ATPS fund money is protected because it all derives from titling fees.

Ms. Vitale said the transfer of ATPS money into the TDR fund can not be done because the purpose of the TDR fund. The use of the fund is not tied to highway maintenance, bridges or streets. It is more of a

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*"to save lives, reduce injuries and economic loss, to administer Ohio's motor vehicle laws and to preserve the safety and well being of all citizens with the most cost-effective and service-oriented methods available."*

consumer protection. Ms. Vitale said a solution was needed for the short term in regards to the temporary language.

In terms of the affects from the \$.50 on the ATPS fund, Ms. Brickman stated that Mr. Long sent the file via e-mail and the graph on the bottom of the chart has nothing to do with the spreadsheet. Ms. Brickman shared two analyses:

1. Shows the fund diverting the \$.50 for two years, stating the revenues would become static,
2. There are major concerns with viability and sustainability.

Mr. Cannon thanked the members for being available to reschedule the sub-committee due to his schedule. As it relates to the ATPS funding, he asked if the idea of trigger mechanism was looked at and if the department had concerns.

Ms. Brickman stated that she has concerns with the impact to the ATPS II and ATPS III systems. There may be some IT impact but she would have to check with IT.

Mr. Cannon is curious about the two month temporary transfer period and how the money is being sent over and in what amounts.

Ms. Brickman said nothing is posted now and as soon as it is available she will e-mail it to the members.

Mr. Cannon said he learned a little today about the constitutional issue relating to vetoes when attempted to transfer money from the ATPS funds to the TDR fund. When trying to take a different route, he was pleased to work with Senator Patton, the Legislature and the Administration to try to come up with what was acceptable as options as it relates to the \$.50 separate fee. There was an idea that was followed closely with respect to other portions to the title fee relating to the Dealers Board. He said, what he is hearing today is that the Department has some concerns both from the financial stand point and from a legal standpoint. He asked if it was safe to say that the Department is opposed to making the temporary law permanent.

Ms. Vitale answered the Department is opposed to it.

Ms. Estep asked if anyone had an idea what the cap to the fund should be.

Ms. Brickman mentioned some totals from previous years but she was unaware where it stands in 2009 because there is a large case being worked on.

Mr. Cannon also did not know of a good figure but a he mentioned a general assessment which could generate \$500,000, \$600,000, or \$700,000.

Ms. Brickman stated that the majority of the total revenue in FY08 was from the assessment fee.

Mr. Cannon said that the goal is to identify a number and then cut the transfer of the dollars sent back to ATPS and still have the assessment option as a safety net.

Mr. Sliwinski said part of this will depend on how the funds are generated. There has to be a floor and every time the amount falls underneath the floor, it is time to reassess.

Mr. Cannon asked since the Department is concerned about the funds it receives, other parts of the title fee go to different locations, does the Department have a position on those.

Ms. Vitale said she has not looked at the amounts in terms of where they go once distributed out.

Mr. Cannon asked since the Department is concerned with the money it receives from both financial and legal, does it care if other parts of the title fee, that it does not receive, stay somewhere else.

Ms. Vitale said she cares more about what happens with the Departments money but the Department does not want it coming from ATPS fund. She threw around the idea of doing a \$5.00 title fee and then an extra \$.50 charge but she would be hesitant to put that into permanent law. A concern is with title fee money being used inappropriately elsewhere but the main concern is what is coming out of the Department and where it is being spent.

Mr. Sliwinski brought up the issues of funding enforcement and consumer protection. If there was a 100% dealer participation of the \$150.00 fee there may not be a necessity to add another \$.50 from ATPS fund. Getting money from one source affects whether it can come from another source. He asked, in terms of discussing the enforcement idea, what can be done about the dealers who are not paying.

Mr. Cannon asked Ms. Estep if she had a chance to look at how many issues there are with dealers who have not paid or issues with consumers who had to be turned away.

Ms. Estep said she can get the numbers by next week.

Mr. Cannon said that is a significant issue to get a handle on to identify the target.

Mr. Coleman stated he receives about 3000 contacts of dealers failed to pay out and about 10% of those are not in the fund, equaling 300. He suggested using leverage or by losing their dealers license as an enforcement option.

Mr. Sliwinski said that does not address the Attorney Generals primary concern which is consumer protection. As far as the dealers are concerned those are the two options that are given, either to cooperate and follow the law or facing criminal prosecution. If they chose the criminal prosecution avenue there are still consumers out there that paid money and still do not have a title. If the fund can be used to cover those consumers (that 10% of consumers) then the dealers can face the option of criminal prosecution. He said the issue of the consumers that cannot recover their money or the titles to their car needs to be addressed as part of this discussion.

Mr. Cannon asked Mr. Coleman to see some of that data and what percentage of them is left hanging. He said when they spoke last time there were some expressed concerns with the proposal as it relates to the fund. He said since the Department is in opposition to his idea, another option could be some incentive for dealers who pay into the fund.

Ms. Vitale said they are open to look at any ideas. She does not want the money coming out of funds that have already distributed elsewhere like the ATPS fund. Her initial thought if the dealers are assessed at the time the licenses are issued or renewed that would fund the TDR fund and all dealers will be paying in. She suggested for the dealers who do not pay in at issuance or renewal maybe they could go in front of the dealer board. This was the Departments initial idea but they are not tied to it.

Mr. Cannon asked if anyone has any ideas on how to get dealers to pay into the fund from a normal assessment.

Mr. Sliwinski said if the dealer is assessed \$150.00 and they do not pay into the fund they subsequently cannot get their license that would be using enforcement assessment. On the other side making sure that before a dealer's license is renewed or issued that they are current with the most recent assessment.

Mr. Cannon asked Mr. Coleman if someone from the dealer body here in Ohio does not renew their license or does not do something they are required to, does the BMV put them in pending status. He also asked if the BMV internally turns them on lights off status.

Mr. Coleman replied, over the years it has become automatic on midnight of March 31<sup>st</sup> to turn them off. If they come in to get renewed, the lights are out and they can not title, they can not register and they can not buy tags. For the lights to get turned back on they would have to submit whatever was required. For the record Mr. Coleman stated that there is an on-line option to get the lights turned back on as well.

Mr. Cannon said the issue with license renewal is if an assessment was sent out today and they may not renew for two years. Mr. Cannon asked Mr. Coleman to summarize what he just stated as it is helpful information to have on hand.

Mr. Sliwinski asked how often the dealers renew their license.

Mr. Coleman said it is based on the alphabet. Half the population renews in year one for two years and the other half will renew in year two for two years. The renewal period runs from April 1<sup>st</sup> to March 31<sup>st</sup> for two years. He said the only choice is to get a two year license.

Mr. Sliwinski said the consumer protection needs expanded to dealers who have not paid because as the law stands right now they are not covered and they will have to pay.

Mr. Cannon said there would still be a problem if they want to get titles. Mr. Cannon stated he is not trying to avoid participation which could be explained by his involvement in this, he is here to be on the team. He is very instrumental in getting additional funding and in helping with the language to put TDR in the purview of this committee. His problem with the assessment every time the license comes up that may be more expensive to his members than the current law. The current law has worked pretty well for them for the past 12 years. He hopes to reach some kind of middle ground both on the funding side and enforcement side.

Mr. Sliwinski asked Mr. Cannon if he would have an issue if a dealer would not be able to get a license if they were not current on the assessment.

Mr. Cannon said he would have to take that back and bounce it off of folks.

Mr. Sliwinski said it would be perhaps in conjunction with some lights out type of action. If the \$150.00 assessment could be tied to the BMV system the same way the renewals are tied to that to where if one doesn't pay their assessment in the appropriate time frame the switch is pulled.

Mr. Cannon said he will also run that back and bounce it off his folks. He stated his idea was to focus away from the dealer and simply cover all dealer related consumer transactions if they could come up with a dedicated funding source.

Mr. Sliwinski said in terms of this study group and sub-committee, his goal by the end of this meeting is to have some consensus, some idea of what will be reported to present to the full committee. He would like for the sub-committee to be able to present a few ideas by end of meeting today and vote on them. Because of the short time frame that they are faced with and because they are all voting members of the sub-committee he doesn't believe they have time to do a whole lot more.

Mr. Cannon said they are not necessarily obligated to discuss these issues only when they are scheduled to meet. He said they have other parties here that have interest in the concerns. They have identified a couple proposals today but have not had enough time to think about them and vote. Mr. Cannon said he is happy to continue to discuss outside of these meetings

Mr. Sliwinski said his concern with that is about the open meetings law. He asked if anyone knows more about the open meetings law.

Ms. Vitale said this is an open meeting but she believes it is okay to call each other and toss out ideas. The issue would only be if the members all got on a phone conference call one day to discuss ideas. She said they can have conversations and when they come back together they have already shared and thought about them with their agency. In coming back to the meetings they can have a more comprehensive discussion about the ideas.

Mr. Lynch said he cannot vote for Senator Patton and he has not had an opportunity to present the ideas to him.

Mr. Sliwinski said they can set an agenda to vote on the proposals at the next meeting.

Ms. Vital said any e-mail ideas that are exchanged are also public record.

Mr. Cannon stated he is speaking on behalf of 850 new auto, trucking and motorcycle organizations. One issue he forgot to mention in the first sub-committee is that other organizations interpret the law differently so some people read the law as optional. He stated others see it as a choice to be in the TDR fund.

Ms. Vitale said their recommendations to the larger group regarding funding the TDR fund should be to outline the issues and tell them there will be further discussions. For the recommendations to the Governor's office, they should recommend that they will continue to work these out because they just don't have it all worked out yet. She recommends doing it that way rather than moving forward with something that is not the best for everyone involved. Ms. Vitale said before the next meeting the Independent Car Dealer Association and the Auction Dealers can submit their recommendations as well.

Ms. Estep asked how to get everyone to pay into the fund. With everyone participating then all consumers will be covered and the small percentages could be handled better. That small percentage of people not paying in is making life more difficult for everyone else.

Mr. Sliwinski said there is a way to change the language in the statute to say everybody is covered. He has concerns with the previous comment about the people seeing it as an optional fund.

Mr. Cannon said the recommendation is to obtain 100% dealer involvement into the fund.

Mr. Sliwinski said there are always going to be some stragglers. He suggests having a safety net for all consumers and to strengthen the enforcement.

Mr. Cannon said Mr. Sliwinski may be talking about one side of the pursuit without necessarily figuring out the other side.

Ms. Vitale asked Mr. Cannon if he is concerned there will be more assessments.

Mr. Cannon said it is difficult for him to give agreement to the proposal at this time.

Mr. Sliwinski asked if anybody has any objections with covering all consumers or any other ideas on how else to do that besides changing the statute. He believes expecting 100% compliance in any area is not exactly a reasonable expectation.

Ms. Vitale said if they either found a funding source or created an enforcement method where more dealers are going to be paying in, there still may not be 100% participation but it will definitely increase the number of dealers paying in. She asked in terms of numbers, how many dealers are paying in and is it going to be enough for your assessments to not increase. So as long as the sub-committee creates an incentive for almost everybody to pay in, the funding level is going to be comfortable.

Mr. Cannon said his plan B was to create incentives for as many dealers as participate in hopes of increasing the numbers. He thinks the charge of the committee is to expand to be 100% or expand to get more involved. He thinks the sub-committee needs to figure out ways to get to the 100% without a potential negative impact.

Mr. Sliwinski brought up the idea of creating a mandatory statutory civil penalty for the dealers who violate the statute. He thinks this may increase the possibility of the dealer assessments increasing.

Mr. Cannon said he will look into that as well.

Mr. Sliwinski asked what is in place now that will prohibit a dealer from obtaining a new license under another business name.

Ms. Vitale says there is somewhat of a background check done.

Mr. Sliwinski asked even with the lights out option is there anything that prevents the dealer from two or three days after the lights have gone out to just take the money and leave.

Mr. Coleman said that the purchaser can take civil action against the dealer.

Mr. Sliwinski said as a method of attempting to get better enforcement as well as expanding consumer protection, he would like to throw out the idea of expanding rights when they do make a TDR payout. Such as making it clear in the statute that the Attorney General can sell that car at auction then puts that money back into the TDR fund. Suggesting when that happens the Attorney General can step into the shoes of the consumer and assert any rights that the purchaser may have had.

Mr. Cannon said he would like to take that back to his members as well. Then he asked if that is relevant to any of the language shared in terms of flexibility when unloading the vehicle and giving options to do what needs to be done.

Mr. Sliwinski said he thinks it relates to some of the language that has been thrown around without the idea of actually spelling out the claims that the Attorney General can pursue.

Mr. Sliwinski referred back to the pairing up the 30 day temporary tag with the 40 day temporary tag.

Mr. Long said he checked with BMV business owners and the change would have a relatively low impact. The main concern is when the change would be implemented because the inventory is ordered for six months at a time and any tags left over would have to be destroyed.

Ms. Vitale said there are several issues for consumers with the pairing of the two.

Mr. Coleman said he would be opposed to changing the 40 day tags to 30 day tags. He also brought up the idea that other states that have eliminated the temporary tags.

Mr. Cannon said that is an excellent point and could be brought up in the BMV stakeholder meeting. He also said that could be an issue with the State Highway Patrol because part of their funding comes from the temporary tag.

Mr. Sliwinski suggested tabling that idea from the sub-committee. No member was opposed.

Ms. Estep asked if the BMV folks are going to reach out to the associations on brainstorming ideas for funding options and enforcement.

Ms. Vitale said she thought that was something the whole sub-committee was supposed to work on. It is agreed by the sub-committee to focus in on enforcement options as opposed to looking at the funding sources. She was under the impression that the best route for now is to focus on better enforcement so that more dealers will voluntary pay in.

Mr. Cannon said they have discussed all of the funding ideas for now and they are all on the same page.

Mr. Sliwinski said as of right now, they should cross off the \$.50 fee and the idea of tying an additional fee onto the licenses because there are opposite ideas on those issues within the sub-committee. If the sub-committee comes up with additional ones, they can certainly be circulated. He likes Ms. Vitale's suggestion to focus on the enforcement aspect and he suggested coming up with ideas on how to expand consumer coverage.

He brought up what the action items were.

1. Ms. Vitale said that the BMV needs to get together with the business unit (dealer licensing) and get their opinion and their ideas regarding enforcement. A proposal will be ready for the next meeting.
2. Mr. Cannon said he will have a proposal for the next meeting as well.
3. Ms. Estep will try to have some numbers on monies that have been in and out of the TDR fund by next the meeting.
4. Mr. Long said he would have the Assistant Registrar's data.

Mr. Sliwinski asked for the record, could the audience please identify themselves: Sean Peterson on behalf of himself; James Mitchell on behalf of OIADA (Ohio Independent Auto Dealers Association); and Debra Koral on behalf of Akron Auto.

Mr. Cannon said going back to Ms. Vitale in terms of the constitutional issues, with the very strong belief that title fees and ATPS funds cannot be used for non motor vehicle purposes, he looks forward to being vigilant as they head into the future and having proactive discussions.

Mr. Sliwinski adjourned the meeting at 2:20pm.