

MOTOR VEHICLE INDUSTRY LICENSING BOARD
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

MINUTES OF MEETING

Date: December 7, 2021

Time: 9:00 a.m.

Place: Virtual Videoconference Meeting – Zoom Webinar
<https://dcca-hawaii-gov.zoom.us/j/94478253845>

Present: Wayne K. De Luz, Industry Member, Chairperson
Steven J.T. Chow, Esq., Public Member, Vice-Chairperson
Randall Ball, D.D.S., M.S., Public Member
Byron A. Hansen, Public Member
Marie H. Weite, Public Member
Russell M. K. Wong, Industry Member
John Uekawa, Industry Member
Jenny M. Yam, Executive Officer (“EO”)
Christopher J. I. Leong, Deputy Attorney General (“DAG”)
LaJoy A. Lindsey, Secretary
Karyn Takahashi, Secretary, Tech Support

Excused: None

Guests: Dave Rolf, Hawaii Automobile Dealers Association (“HADA”)

Agenda: The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by §92-7(b), Hawaii Revised Statutes (“HRS”).

A short video was played to explain the meeting procedures and how members of the public could participate in the virtual meeting.

Call to Order: Chairperson De Luz called the meeting to order at 9:13 a.m., at which time quorum was established. All Board members confirmed that they were present.

Approval of the
October 12, 2021
Minutes: It was moved by Mr. Chow, seconded by Mr. Hansen, and unanimously carried to approve the minutes of the October 12, 2021, meeting as circulated.

Licensing: a. Ratifications:

Motor Vehicle Salesperson Licenses and Transfers
Motor Vehicle Dealer Licenses and Branch Licenses

It was moved by Vice-Chairperson Chow, seconded by Mr. Wong, and unanimously carried to ratify the above lists.

Correspondence:

- A. Email inquiry from Division of Purchasing, County of Kauai, seeking clarification on Chapter 437, HRS, and if they can procure motor vehicles from out-of-state motor vehicle dealers and subsequently ship the motor vehicle to Hawaii.

EO Yam received an email inquiry from Division of Purchasing, County of Kauai, seeking clarification if they can procure motor vehicles from out-of-state motor vehicle dealers and subsequently transport the motor vehicle to Hawaii.

EO Yam stated that the Board discussed a related matter at its September 4, 2012 and April 24, 2002 meeting.

The September 4, 2012 meeting minutes provide that:

In the Matter of SODERHOLM SALES AND LEASING INC.,
Petitioner vs. COUNTY OF KAUAI, DEPARTMENT OF FINANCE,
Respondent; PCY=-2012-017 – Hearings Officer’s Findings of
Fact, Conclusions of Law, and Decision

Board members discussed this case, which is a result of a procurement protest and is not under the Board’s jurisdiction. The Hearings Officer’s decision can be found at:
http://hawaii.gov/dcca/oah/oah_decisions/procurement.

Board members also reviewed the minutes of April 24, 2002 in which the Board issued its non-binding interpretation:

“Board counsel Rod Tam discussed a recent request by the City and County of Honolulu (“City”) on whether they would be in violation of chapter 437, HRS if they purchased buses directly from a manufacturer located outside the State of Hawaii, with the intent that acceptance would be made and the title of ownership would be transferred at the manufacturer’s site.

Tam noted that in general, HRS chapter 437 requires a person or entity that acts, engages in the business of, or advertises as a “dealer” or “salesperson” to be licensed. However, based solely on the information provided by the City, as long as:

1. The manufacturer did not solicit the sale in the State (i.e., the manufacturer is not acting as, engaging in the business of, or advertising as a “dealer” or “salesperson” in the State), and the City approached the manufacturer on its own;
2. There is no “middleman” involved in the sale who can be construed to be acting as a “dealer” or “salesperson”;

3. The manufacturer does not have a local representative/office in the State;
4. The sale is consummated outside the State; and
5. The City is solely responsible for transporting the transit buses/other specialized types of motor vehicles to the State,

it appears that the City is not prohibited under HRS chapter 437 from purchasing transit buses or other specialized types of motor vehicles directly from a manufacturer located outside the State.”

Board members agreed by consensus that the above remains the Board’s position.

Board members also discussed the licensure requirements that dealer applicants must meet, including the premise requirement. It was discussed that the premise requirement is not obtrusive. For example, applicants are not required to purchase real estate or a building or have a showroom. Instead, the Board has allowed applicants to share premises and have a display area where they can display at least three (3) vehicles. In addition, Board members stated that the premise requirement should not be confused with a *residency* requirement.

Further, that an individual or entity that engages in motor vehicle dealer activity in this State regardless of whether the purchaser is a government agency, the individual or entity shall be licensed as a motor vehicle dealer and meet all of the licensure requirements as per ch. 437, HRS.

DAG Leong stated that a state or county procurement bid may allow in-state and out-of-state bidders to participate. DAG Leong advised that the April 24, 2002 non-binding interpretation is still valid regardless if a Hawaii government entity is procuring from a manufacturer or dealer.

Vice-Chairperson Chow asked whether the title of the vehicle must be registered by the out-of-state dealer before a Hawaii government entity may transport the vehicle to Hawaii.

DAG Leong answered affirmatively.

Mr. Hansen clarified that if the vehicle is purchased in California, then they would have to register the vehicle in California before it can be shipped to Hawaii.

Mr. Wong is of the opinion that the April 24, 2002 non-binding

interpretation is clear and an out-of-state dealer would be required to obtain a Hawaii license. Specifically, one of the conditions specify that:

2. There is no “middleman” involved in the sale who can be construed to be acting as a “dealer” or “salesperson”;

Mr. Wong stated that Hawaii dealers are required to, among other things, have a physical premise and maintain adequate repair facilities to provide warranty services on new vehicles. He stated that the Board’s duty is to protect consumers and expressed concerns if the Board decides to give an exception to the licensure requirements for out-of-state dealers relating to procurement matters.

Vice-Chairperson Chow concurred with Mr. Wong’s comment and stated the April 24, 2002 non-binding interpretation seems to create a different standard for manufacturers and dealers. He asked if DAG Leong could clarify the non-binding interpretation.

DAG Leong stated that a consumer can purchase a vehicle from an out-of-state dealer and transport the vehicle to Hawaii. In this scenario, the out-of-state dealer is not required to obtain a Hawaii license because the out-of-state dealer is not selling or bringing vehicle into this State.

Mr. Wong is of the opinion that the board should reaffirm its April 24, 2002 non-binding interpretation as it states that there should be no middleman involved in the sale and a government entity may procure from a manufacturer directly and transport the vehicle to Hawaii themselves.

Vice Chairperson Chow asked DAG Leong to analyze this matter further as there may be a reason that the April 24, 2002 non-binding interpretation distinguishes between a manufacturer and dealer.

Mr. Uekawa stated that he agrees with Mr. Wong’s concerns; however, he also agrees with DAG Leong that an individual may purchase a vehicle directly from an out-of-state dealer and transport the vehicle to Hawaii and the law would not prevent a Hawaii government entity from doing the same. Mr. Uekawa stated that the non-binding interpretation should be updated to also include distributors because distributors may also be viewed as a “middleman”.

Dave Rolf, HADA, asked to be recognized to provide public comment and Chairperson De Luz recognized Mr. Rolf.

Mr. Rolf stated that HRS Chapter 437 requires those who engage in the business of selling vehicle in the State to obtain a dealer license. He stated that an out-of-state dealer may become engaged in the business of a dealer in Hawaii and a license would be required when they bid for a Hawaii state or county procurement contract. An exception is made when federal funds are involved as it prohibits any exclusionary or

discriminatory specification.

For the purpose of clarification, 49 U.S.C. §5325 provides that:

(h) Grant Prohibition.— A grant awarded under this chapter or the Federal Public Transportation Act of 2015 may not be used to support a procurement that uses an exclusionary or discriminatory specification.

(i) Bus Dealer Requirements.— No State law requiring buses to be purchased through in-State dealers shall apply to vehicles purchased with a grant under this chapter.

Mr. Rolf stated that a Hawaii dealer is authorized to doing business only for the county in which the license has been issued pursuant to HRS §437-7(j)(2). He also clarified that HRS §437-2(e) does not remove the Hawaii dealer licensing requirement for state or county procurement purposes. Mr. Rolf stated that HRS §437-2(e) allows a Hawaii dealer, for example, that is licensed to sell vehicles in Kauai County to be able to bid for a procurement contract in Hawaii County.

HRS §437-2(e) provides that:

Notwithstanding any provisions of this chapter, the authority of any state or county agency to purchase motor vehicles for state or county use from any dealer licensed under this chapter shall not be limited or conditioned. Any dealer licensed under this chapter may sell vehicles to any state or county agency.

DAG Leong recommended that the Board defer this matter and he'll research and report back to the Board at the next meeting.

It was moved by Vice-Chairperson Chow, seconded by Mr. Uekawa, and unanimously carried to defer this matter for further discussion.

Hawaii Administrative
Rules Chapter 86
Amendments:

EO Yam reported that the draft rules were provided to HADA for review and HADA requested additional amendment to the definition of "motor vehicle dealer".

Mr. Rolf thanked the Board for the opportunity for HADA to review the draft rules. He stated that the draft rules were also reviewed by Richard Sox and Jason Allen at Bass Sox & Mercer. HADA recommended that the definition of "motor vehicle dealer" be amended to include modern practices such as leasing because a dealer's business function has expanded over the years. He noted that the term "lease" is included in the definition of "motor vehicle dealers" in many administrative rules across the country.

The "motor vehicle dealer" definition was proposed to be amended as:

“Motor vehicle dealer” means a dealer who engages in the business of selling at wholesale or retail, new motor vehicles or used motor vehicles, including but not limited to offering the vehicle through a lease, subscription or like arrangement, offering vehicle test drives or demonstrations, offering to finance the purchase of the vehicle, accepting an order for a vehicle and software or hardware upgrades or changes to vehicle function and features.

It was moved by Mr. Wong, seconded by Vice-Chairperson Chow, and unanimously carried to accept the amended definition of “motor vehicle dealer” and approve the proposed amendments to Hawaii Administrative Rules Chapter 86.

2022 Schedule: EO Yam advised members that the 2022 meeting schedule was included with their packet and all Board meetings will continue to be virtual video conference until further notice.

Public Comment: None.

Next Meeting: February 1, 2022
9:00 a.m.
Virtual Videoconference Meeting
Zoom Webinar

Adjournment: There being no further business to discuss, the meeting adjourned at 9:54 a.m.

Reviewed and approved by:

Taken and recorded by:

/s/ Jenny M. Yam

/s/ LaJoy Lindsey

Jenny M. Yam
Executive Officer

LaJoy Lindsey
Secretary

12/30/21

[x] Minutes approved as is.

[] Minutes approved with changes. See Minutes of _____.

MOTOR VEHICLE INDUSTRY LICENSING BOARD
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

RATIFICATION LIST

December 7, 2021

MOTOR VEHICLE SALESPERSON TRANSFERS

CITY AND COUNTY OF HONOLULU

Alsup, Stuart W	Lithia of Honolulu V LLC dba Honolulu Volkswagen
Anderson, David M	Stoebner Holdings Inc dba Honda Windward
Bergeron, Donald	Windward Auto Group LLC dba Windward Dodge Chrysler Jeep RAM
Cabutage, Richard	Windward Auto Group LLC dba Windward Dodge Chrysler Jeep RAM
Cano, Ellie	Windward Auto Group LLC dba Windward Dodge Chrysler Jeep RAM
Choy, Wallace	Windward Auto Group LLC dba Windward Dodge Chrysler Jeep RAM
Dilliner, Noah	Windward Auto Group LLC dba Windward Dodge Chrysler Jeep RAM
Fryar, Jordan	Windward Auto Group LLC dba Windward Dodge Chrysler Jeep RAM
Gates, Karen	Windward Auto Group LLC dba Windward Dodge Chrysler Jeep RAM
Gifford, Michael	Windward Auto Group LLC dba Windward Dodge Chrysler Jeep RAM
Gongob, Gabriel	Windward Auto Group LLC dba Windward Dodge Chrysler Jeep RAM
Goodness, Dylan	Windward Auto Group LLC dba Windward Dodge Chrysler Jeep RAM
Holt, Quentin	Windward Auto Group LLC dba Windward Dodge Chrysler Jeep RAM
Kanoa, Ashten-Leigh	Windward Auto Group LLC dba Windward Dodge Chrysler Jeep RAM
Ma, Darius	J P Automobiles Inc dba Pacific Honda
McGovern, Bryan	Windward Auto Group LLC dba Windward Dodge Chrysler Jeep RAM
Naleieha, Brandon	Windward Auto Group LLC dba Windward Dodge Chrysler Jeep RAM
Nelson, Joshua B	Lithia of Honolulu-V-LLC dba Honolulu Volkswagen
Oh, David	Windward Auto Group LLC

Paredes, Garrett	dba Windward Dodge Chrysler Jeep RAM Windward Auto Group LLC
Postel, Michael	dba Windward Dodge Chrysler Jeep RAM Windward Auto Group LLC
Prestoza, Claire Pate C Reed, Clifton	dba Windward Dodge Chrysler Jeep RAM Stoebner Holdings Inc dba Honda Windward Windward Auto Group LLC
Reed II, Clifton F	dba Windward Dodge Chrysler Jeep RAM Windward Auto Group LLC
Rueda, Daniel	dba Windward Dodge Chrysler Jeep RAM Windward Auto Group LLC
Stubblefield Devan M	dba Windward Dodge Chrysler Jeep RAM Cutter CJD Inc dba Cutter Chrysler Dodge Jeep RAM of Pearl City
Shaw, Richard	Windward Auto Group LLC
Taito, Ransen	dba Windward Dodge Chrysler Jeep RAM Windward Auto Group LLC
Tankersley, Mingo R	dba Windward Dodge Chrysler Jeep RAM Windward Auto Group LLC
Wood, Akira R	dba Windward Dodge Chrysler Jeep RAM P Automobiles Inc dba Pacific Honda

COUNTY OF MAUI

Simone, Anthony Wolcott, Ryan	Jones Maui LLC Lithia of Maui-H LLC dba Island Honda
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COUNTY OF HAWAII

Na'auao-Kipapa, Kapena M	Island Wide Motors LLC
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MOTOR VEHICLE SALESPERSON LICENSES

CITY AND COUNTY OF HONOLULU

CS-20667-0	ANTHONY G SANTIAGO	C & C AUTO GROUP INC
CS-20676-0	JONATHAN F SEVERT	ALOHA AUTO GROUP LTD
CS-20680-0	BETHANY C BELZ	PACIFIC NISSAN INC
CS-20685-0	DAWN BAKER	TONY HAWAII AUTOMOTIVE GROUP LTD
CS-20687-0	HAILIE A WILLIAMS	TELESEEK AUTO LLC
CS-20666-0	CONOR G BALDWIN	CUTTER CJD INC
CS-20693-0	BRANDON L DOBBS	PACIFIC IMPORT VEHICLES LLC
CS-20673-0	REBECCA J MARTINEZ	WINDWARD AUTO GROUP LLC
CS-20686-0	ELLIE M CANO	WINDWARD AUTO SALES INC

CS-20690-0	TYLER A BLAIR	WINDWARD AUTO GROUP LLC
CS-20668-0	MOHAMMAD HAMEDALLAH	SMART CAR LLC
CS-20669-0	NOAH R JOHNSON	AUTOSOURCE LLC
CS-20671-0	JULIAN M TOMAN	AUTOSOURCE LLC
CS-20672-0	SIERRA W CLAPHAM	SERVCO SUBARU INC
CS-20674-0	SENICHI T WOOD	ALOHA AUTO GROUP LTD
CS-20677-0	GARTHAN FREEMAN	SHELLY EUROCARS LLC
CS-20678-0	DENNIS M GILBERT	LITHIA OF HONOLULU-F LLC
CS-20681-0	JOSE L CASTILLO	SHELLY EUROCARS LLC
CS-20683-0	ROBERT D BURR	ROBERT'S TOURS AND TRANSPORTATION INC
CS-20684-0	MARK E THOMAS	JN GROUP INC
CS-20688-0	CHELSEA GRACE CAPUTO	TESLA INC
CS-20691-0	HUNTER PAUL MANSON	CUTTER HONOLULU INC
CS-20692-0	KARISSA HUYNH	TESLA INC

COUNTY OF HAWAII

CS-20675-0	MELISSA I KUA-NACHOR	TONY HAWAII KONA LLC
CS-20670-0	EMMANUELLE B L SARFIELD	DE LUZ AUTOMOTIVE LLC
CS-20679-0	KOVEE E K RIVERA	BIG ISLAND MOTORS INC
CS-20682-0	BLAKE S ABEYTA	ALOHA AUTO GROUP LTD

COUNTY OF KAUAI

CS-20689-0	TORILYN KAULANA FARIAS-ASAI	NIETHAMMER FAMILY LLC
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MOTOR VEHICLE DEALER LICENSES

MVD-1119-0	SMART CAR LLC
MVD-1120-0	PACIFIC IMPORT VEHICLES LLC

MOTOR VEHICLE BRANCH LICENSES

MVB-729-2	KIHEI AUTO SALES INC
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