

Approved: 2/28/94
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Chairperson Ben Vidricksen at 9:00 a.m. on February 24, 1994 in Room 254-E of the Capitol.

All members were present except:

Senator Vidricksen - Excused
Senator Rock - Excused

Committee staff present: Hank Avila, Legislative Research Department
Ben Barrett, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Martha Ozias, Committee Secretary

Conferees appearing before the committee:

Mary Turkington - Kansas Motor Carriers Association
Pam Somerville - Kansas Automobile Dealers Association
Paul McDonald - President-Elect, Kansas Automobile Dealers Association
Sheri Rosile - Scollfied Auto Group, Wichita
Pete Klein - Augusta
Fred LaGreca - President of Hambelton LaGreca Chevrolet, GEO, Pontiac, Inc.
Glenn Cogswell - Kansas-Nebraska Association of Seventh-Day Adventists
Betty McBride - Director, Division of Vehicles, Department of Revenue

Others attending: See attached list

SB 760 - Relating to motor transportation brokers

Mary Turkington refreshed the Committee on the ramifications of **SB 760** which would bring "motor transportation brokers" under the regulation of the Kansas Corporation Commission. She stood for questions, there was no discussion.

Senator Emert made a motion to recommend **SB 760** favorable for passage. A second was made by Senator Tiahrt. Motion carried.

SB 750 - Amending the vehicle dealers and manufacturers licensing act; prohibiting certain vehicle dealers from sales on Sunday

A prepared packet was distributed from Pam Somerville (Attachment 1) who introduced Paul McDonald who in turn addressed the Committee in support of **SB 750**. He discussed four provisions for amending the dealer licensing act. Those being to clarify and add definitions in the statute, to set forth requirements to obtain a supplemental place of business and hold a motor vehicle show, to approve warranty claims through computerized systems and to add Sunday closing language which would required vehicle dealers to close on Sunday but permit the occasional sale of 5 vehicles per month. The motive behind these provisions is to maintain a quality of life for employees, to keep turnover to a minimum and overhead costs lower. (Attachment 2)

Sheri Rosile spoke from the viewpoint of an automobile business manager explaining that she worked six days a week and often stayed late in the evenings as she was required to complete all the paperwork in the same day for each sale. She addressed the problems of not being able to verify checks, employment, insurance and information needed from the court house and various other places when she had to work after the normal closing hours of these companies and businesses.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES, Room 254E-Statehouse, at 9:00 a.m. on February 24, 1994.

Pete Klein spoke in support of the employees who often worked long hours every week. He questioned the concept of "Free Enterprise" and stated that in order to keep honesty, integrity and professionalism in dealerships an employee must have some family time. (Attachment 3)

Fred LaGreca spoke in opposition to **SB 750** stating that the free market system should dictate and businesses should have the choice of when to be open and when to be closed. (Attachment 4)

Glenn Cogswell spoke in strong opposition to New Section 7 of the bill referred to as "Sunday closing". He stated that this appeared to be a battle within the automobile industry grounded in economics and he felt that government should not mandate days when any business may be opened or closed. (Attachment 5)

The Department of Revenue presented some amendments for the Committee to review in preparation for further discussion at the next meeting. (Attachment 6)

Additional testimony was distributed but not read from:

Gene Swan - Boeing Wichita Employees Credit Union (Attachment 7)

Bruce Armstrong - The Andover State Bank (Attachment 8)

Stephen Kammerer - Union National Bank (Attachment 9)

Duane Nightingale - NeKan Bell Credit Union (Attachment 10)

The meeting was then adjourned by the Vice-Chairperson.

The next meeting is scheduled for February 25, 1994.

GUEST LIST

SENATE TRANSPORTATION COMMITTEE

DATE: February 24, 1994

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Matt Holt	Lawrence	Student
John Tress	Topeka	Kansas-Neb. Assoc. of Sunday Adventists
Joel Tompkins	TOPEKA	" " "
Glenn Cogswell	Topeka	" " "
Jacqueline Dakes	"	KIADA
Jerel Wright	Topeka	Ks Credit Union Assn
Edna Greca	Hutchinson	Hamberton La Greca Chev MSL Hamberton Ford
HAROLD PITT'S	TOPEKA	AARP-CCTF
BUD GRANT	"	KCCC
DON McNEELY	TOPEKA	KADA
Pam Somerville	TOPEKA	KS Auto Dis Assn
Sheri Dawn Rosile	Wichita	Scholfield Brothers
SAM MANSKE	Overland Park	OLATHE FORD
STAN MICHAELS	IRCK	JAY WELFE AUTO GROUP
LORNE SCHATTER	Independence	Quality Motors Inc
ROGER A SMITH	KCK	ROGER SMITH'S TOYOTA
"Pete" Klein	Dawn Moore - Wichita, Kansas	
MIKE STEVEN	WICHITA	STEVEN MOTOR GROUP
PAT SHIELDS	Chanote	SHIELDS AUTO Co.
STEVE BREDLOWE	PARSONS	BREDLOWE AUTOMOTIVE GROUP
Kim Bredlowe	Parsons	Bredlowe Automotive Group

GUEST LIST (continued)

DATE: 7/24/94

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kansas automobile dealers association

800 Jackson, Suite 1110 • Topeka, Kansas 66612-1216 • (913) 233-6456 • FAX (913) 233-1462

February 24, 1994

Kansas Dealers and employees present in support of SB 750:

Paul MacDonald, Paul MacDonald Chevrolet, Hays, Kansas
Sheri Roseile, Scholfield Auto Group, Wichita, Kansas
Pete Klein, Davis-Moore, Wichita, Kansas
Steve Breedlove, Breedlove Motors, Parsons, Kansas
Dee Dove, Dove Buick-Oldsmobile-Cadillac, Great Bend, Kansas
Dave Marmie, Marmie Motors, Inc., Great Bend, Kansas
Sam Mansker, Olathe Ford, Olathe, Kansas
Paul Smith, Sonny Hill Pontiac-Buick-GMC, Olathe, Kansas
Mike Steven, Steven Motor Group, Wichita, Kansas
Roger Smith, Roger Smith and Sons Toyota, Kansas City, Kansas
Stan Michaels, Jay Wolfe Chevrolet-Honda, Kansas City, Kansas
Lorne Schlatter, Quality Motors of Independence,
Independence, Kansas
Pat Shields, Shields Motors, Chanute, Kansas

ATTACHMENT 1

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Safety programs developed

It was announced in our December newsletter that LADA and Ray Kirk of OSHI, Inc. has entered into a contract whereby LADA/SIF members will receive a package of environmental, health and safety training, and compliance assistance.

These safety programs are designed to benefit your dealership in complying to OSHA and EPA regulations.

Now that the new year is here Ray has started on the Safety Programs OSHI, Inc. has developed, which consists of two steps.

Fact Finding Visit

They will visit each member to:

- Introduce the program
- Collect information for the Hazard Communication Written Program
- Collect information for the Contin-
gency Plan
- Conduct a general inspection for
OSHA violations
- Conduct a general inspection for
EPA (DEQ) violations

Employee Training and Management Conference

15 to 30 days after the first visit, OSHI, Inc. will call the member to set up a time for the employee training and management conference. At this time, OSHI, Inc. will discuss with management the violations found in the previous inspections and make our recommendations.

Sunday Closing decision upheld

The new car and truck dealers of Louisiana received a late Christmas present on December 30, 1993, when the Louisiana First Circuit Court of Appeal upheld the District Court decision in the Lakeside Imports, Inc. case.

Thanks to an excellent job done by Jon Adcock of Brook, Morial, Cassibry, Pizza & Adcock and Ray Mongrue from the Louisiana Attorney General's office, the Louisiana auto dealers will remain closed on Sunday. We believe this decision reflects the wishes of the vast majority of the dealers and probably all of your employees.

LADA is happy we were able to serve the dealer body in 1986 by passing the law to require Sunday Closing and in 1993 by defining it.

A complete copy of the five page court judgment is available from LADA upon request (504-769-550 or 800-375-5232 or fax 504-769-2085).

LATE BREAKING NEWS

The New Orleans news media has reported that Lakeside Imports, Inc. intends to appeal this decision to the Louisiana Supreme Court.

"For Sale" Demos Require Buyer's Guide

Used Car Buyers' Guides must be placed on the windows of demonstrators when they are being offered for sale, according to the requirements of the FTC Used Car Trade Rule. Demonstrators are included within the definition of "used vehicles", requiring window stickers.

Dealers should complete a Buyer's Guide for each demonstrator and put it in the glove compartment. Anytime the demonstrator is put on the lot "FOR SALE", or before negotiations begin on that vehicle, the sticker must be placed in the window. The sticker need not be posted when the demonstrator is segregated from other vehicles being offered for sale.

In addition to the Buyer's Guide, the Monroney Sticker must also be posted whenever the vehicle is being displayed for sale.

Louisiana Automobile Dealers Association

Robert C. Israel, Executive Vice President

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LAKESIDE IMPORTS, INC.

STATE OF LOUISIANA

VERSUS

COURT OF APPEAL

FIRST CIRCUIT

STATE OF LOUISIANA

CA 92 2149

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, NO. 380,247, HONORABLE MICHAEL PONDER, JUDGE PRESIDING.

BEFORE: FOIL, PITCHER AND PARRO, JJ.

December 29, 1993

FOIL, JUDGE.

Plaintiff, Lakeside Imports, Inc. (Lakeside), appeals from a judgment holding that La. R.S. 51:193 is constitutional and denying its requests for a permanent injunction, a declaratory judgment and an award of attorney's fees. We affirm.

FACTS

Lakeside is a Louisiana licensed motor vehicle dealer which sells new and used cars and trucks in Jefferson Parish. It also purchases cars and trucks, sells auto parts and accessories, and does service and repair work.

Lakeside wishes to open for business on Sundays, but is prohibited from doing so by law. La. R.S. 51:193 prohibits licensed motor vehicle dealers which are engaged in the sale of new or used cars or trucks from opening on Sunday. Lakeside claims it has lost and continues to lose business by not being able to open on Sunday in order to compete for customers with other businesses which are open on Sunday and offer similar services or merchandise (e.g. parts stores and repair shops).

Lakeside filed this suit against the state of Louisiana, seeking a judgment declaring La. R.S. 51:193 unconstitutional, permanently enjoining any action against it based on a violation of the statute, granting it a preliminary injunction pending a trial on the merits, and awarding it attorney's fees. Lakeside contends

that the statute effects an unconstitutional deprivation of a
interferes with its right to open and operate its business c
Sundays, a right extended by the state to all other businesses.

Prior to the hearing on Lakeside's request for a
preliminary injunction, the Louisiana Automobile Dealers
Association (LADA) filed a petition for intervention and joined the

state in resisting Lakeside's demands. Thereafter, by stipulation, the entire case was tried on the merits. After issuing oral and written reasons for judgment, the trial court rendered judgment dismissing Lakeside's request for a preliminary injunction as moot, and denying the other relief it requested. Lakeside then took this devolutive appeal.

CONSTITUTIONALITY

On appeal, Lakeside claims that La. R.S. 51:193 is unconstitutional because it violates the due process and equal protection provisions of the Fourteenth Amendment to the United States Constitution and Article I, Sections 3 and 4, of the Louisiana Constitution.

Prior to 1986, La. R.S. 51:191-195 prohibited various businesses, including licensed car dealers, from opening on Sunday. However, Louisiana's statewide comprehensive Sunday Closing Law was repealed by Acts 1986, No. 1. The 1986 act authorized parishes and municipalities to adopt local ordinances prohibiting the opening of certain businesses on Sunday, subject to voter approval. La. R.S. 51:191. The act also amended La. R.S. 51:193 which is now the only statewide Sunday Closing Law. It prohibits licensed motor vehicle dealers who engage in the sale of new or used cars or trucks from opening for any business on Sunday.

Clearly, Sunday Closing Laws are not per se unconstitutional. State legislatures may, within their police powers, enact legislation setting aside a uniform day of rest and restricting sales on that day. To determine the constitutionality of such a statute, we must examine its particular provisions to confirm that the law does not create arbitrary and unreasonable

business classifications which have no bearing on the public health and welfare considerations that prompted enactment of Sunday Closing Laws. Unless a statute interferes with the exercise of fundamental personal rights, or is drawn upon inherently suspect

distinctions, its constitutionality is presumed. The jurisprudence requires only that the classification challenged be rationally related to a legitimate state interest. *Harry's Hardware, Inc. v. Parsons*, 410 So.2d 735, 737 (La.), cert. denied, 459 U.S. 881, 103 S.Ct. 178, 74 L.Ed.2d 145 (1982).

Lakeside asserts that the statute in question violates the due process guarantees of the federal and state constitutions by prohibiting it from using its property to open and operate any lawful business on Sundays. Stated another way, Lakeside contends that the State has no legitimate state objective which is reasonably and rationally advanced by a law which prohibits only licensed motor vehicle dealers from opening for any business on Sundays. Lakeside further argues that the statute violates the equal protection guarantees because it establishes a statutory scheme of discrimination against one class of business which does not advance a legitimate state objective.

We begin our consideration of the constitutionality of the statute by examining the state interests to be furthered by the law and then examining the rationality of the means employed to achieve the state's ends. The issue is whether the state has a legitimate state interest in requiring all automobile dealerships to be closed on Sunday instead of delegating this decision to the local governments as it did in 1986 with regard to all other businesses. Our review of the record leads us to conclude that the requirement of La. R.S. 51:193 that car dealerships remain closed on Sundays is clearly a reasonable exercise of the state's police powers.

The record shows that Sunday opening pursuant to a local-

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option scheme would benefit large metropolitan dealers, like Lakeside, to the detriment of smaller rural dealerships. In order to remain competitive, these smaller dealers would be forced to

open on Sunday or face losing business or worse, going out of business.

Clearly, the purchase of an automobile is one of the most important and costly purchases made by the average citizen. The record reveals that most consumers prefer that dealerships be closed on Sunday as it affords them an opportunity to examine and compare the vehicles by themselves. This opportunity encourages consumers to make informed, responsible decisions.

Additionally, if automobile dealerships were open on Sundays, the sales personnel would necessarily have to work an extra day in order to compete and avoid losing a sale and the commission to another person. The law in question provides a forced day of rest for these workers, thereby safeguarding their health and general welfare.

In summary, we agree with the trial court that the state of Louisiana has a legitimate interest in protecting smaller rural dealerships from their larger urban competitors; in providing its citizens with an opportunity to make careful, planned decisions before incurring considerable indebtedness; and in regulating the working hours of its citizens who make a living in car sales. Finally, we find that the statute is a rational means employed to achieve the ends noted above. Again, we agree with the trial court that a local-option scheme would not achieve the same result because the automobile industry is regional in nature. As soon as one locality allowed its dealerships to open on Sundays, neighboring localities would be forced to do the same. We conclude that La. R.S. 51:193 is constitutional in that it is a legitimate exercise of the state's power to regulate the automobile industry,

its customers and employees.

Because of our holding on the issue of the statute constitutionality, we need not address the merits of Lakeside's request for injunctive relief and an award of attorney's fees.



kansas automobile dealers association

800 Jackson, Suite 1110 • Topeka, Kansas 66612-1216 • (913) 233-6456 • FAX (913) 233-1462

February 24, 1994

To: The Honorable Lillian Papay, Vice-Chairman
Senate Committee on Transportation and Utilities

From: Paul MacDonald, President-Elect
Kansas Automobile Dealers Association

**Re: SB -750 AMENDMENTS TO THE VEHICLE DEALERS'
AND MANUFACTURERS' LICENSING ACT**

Good morning Senator Papay and members of the committee. I am Paul MacDonald of Paul MacDonald Chevrolet in Hays, Kansas and the President-Elect of the Kansas Automobile Dealers Association. Our association represents over 300 franchised new car dealers across the state.

Thank you for the opportunity to appear before you today in support of SB 750 which amends the Vehicle Dealers' and Manufacturers' Licensing Act. This bill contains four provisions amending the dealer licensing act. I will address each of those provisions separately.

The first provision is to clarify the existing definition for "supplemental place of business" (a permanent facility operated on a year-round basis) and add new definitions for "storage

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facility" (a lot to store vehicles), "motor vehicle show" (for shows and/or temporary sales), and "recreational vehicle" because it is referenced in the statute and a definition is not addressed in the current dealer licensing act. This language is found on Page 5, lines 17-35.

We are asking for this change since current language only define one type of supplemental location, and we believe these definitions better identify what actually transpires in our business.

The second provision would add language in K.S.A. 8-2404 and set forth requirements to obtain a supplemental place of business and to hold a motor vehicle show. One requirement to obtain a supplemental location is to encompass the relevant market area requirements passed during the 1991 Legislature which are contained in K.S.A. 8-2430.

For dealers seeking to establish a temporary location, they would be required to secure consent or participation of at least 50% of the licensed dealers in the county of the location to be established. This language is found on page 10, lines 36-43 and lines 1-20 on page 11. This language is similar to Missouri law only less restrictive since Missouri require 50% of the dealers to participate in the show or sale.

The third provision of the bill would amend K.S.A. 8-2415 which would require the manufacturer or distributor to pay authorized promotional allowances, incentive payments,

and warranty claims within 30 days of approval. The majority of our manufacturers approve warranty claims through computerized systems when vehicles are brought to the dealership for warranty work so, in effect, the claim is approved at the time the transmission is sent.

The manufacturer would retain the right to audit the claim, including warranty claims, for a period of one year after the date the claim was paid; however, current Kansas statutes would permit the manufacturer the right to audit two years previous if there is good cause that fraud had occurred. This language is found on Page 16, lines 10-14 and lines 31-43, and on page 17, lines 1-5.

The final provision is a new section to add the Sunday closing language which would require vehicle dealers to close on Sunday; however, the isolated or occasional sale of 5 vehicles per month is permitted. This language is New Section 7 on page 20, line 43, and page 21, lines 1-21.

Sunday Closing is not a new topic for you on the committee and there has been much discussion concerning our request. I believe all of our members understand the difficult decision you face in supporting this request since there are many times we ask government not to intervene. However, we do have a unique circumstance in that we cannot as a group collectively "get together" and agree to close on Sunday.

As an individual who used to live in Detroit, I am very knowledgeable about the FTC requirements and Sherman Anti-Trust Act which specifically prohibits our association from doing the very thing that the recent WIBW editorial suggested we do, which is our association should just agree to close. In the Detroit incident, dealers did agree to close on Saturday and their penalty from the FTC was not only a monetary fine but they were also required to be open every Saturday for a year. I would point out that Michigan has had a Sunday Closing law for over 30 years.

Nineteen states specifically prohibit car dealers to be open on Sunday. Our surrounding states of Missouri, Oklahoma and Colorado are closed. There are no more cars sold annually whether you are open seven days a week or six days a week; however, there may be sales of cars from other areas. You may ask, what is the motivation for me as an owner of a dealership to ask for this law? The motive is simply maintaining a quality of life for our employees, keeping employee turnover to a minimum, overhead costs lower, and preserving the dealer body in the state of Kansas.

We have all heard the stereotype jargon about car dealers and their employees, but the real truth is we are real people living and working in communities all across the state. The auto industry has been, and will continue to be the pulse of our country. We are very much concerned about retaining a positive future for our employees.

Our industry has been moving toward a better image and a better environment for our employees. It is the auto industry that asked for bonding, odometer disclosure, and

branding of titles. Another good illustration is that the National Automobile Dealers Association recently initiated the Society of Automobile Sales Professionals and the Salesperson Certification Program. This program is geared to greater customer service within a dealership so that consumers will no longer have to enter the car buying experience with trepidation.

Madam Chair, in closing I would emphasize the fact that car dealerships are, indeed, an interesting breed of retailers. They are not like the KMarts, Walmarts, and other retail enterprises nor do we diminish the importance of their existence in the marketplace. However, we do not try to staff our dealerships with part-time employees on the weekends, but rather we do attempt to attract professionals, just like each of you sitting on this committee. We take our responsibilities to the public seriously, and we encourage your support for this important piece of legislation.

Thank you again for the opportunity to appear in support of Senate Bill 750. I would be happy to answer questions.

Good automobile dealerships are important to our State. They employ over 4,600 people in sales; over 3,400 people as mechanics and technicians; over 10,000 people overall.

Small town dealerships are an absolute necessity to our State, as over 98% of our rural and smaller town residents depend upon the automobile for their transportation.

Does "Free Enterprise" mean driving our small town dealers and repair shops out of business?

Does "Free Enterprise" really mean that a couple of dealerships should remain open on Sundays and advertise heavily into all areas of Kansas to come to their dealerships? They will even put prospects up in a motel and resort to other gimmicks. You are to come to these dealerships from 200, 300 or 400 miles away to purchase vehicles. Who will service this automobile? Will this selling dealer drive 400 miles to help this customer repair their car if there is a problem?

A small town dealer pays exactly the same for his new car inventory as any other dealer in Kansas. Can a dealer in a larger city sell his car for less? -- The answer is NO!

These dealers who encourage buyers to shop Sundays do extensive advertising on T.V. where disclaimers are in print too small to read, while their pitchman is quoting unbelievable prices. People coming to these dealerships may be persuaded to make a purchase by "high pressure tactics" thinking they are getting a great deal. Is this really "Free Enterprise" at work?

Small town people and dealers have a great regard for family values and they do not wish to open on Sundays. Nor can they afford to do extensive advertising.

Dealers in larger cities are open 6 days per week from 7:30 am until 9:00 pm or 10:00 pm. Many employees work 60 hours per week.

It is easy to see that in order to keep honesty, integrity and professionalism in dealerships, an employee must have some time for his family. It is not protocol to hire part-time employees to sell or service automobiles.

How can anyone say that good dealerships who are all open 65 to 70 hours per week in larger cities are trying to stifle competition? The customer has plenty of time to shop; to compare models and prices; consult their bank, credit unions, or their insurance companies regarding their purchase; none of which are open on Sundays.

I believe the whole franchise system of automobile sales and service can be badly fractured or destroyed by a couple of dealers.

I believe it is GREED --- Am I wrong or is this really "Free Enterprise"?

Respectfully,

C.W. "Pete" Klein

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February 24, 1994

Prepared Testimony regarding Senate Bill 750 and House Bill 2985

Presented By: Fred LaGreca, President of Hambelton LaGreca Chevrolet, GEO, Pontiac, Inc.

Introduction

I am Fred LaGreca, President of Hambelton LaGreca Chevrolet, GEO, Pontiac, Inc. located in Hutchinson, Kansas. I am here testifying today, not only on behalf of Hambelton LaGreca Chevrolet, GEO, Pontiac, Inc., but also on behalf of Mel Hambelton Ford, Inc. of Wichita, Kansas. Both dealerships would like to express our appreciation for the opportunity to testify before the Senate Transportation Committee regarding Senate Bill 750. Mel Hambelton and I oppose those portions of Senate Bill 750, which would: (i) force car dealerships in their respective county of operation to close on Sunday; and (ii) force car dealers to obtain the permission of one-half of the other car dealers to hold an off-site sale. We also oppose House Bill 2985 which contains similar if not identical language to the Senate Bill. We believe individual car dealerships should have the right to set their hours of operation, and hours of operation should be a business judgment and not a governmental judgment. It is our firm position government does not have a legitimate, rational reason for regulating a private business, such as a car dealership, which is not a threat to public health and safety. Why are car dealerships singled out for Sunday closure, when other diverse retailers--department stores, appliance stores, furniture stores, clothing stores, auto parts stores, grocery stores, just to name a few, are open on Sunday? If retail sales on Sunday are bad public policy, why doesn't the proposed law force all retailers to close on Sunday?

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Analysis

1. Lost Jobs, Lost Revenues. Forced Sunday closings will cause our revenues to go down, and as gross revenues go down, our dealerships will have to reduce sales and administrative staff. People who need and want to work will lose their jobs because of Senate Bill 750 and House Bill 2985. How in good conscience, the legislature could even consider forcing dealers to close on Sunday, thereby prohibiting employees from working who want and need to work is beyond comprehension.
2. Not an Undue Hardship on Employees. The argument that being open on Sunday places an undue hardship on our employees is simply not true. At Hambelton LaGreca sales are good enough on Sunday that our sales people "draw straws" to see who gets to work on Sunday. At Mel Hambelton Ford, sales people alternate Sundays so each sales person does not work more than two Sundays a month. In addition, when a sales person works on Sunday, he or she has an extra day off during the week. For example, a sales person working a five-hour shift on Sunday at Hambelton LaGreca will have a seven-hour shift off during the week, so their work week is about 43 hours per week, including Sunday.

Another argument put forth for Sunday closing is that being open on Sunday interferes with church-related activities. Our dealerships do not open until 1:00 p.m. on Sunday; thereby, assuring that our employees and customers, who choose to do so, have time to attend Sunday church services. I would point out that a forced Sunday closing would work an unfair hardship on people whose day of worship may be a day other than Sunday.

3. Unfair Exceptions. Both Senate Bill 750 and House Bill 2985 allow for the sale of recreational vehicles and motorcycles on Sunday, as well as cars by any dealer who sells five or fewer vehicles on Sunday in any one month. If Sunday sales are bad public

policy (which they are not)---wouldn't it follow that it is bad public policy to also sell only five cars per month or unlimited numbers of recreational vehicles or motorcycles?

4. Anti Competitive Effect of Restricted Offsite Sales. In addition, both the Senate Bill and the House Bill prevent individual new and used car dealers from having offsite sales at such places as the Kansas Coliseum or the Kansas State Fairground or other locations, unless half of the competitor dealerships in a county either consent to such a sale or participate in the sale. Once again, recreational vehicles and motorcycles are excluded from this offsite sale restriction. What good reason exists for requiring a car dealership to have to obtain permission from other dealerships to hold an offsite sale. Volume sales allow more cars to be sold at lower prices which benefits the consumer. Offsite sales are just another marketing tool used by dealers. Any artificial barrier to the sale of cars is a barrier that impedes free competition. Neither Bill articulates any sound public policy reason to restrict offsite sales and the competition it creates. The bottom line is that it is ludicrous and bordering on the insane for the legislature to expect competitors to have to give each other permission to hold an offsite sale or have the sale be one that includes half of the car dealerships in a county. Requiring competitors a veto right on another dealership's sales is nothing but a restraint of trade. There is no other retail business, whether it be food, appliances, furniture or clothing that would tolerate having to get permission from its competitors on how to conduct business.
5. Extended Hours Facilitates Competition. There are many facets to competition--price of product, quality of service, quality of product, marketing and hours of operation. The hours a car dealership is open is important to the mix of competitive factors because for many people Sunday is their only extended shopping day if they live outside the dealership's immediate area, or if they work Monday through Saturday. Mel Hambelton and I both believe our hours of service are a critical componet of our ability to compete in the marketplace.

6. Forced Sunday Closings of Car Dealerships is Unconstitutional. The Sunday Closing provision of Senate Bill 750 and House Bill 2985 applicable to new and used car dealerships, but not to dealers of recreational vehicles, motorcycles, or dealers who sell fewer than five cars per month, is unconstitutional under Kansas law. In a very similar case, the Kansas Supreme Court in Boyer v. Ferguson, 192 Kan. 607 (1964) held a Sunday closing law which forced large grocery stores to be closed on Sunday was unconstitutional because it violated Article 2, Section 17 of the Kansas Constitution which reads in part:

"All laws of general nature shall have uniform operation throughout the state; and in all cases where a general law may be made applicable, no special law shall be enacted; whether or not a law enacted is repugnant to this provision of the constitution shall be construed and determined by the courts of the state..."

The Kansas Supreme Court concluded that the Sunday Closing Law in question did not have uniform operation throughout the state as required by Article 2, Section 17 of the Kansas Constitution. The Court pointed out that while the act purported to prohibit the sale of certain items sold in grocery stores throughout the state, it then exempted so-called "Mom and Pop" stores from the Sunday closing requirement. The Court; therefore, reasoned that the Sunday Closing Law did not operate uniformly on all members of the broad classification created.

Like the 1963 Sunday Closing Law, the proposed legislation in 1994 to close all vehicle dealers on Sunday is a general law by nature, but is not applied uniformly because it exempts from the Sunday closing requirements dealers who sell no more than five cars per month, as well as excluding vehicle dealerships that sell motorcycles or recreational vehicles, regardless of the number of monthly sales. The proposed legislation at hand is similar to the Sunday Closing Law which was declared unconstitutional by the Supreme Court of Kansas in the Boyer v. Ferguson case in 1964, except that it was in reference to grocery stores in 1963 and now we are talking about car dealerships. In addition, we

believe there is not a sound constitutional or equitable principle upon which the legislature can rely to distinguish car dealerships from other retailers, including dealers of recreational vehicles and motorcycles for purposes of justifying closing car dealers, but not other retailers to close. Other retailers are: open Monday through Sunday, employee sales staff on commissions, advertise seven days per week; and rely on high volume sales strategies; yet car dealers are being unjustly and irrationally singled out for closing.

Summary

Mel Hambelton and I believe each car dealership within the state of Kansas should be free to set their own hours of operation. We are not asking other car dealerships to open their doors on Sunday and by the same token we do not believe other car dealerships should ask us to close. The free market system should dictate, and businesses should have the choice, when to be open and when to be closed, particularly when these businesses pose no threat to the safety, health or welfare of the public. A law to force certain retailers to close on Sunday is as unreasonable as a bill to force retailers to be open on Sunday. We strongly urge all State Legislators to reject this legislation being pushed by those car dealerships that wish to close on Sunday or those who would stifle competition by effectively prohibiting offsite sales. If certain dealers cannot compete with those who want to be open on Sunday or have offsite sales, they should not be allowed to run away from fair competition and seek the protection of government. Government should encourage fair competition--not protect those who do not want to compete.

I would like to thank the committee for allowing me the opportunity to testify and present my views on the proposed legislation.

Fred LaGreca
President
Hambelton LaGreca Chevrolet, GEO,
Pontiac, Inc.

February 24, 1994

Supplemental Prepared Testimony regarding Senate Bill 750 and House Bill 2985

Presented By: Fred LaGreca, President of Hambelton LaGreca Chevrolet, GEO, Pontiac, Inc.

Introduction

- Both Senate Bill 750 and House Bill 2985 would force car dealerships to close on Sunday, and would require car dealerships to obtain permission from one-half of the other car dealers in the county in order to hold an off-site sale. Recreational vehicles and motorcycles along with dealerships who sell five or fewer cars a month on Sunday are exempted from the Bills. Mel Hambelton and I strongly oppose the legislation as anti-competitive and anti-jobs.

Analysis

- Government does not have any rational basis to interfere in business decisions such as the setting of hours, particularly when that interference reduces competition and reduces jobs.
- The Kansas Motor Car Dealers Association in testimony before your Committee on February 24, 1994, admitted that car dealers could not legally get together to close on Sunday because that violates FTC Rules regarding competition. However, they are still asking you to pass a law to do something which they could not do legally. In other words, they are asking you to restrain competition.
- Forced Sunday closings will cause revenues to go down, and as revenues go down, dealerships will have to reduce sales and administrative staff. People will lose jobs because of Senate Bill 750 and House Bill 2985.
- Working on Sunday does not place an undue hardship on employees. Employees at Hambelton LaGreca "draw straws" to see who works Sunday since sales are so good on that day. At Mel Hambelton Ford, sales people alternate Sundays so each sales person has at least two Sundays a month off. Working on Sunday does not interfere with church-related activities since the dealership does not open until 1 p.m.
- By exempting dealers of recreational vehicles, motorcycles, or dealers who sell fewer than five cars a month on Sunday the both Bills would be unconstitutional according to Article 2, Section 17 of the Kansas Constitution. In a very similar case, the Kansas Supreme Court in Boyer v. Ferguson, 192 Kan. 607 (1964) held a Sunday closing law which forced large grocery stores to be closed on Sunday was unconstitutional because it did not have uniform operation throughout the state as required by Article 2, Section 17.

Summary

- Car dealerships within the state of Kansas should be free to set their own hours of operation. The free market system should dictate, and businesses should have the choice, when to be open and when to be closed, particularly when these businesses do not pose a threat to the safety, health or welfare of the public. If certain dealers cannot compete with those who want to be open on Sunday or have offsite sales, they should not be allowed to run from fair competition and seek the protection of government.

SENATE BILL NO. 750

**TESTIMONY OF GLENN D. COGSWELL ON BEHALF OF
KANSAS-NEBRASKA ASSOCIATION OF SEVENTH-DAY ADVENTISTS
BEFORE THE SENATE TRANSPORTATION AND UTILITIES COMMITTEE**

FEBRUARY 24, 1994

Mr. Chairman and members of the Committee:

My name is Glenn Cogswell and I am appearing on behalf of Kansas-Nebraska Association of Seventh-day Adventists, whose offices are located in Topeka, Kansas.

Kansas-Nebraska Association of Seventh-day Adventists neither favors nor opposes the provisions of the first six sections of Senate Bill No. 750. It does however, strongly oppose New Section 7 of the bill, which begins at line 43 on page 20 and continues through line 21 on page 21 of the bill. This section of the bill may be referred to, as denoted in the Senate Calendar, as "prohibiting certain vehicle dealers from sales on Sunday" or simply as "Sunday closing."

New section 7, although extremely broad as to what actions and activities it would prohibit, appears to apply to the sale of all motor vehicles except recreational motor vehicles and "the isolated or occasional sale of a motor vehicle by ^a vehicle dealer," which is defined as "The sale of five or less motor vehicles in any calendar month. . . ."

I have not had the opportunity to fully research the history of laws prohibiting sales on Sunday or "Blue Laws." My own memory serves to recall that the Kansas Legislature passed a Sunday Closing Law in the 1963 session. The constitutionality of the law

was promptly challenged. In a unanimous opinion handed down in 1964 the Supreme Court of Kansas found the "Sunday Closing Law" enacted in 1963 to be unconstitutional. Boyer v. Ferguson, 192 Kan. 607.

A strong effort was subsequently made to enact a "Sunday Closing Law" that might survive a challenge of being unconstitutional. The proposed bill which had wide application did not pass. A proposal, Senate Bill No. 65, similar to New Section 7 of Senate Bill No. 750 was introduced in the 1991 session and was reported adversely by the Senate Committee on Transportation and Utilities. Again in 1993 House Bill No. 2123, Section 1 of which, as amended was identical to New Section 7 of Senate Bill No. 750 failed in the House on final action. Motion to reconsider failed the following day. Subsequently the identical provisions appeared again, amended into House Bill No. 2089 which dealt with the Motor Dealers and Manufacturers Licensing Act; relating to financial responsibilities of vehicle dealers; concerning temporary sales persons licenses. House Bill 2089, as thus amended, was stricken from the Senate Calendar on March 29, 1993. The Sunday closing proposition has failed three times in the past four years; once on its own and twice when combined with other issues.

The Kansas-Nebraska Association of Seventh-day Adventists, whose office is in Topeka, has a long history of involvement in issues of protection of religious liberty and strongly feels that

government should not mandate days when any business may be open or closed.

Although supported by the Kansas Motor Car Dealers Association, the statutory prohibition of sales of automobiles on Sunday is not favored by all automobile dealers. The issue appears to be a battle within the automobile industry grounded in economics. As noted in the Supplemental Note on House Bill No. 2123, in the 1993 Session:

Background

H.B. 2123 was requested by the Kansas Motor Car Dealers Association. Persons who appeared in support of the bill pointed out whenever a dealer decides to conduct business on Sundays other dealers will eventually feel pressure to open their businesses on Sunday as well. Representatives of car dealers pointed out that, among other things, Sunday openings would result in higher overhead costs and lower morale of employees.

The designation of Sunday, a religious day for many people but not for everyone, does bring the issue into the realm of religious liberty.

The bottom line is that the state has no business mandating days when a business may be open or closed.

We urge the Committee (1) to either amend Senate Bill No. 750 on page 20 by striking all of line 41; on page 21 by striking all of lines 1 through 21; or (2) in the alternative, report Senate Bill No. 750 adversely.

STATE OF KANSAS

Betty McBride, Director
Robert B. Docking State Office Building
915 S.W. Harrison St.
Topeka, Kansas 66626-0001



(913) 296-3601
FAX (913) 296-3852

Department of Revenue
Division of Vehicles

To: The Honorable Ben Vidricksen, Chairman
Senate Committee on Transportation and Utilities

From: Betty McBride, Director
Division of Vehicles

Date: February 24, 1994

Mr. Chairman, Members of the Committee,

My name is Betty McBride, and I am the Director of the Division of Vehicles. I appear before you on behalf of the Kansas Department of Revenue regarding Senate Bill 750.

We have discussed this bill with the Kansas Motor Car Dealer's Association, and have agreed on the following amendments:

1. Page 5, line 24, deleting the definition of a *storage facility*, and deleting the use of the term "*storage facility*" every place it appears on this act.
2. Page 6, line 35, after the sentence ending with applications add: "*All licenses for supplemental places of business existing or issued on or after January 1, 1994, shall expire on December 31, 1994, unless previously expired, suspended or revoked, and shall thereafter expire on December 31 of the calendar year for which they are granted, unless previously suspended or revoked.*"
3. Page 7, line 16, delete *storage facility*.
4. Page 7, line 36, delete *storage facility*.
5. Page 10, line 22, restore the word *lot* and delete *storage facility*.
6. Page 10, line 27, 28, delete *storage facility*.
7. Page 11, line 7, after the word *dealer*, insert: "*shall pay a \$10 license fee and give the director...*"
8. Page 11, line 13, at the end of the sentence ending with the word *otherwise*, insert: "*A vehicle dealer participating in a motor vehicle show shall be*"

ATTACHMENT **6**

SEN. TRANS. 2/24/94

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within the same county of their licensure or area of responsibility as defined in the dealer's franchise agreement."

9. Page 14, line 42, delete *storage facility*.
10. Page 15, line 9, change 14 to 15.
11. Page 15, line 24, delete *or* and change to *"established place of business or supplemental place of business."*
12. Page 17, line 5, after K.S.A. 60-513 insert *"in addition to any other available remedy, this section may be enforced pursuant to K.S.A. 8-2411, and amendments thereto."*



BOEING WICHITA EMPLOYEES CREDIT UNION
2900 S. OLIVER • WICHITA, KANSAS 67210-1595 • (316)683-1199

February 18, 1994

Senator Ben Vidricksen, Chairman
Senate Transportation & Utilities Committee
Room 254-E
Statehouse

Subject: SB750 - New Section 7, Page 20
Sunday Closing Law For Automobile Dealerships

Dear: Senator Vidricksen and Members of the Committee,

The purchase of an automobile is an important decision that impacts nearly every citizen in the state of Kansas as their need for securing new transportation arises. It is important that the consumer be able to shop various dealers and various lenders for the best deal possible.

Since most dealers and financial institutions are closed on Sundays, the unsuspecting consumers who visit one of the few dealers that are open on Sunday may not have the choice of auto selection or financing options other than what is available at that dealership.

I believe the 23,000 plus members of the Boeing Wichita Employees Credit Union and the citizens of Kansas will be better served if given more choices. Therefore, for the benefit of our members and the state of Kansas, please vote in favor for the Sunday Closing Law for automobile dealerships.

Sincerely,

A handwritten signature in cursive script that reads "Gene Swan".

Gene Swan
Chief Executive Officer

ATTACHMENT 9

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THE ANDOVER STATE BANK

1432 North Andover Rd. • (316) 733-1375 • 600 North Andover Rd. • (316) 733-8206
P.O. Box 278 • Andover, KS 67002

February 22, 1994

Senator Ben Vidricksen, Chairman
Senate Transportation & Utilities Committee
Room 254-E
Statehouse

Re: SB750 - New Section 7, Page 20
Sunday Closing Law for Automobile Dealerships

Dear Senator Vidricksen and Members of the Committee:

For the benefit of our population in general, **please vote in favor of Senate Bill #750, the Sunday Closing Law for Automobile Dealerships.**

The purchase of an automobile is a most important decision that impacts nearly every citizen in the State of Kansas. As their need for securing new transportation arises, it is important that the consumer be able to shop various dealers and various lenders for the best deal possible.

Most dealers and financial institutions are closed on Sundays. Therefore, unsuspecting consumers who visit one of the few dealers that are open on Sunday are not presented with choices other than what is available at that dealership. We believe the Wichita area residents and the citizens of Kansas will be better served if given choices including complete auto selection, competitive prices, financing options, insurance quotations, etc.

Thank you for voting **YES**.

Sincerely,

Bruce Armstrong
Executive Vice President

gd

 Union National Bank

February 23, 1994

Senator Ben Vidricksen, Chairman
Senate Transportation and Utilities Committee
Statehouse, Room 254-E
Topeka, Kansas 66612

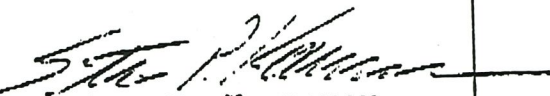
Dear Senator Vidricksen:

Regarding Senate Bill #750, Union National Bank of Wichita, would like to encourage your support of this bill for the benefit of all consumers.

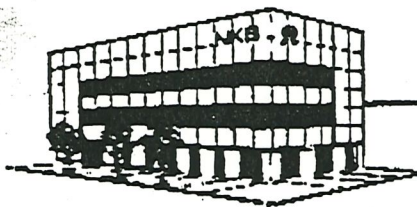
In today's market, an automobile purchase is a major financial investment for all consumers and for them to be restricted to a few isolated auto dealers who choose to be open Sundays, presents a disadvantage to them regarding competitive pricing and loan rates. While we strongly believe in the free enterprise system, we also strongly believe in the Kansas family values that have been established over the years. The alternative of all dealerships being open Sundays, to compete on a level playing field, we believe disrupts families by forcing many employees on a statewide basis to work on Sundays, taking them away from the family structure.

We urge you and your Committee Members to give careful consideration to SB #750 and recommend its passage.

Sincerely,



Stephen P. Kammerer
Senior Vice President



HOME OFFICE • TOPEKA, KANSAS

February 21, 1994

Senator Ben Vidricksen, Chairman
Senate Transportation & Utilities Committee
Statehouse, Room 254-E
Topeka, Kansas 66612

Dear Senator Vidricksen:

Very seldom do I believe more regulation can help the consumer in Kansas. Senate Bill # 750, however, will do just that.

Since the automobile is the second most expensive purchase for most families, it is important the most competitive prices and financing rates be obtained. High pressure tactics and the perceived idea the "dream car" might be gone on Monday have caused many Kansans to purchase without the advantage of comparison shopping for the car AND financing since almost all financial institutions are closed on Sundays.

It is my belief our 8,000+ members would benefit from closing all car dealerships on Sunday. Please consider their position when deliberating SB750 and vote accordingly.

Sincerely,

Duane E. Nightingale
President & General Manager

COPY

NeKan Bell Credit Union

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ATTACHMENT

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NE (913) 235-551



SEN. TRANS.

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