

STATE OF LOUISIANA

OFFICE OF STATE INSPECTOR GENERAL



LOUISIANA RECREATIONAL AND USED MOTOR VEHICLE COMMISSION

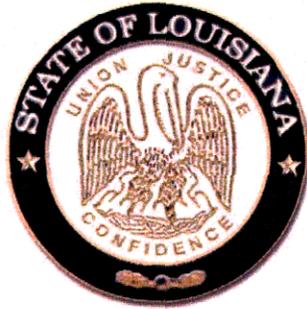
Date Released:

August 23, 2006

File No. 1-06-0013

STATE OF LOUISIANA

OFFICE OF STATE INSPECTOR GENERAL



LOUISIANA RECREATIONAL AND USED MOTOR VEHICLE COMMISSION

**Sharon B. Robinson, CPA
State Inspector General**

A handwritten signature in black ink, appearing to be "KAB", written over a horizontal line.

**Approved by:
Governor Kathleen Babineaux Blanco**

June 5, 2006

File No. 1-06-0013

Table of Contents

Letter to the Governor	
Executive Summary	1
Background	3
Scope and Methodology	3
Finding and Recommendation	
Commission Practice May Conflict with State Law.....	5
Appendix A – Response	



State of Louisiana
DIVISION OF ADMINISTRATION

OFFICE OF STATE INSPECTOR GENERAL
Sharon B. Robinson, CPA
(225) 342-4262
1-800-354-9548
FAX (225) 342-6761

KATHLEEN BABINEAUX BLANCO
GOVERNOR

JERRY LUKE LEBLANC
COMMISSIONER OF ADMINISTRATION

June 5, 2006

Honorable Kathleen Babineaux Blanco
Governor of the State of Louisiana
P.O. Box 94004
Baton Rouge, LA 70804-9004

Re: Case No. 1-06-0013

Dear Governor Blanco:

This report addresses concerns raised about the operations of the Louisiana Recreational and Used Motor Vehicle Commission. The report includes one recommendation that, if implemented, could help improve the Commission.

We provided drafts of the report to the Commission's chairman and executive director. Their written response is included as Appendix A.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sharon B. Robinson".

Sharon B. Robinson, CPA
State Inspector General

SBR/dm

Enclosure

Executive Summary

Audit Initiation

On January 9, 2006, the Office of State Inspector General began an investigation of an allegation that Mr. John M. “Jack” Torrance, executive director of the Louisiana Recreational and Used Motor Vehicle Commission (the Commission), improperly facilitated travel trailer sales. According to the allegation, Bourget’s of the South, LLC was selling new travel trailers to FEMA, but its license was restricted to used travel trailer sales. A formal complaint was filed with the Commission regarding the new travel trailer sales.

Our audit objectives were to determine the allegation’s validity and if the Commission properly handled the complaint filed with it regarding the travel trailer sales.

During our audit, we learned that the mechanism used by the Commission to protect dealer territories may conflict with state law. The Commission has a long-standing practice of requiring applicants for a dealer license to submit an agreement with a manufacturer or distributor and restricting sales to name brand products associated with the agreement. Failure to submit the agreement will result in the Commission denying the license. This practice may conflict with state law. Our objectives were expanded to include this concern.

Summary of Findings

- We did not find sufficient evidence to conclude that the intent of the Commission and Mr. Torrance was improper when suspending the long-standing practice of protecting dealer territories. Following Hurricane Katrina, the Commission ratified the suspension of the practice for the period September 20, 2005, through December 31, 2005. This action facilitated any Louisiana dealer’s ability to sell name brand travel trailers not associated with agreements with their manufacturers or distributors. Mr. Torrance initiated the suspension of the practice and Commission members openly discussed the suspension prior to ratifying it. Louisiana travel trailer dealers in addition to Bourget’s of the South benefited from the suspension of the practice through contracts with FEMA.
- We found no evidence that anyone associated with the Commission improperly handled a complaint against Bourget’s of the South. In October 2005, a formal complaint was filed against Bourget’s of the South alleging Bourget’s sold travel trailers to FEMA without a proper license. The Commission investigated the complaint resulting in Bourget’s being charged with failing to obtain a proper license to sell new travel trailers. On January 17, 2006, a hearing was held to hear the charge. The Commission ruled that Bourget’s sold 211 travel trailers without obtaining the proper license and fined Bourget’s \$46,000, \$2,000 for each date a

violation occurred, the maximum allowed by law. Bourget's has appealed the ruling and the fine has not been paid.

- The long-standing practice of the Commission to protect dealer territories may conflict with state law. The Commission requires an applicant for a dealer license to submit an agreement with a manufacturer or distributor of the marine products, new and unused motorcycles, trailers, motor homes, recreational vehicles, travel trailers, or all-terrain vehicle, or vehicles proposed to be dealt in. If the agreement is not submitted, the license is denied. This practice appears to conflict with LSA-R.S. 32:775(B) which prohibits the Commission from denying an application for a license based upon consideration of an existing or anticipated economic or competitive effect on other licensees in the surrounding community or territory. In addition, Commission Executive Director Jack Torrance and Commission contract attorney Robert Hallack disagree whether the practice is based on state law or administrative policy. As a result, Commission members are receiving conflicting advice. In December 2005, Commission members ratified suspension of the practice Mr. Torrance initiated in September 2005.

Background

Act 773 of the 1984 Legislative Session created the Louisiana Recreational and Used Motor Vehicle Commission, formerly Louisiana Used Motor Vehicle and Parts Commission, within the Office of the Governor.

The Commission consists of thirteen members all appointed by the governor with Senate consent. The Commission chairman, Mr. Michael Roberts, is designated by the governor. The Commission appoints an executive director and determines his/her salary. The executive director is in charge of the Commission office and must devote such time as necessary to fulfill the duties prescribed by the Commission. The Commission is required to adopt all rules and regulations in accordance with the provisions of the Administrative Procedure Act. The House Committee on Commerce and the Senate Committee on Transportation, Highways, and Public Works conduct oversight review.

Powers and duties of the Commission include but are not limited to licensing and regulating:

- Used motor vehicle dealers and salesmen
- Motor vehicle crushers
- Dealers of used parts and accessories
- Automotive dismantlers and parts recyclers
- New and used motorcycle dealers
- All-terrain vehicle dealers
- Marine product dealers
- Recreational vehicle dealers

House Bill 502 was filed, then substituted with House Bill 1377, in the 2006 regular legislative session to amend and reenact the enabling statutes for this Commission.

The Commission operates with funds generated from license fees and fines. The Commission's 2006 fiscal year operating budget is \$1,362,974. The Commission has 23 full time employees, and is domiciled in Baton Rouge.

Scope and Methodology

We conducted our audit in accordance with *Principles and Standards for Offices of Inspector General* as promulgated by the Association of Inspectors General.

The scope of the investigation was limited to actions taken by the Commission associated with new travel trailer sales to FEMA from September 2005 through January 2006. The investigation consisted of:

1. Reviewing state laws, rules, and regulations;

2. Interviewing agency personnel and other pertinent individuals;
3. Evaluating documents, files, reports, policies and procedures, as we considered necessary;
4. Observing operations; and
5. Reading and analyzing Commission hearing minutes.

Commission Practice May Conflict with State Law

The long-standing practice of the Commission to protect dealer territories may conflict with state law. The Commission requires an applicant for a dealer license to submit an agreement with a manufacturer or distributor of the marine products, new and unused motorcycles, trailers, motor homes, recreational vehicles, travel trailers, or all-terrain vehicle, or vehicles proposed to be dealt in. If the agreement is not submitted, the license is denied. This practice appears to conflict with LSA-R.S. 32:775(B) which prohibits the Commission from denying an application for a license based upon consideration of an existing or anticipated economic or competitive effect on other licensees in the surrounding community or territory. In addition, Commission Executive Director Jack Torrance and Commission contract attorney Robert Hallack disagree whether the practice is based on state law or administrative policy. As a result, Commission members are receiving conflicting advice. In December 2005, Commission members ratified suspension of the practice Mr. Torrance initiated in September 2005.

LSA-R.S. 32:775(B) reads as follows:

“The commission shall not deny an application for a license or revoke or suspend a license based upon consideration of an existing or anticipated economic or competitive effect on other licensees in the surrounding community or territory, except when the commission is reviewing an objection filed by an existing dealer to either a change in the area of responsibility under R. S. 32:773.2(D)(4), or when the commission is reviewing an objection filed by an existing dealer to an application or intent to establish a new dealer under R.S. 32:773.2(F)(5).”

The practice in question requires applicants for a dealer license to submit an agreement with a manufacturer or distributor whose product the applicant proposes to sell. Once licensed, the dealer can only sell the name brand product associated with the agreement. According to Mr. Torrance, the practice was initiated to protect dealer territories.

Since the requirement is based on consideration of an economic effect on other licensees, any denial of a license based on the failure to submit an agreement with the application would conflict with LSA-R.S. 32:775(B).

According to Mr. Torrance, this practice is unwritten administrative policy the Commission has enforced since its inception. Mr. Torrance acknowledged that the practice has not been adopted in accordance with the provisions of the Administrative Procedures Act.

Mr. Hallack said the practice is mandated by LSA-R.S. 32:774 J (1), which reads (in part) as follows:

“Applications for license ... must, in addition to the foregoing, also be accompanied by the filing with the commission of any bona fide contract or franchise in effect between the applicant and a manufacturer or distributor of the marine products, new and unused motorcycles, trailers, motor homes, recreational vehicles, travel trailers, or all-terrain vehicle, or vehicles proposed to be dealt in ...”

In a December 2005 Commission meeting, during discussion associated with the practice, Mr. Torrance advised Commission members that requiring specific contracts with suppliers is administrative policy and not required by state law. However, during the same discussion, Mr. Hallack advised Commission members the practice is mandated by state law.

If the practice is statutory, the Commission suspended a state law without proper authority. If the practice is policy, the Commission did not adopt it as a rule in accordance with the provisions of the Administrative Procedures Act as required by law.

Recommendation:

1. The Commission should seek an opinion from the Office of Attorney General regarding the legality of its practice of requiring applicants for a dealer license to submit an agreement with a manufacturer or distributor, especially if the Commission uses the agreement to limit the scope of products a licensee can sell.

APPENDIX A

Response



KATHLEEN BABINEAUX BLANCO
GOVERNOR

State of Louisiana
OFFICE OF THE GOVERNOR
RECREATIONAL AND USED MOTOR VEHICLE COMMISSION



JOHN M. "JACK" TORRANCE
EXECUTIVE DIRECTOR

May 30, 2006

Ms. Sharon B. Robinson, CPA
OFFICE OF STATE INSPECTOR GENERAL
P.O. Box 94095
Baton Rouge, Louisiana 70408-9095

Re: Case No. 1-06-0013

Dear Ms. Robinson:

In response to your letter and "draft audit report" of May 16, 2006, the Commission offers its compliments with regard to the professional and courteous manner in which your staff and in particular David Morales handled this investigation and audit. We are pleased that the exhaustive investigation has cleared me of any alleged impropriety or misconduct. Certainly, I concur with the Inspector General's findings with regard to the manner in which I handled the licensing and investigation of Bourget's of the South. I assure you again neither I nor anyone in my office handled the license or investigation in anyway differently from normal procedures.

The remainder of the report does not actually involve a "finding" in terms of how facts are determined, and I think you would agree because you have suggested that we obtain an Attorney General's opinion interpreting this particular provision. We have been working with Joe Gendron of Legislative Services to amend the applicable provision, LSA- R.S. 32:774(J)(1), to make it clearer, and I will explain that in further detail later.

This Commission is perhaps one of the most misunderstood agencies in state government. No other agency handles as broad a spectrum of licensees as we do. This is why we are restructuring and organizing our existing laws with House Bill 1377. In 1984, this Commission was created to license and regulate used car dealers and parts dismantlers as Used Motor Vehicle and Parts Commission. In 1988, the Commission was given the task of representing the recreational products industry, including marine, motorcycle, ATV's, recreational vehicles and trailers both dealers and manufacturers. By law, all of these entities were clumped together under one definition as a "used motor vehicle dealer." It created a somewhat convoluted, and occasionally chaotic, situation, but problems in this area were rare due simply in part to the fact that very few knew what we did. Eventually, the recreational products began to dominate what the Commission did, and in 2004, we changed the name of the agency to the Recreational and Used Motor Vehicle Commission.

PRACTICE OF PROTECTING DEALER TERRITORIES AND THE CONFLICT WITH R.S. 32:775(B):

Nevertheless, our purpose is still somewhat misunderstood. For instance, we do not see our goal in the recreational products industry as “protecting dealer territories.” The Commission rather interprets its duty as one oversight, not protection. We feel our mission is to facilitate and enhance the relationship between the dealer and the manufacturer, and the core of that relationship is the franchise agreement.

Furthermore, considerable focus has been incorrectly directed to the “area of responsibility.” A territory or an area of responsibility is only a small part of the franchise agreement. In fact, some agreements do not even have an area of responsibility. There are many other provisions within the franchise agreement which are there to protect not only the dealer but the manufacturer as well. Both parties benefit from a franchise agreement.

The purpose behind requiring a recreational products dealer to have a franchise agreement as a condition of his license is not necessarily to establish an area of responsibility-it is to be the anchor of that relationship. In fact, the Commission does not require a franchise agreement for all of its licensees. For recreational vehicles and trailers, there is no requirement that the parties have an area of responsibility. Recreational vehicle dealers, such as Bourget’s, and trailer dealers do not have to have an area of responsibility. With regard to motorcycles and marine, we do ask the parties to include territories within their agreement; however, if the parties do not, the mandatory areas are applicable [see LSA- R.S. 32:771(2)(a & b)].

Therefore, because the area of responsibility is not necessarily a part of the franchise agreement, the requirement of a franchise agreement as a condition of the license does not translate into protection of dealer territories. It is a far stretch to interpret the franchise agreement as having an economic effect on other dealers or businesses. Your concern over the economic effect is over the area of responsibility, which, again, is not a mandatory requirement of the franchise agreement.

Therefore, we do not see how the “practice” of requiring a franchise agreement can be conflict with LSA- R.S. 32:775(B), particularly when there is no requirement for an area of responsibility. However, even if there was a requirement of an area of responsibility within the franchise agreement, it is still difficult to understand how an economic effect is not considered and made part of the law. Indeed, R.S. 32:775(B) contemplates problems with regard to area of responsibility disputes which are handled under LSA- R.S. 32:773.2(D) and (F). In the end, we do not necessarily agree that requiring an area of responsibility, which, again, is only mandated for marine and motorcycle, is in conflict with R.S. 32:775(B) because economics is clearly part of the consideration in an area of responsibility dispute. Furthermore, this is not a restrictive provision because the parties are free to negotiate a territory whether under the law or under contract.

In addition, the requirement of a franchise agreement serves another important purpose. Only manufacturers who have franchise agreements with their dealers are required by law to have license to operate in Louisiana. LSA- R.S. 32:773(A)(7)(a) provides:

- A. No person, firm, or corporation, unless licensed to do so by the commission under the

provisions of this Chapter, shall carry on or conduct the business of:

- (7)(a) A manufacturer or distributor, who holds a current contract, selling, or franchise agreement with a licensed new motorcycle, all-terrain vehicle, marine, trailer, or motor home dealer.

The State has no authority over an unlicensed manufacturer, and is therefore powerless to take action against one if he does not have a license. This provision serves not only to protect the dealer but the consumer as well.

INTERPRETATION OF R.S. 32:774(J)(1):

LSA-R.S. 32:774(J)(1) provides in pertinent part as follows:

- J(1) Applications for license as a marine dealer, new motorcycle, trailer, motor home, recreational vehicle, travel trailer, or all-terrain vehicle dealer must, in addition to the foregoing, also be accompanied by the filing with the commission of any bona fide contract or franchise in effect between the applicant and a manufacturer or distributor of the marine products, new and unused motorcycles, trailers, motor homes, recreational vehicles, travel trailers, or all-terrain vehicle, or vehicles proposed to be dealt in; unless such contract or franchise has already been filed with the commission in connection with a previous application made by such applicant, in which event the applicant shall, in lieu of again filing the contract or franchise identify same appropriate reference and file all revisions and additions, if any, which have been made to said contract or franchise . . .

In speaking with David Morales, I can understand how this may be interpreted to require the dealer to file only the franchise agreements existing between the dealer and the manufacturer. Under this interpretation, a dealer need not obtain a franchise agreement.

To resolve this problem, R.S. 32:774(J)(1) has been revised in House Bill 1377 to read as follows:

- J(1) Applications for license as a recreational products dealer shall, in addition to the other requirements provided for this part, be accompanied by the filing with the commission of a bona fide contract or franchise in effect between the applicant and a manufacturer or distributor of recreational products proposed to be dealt in that contains the address of the location where the applicant seeks a license unless such contract or franchise has already been filed with the commission in connection with a previous application made by such applicant, in which event the applicant shall, in lieu again filing the contract or franchise, identify same by appropriate reference and file all revisions and additions, if any, which have been made to said contract or franchise . . .

As you can see among the other changes, “any” has been replaced with “a.”

Much ado has been made over what has been termed as a “disagreement” between myself and the

Commission's attorney which supposedly lead to "conflicting advice." The total sum and substance of the alleged disagreement which occurred at the December 20, 2006 meeting are as follows:

Mr. Torrance: Can I say something? To be a dealer, you must have insurance, a bond, a location, telephone and a sign. That's the requirements. What you spoke of earlier about we relaxed the law, it wasn't the law that got relaxed. It is policy. We are not required by law to have a franchise agreement to have a license.

* * *

Mr. Roberts: You do have to have a franchise agreement, correct?

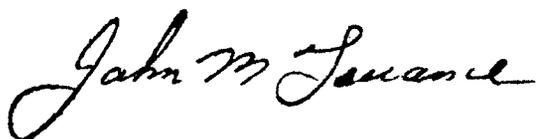
Mr. Hallack: That's correct.

First of all, if this is characterized as a disagreement, you should understand the nature of how this arose. At that meeting, we were fielding questions from a number of different people. This was simply a misunderstanding, and no one was attempting to be misleading. The Commission's attorney is not involved in the agency's day to day operations and affairs, particularly with regard to the application process. He was merely interpreting the law as he read it.

I further disagree that the exchange led to "conflicting advice." This is a distinction without a difference. Whether it was long-standing practice and policy or a perceived misinterpretation of the law, the results were the same - the Commission required a franchise agreement as a condition of a license for recreational products dealers. This practice was, and has always been, required for all licensees without exception.

In closing, I would just like to say that our Commission does not simply try to do the right thing, we strive to do things better. We are constantly working on the machine to make it run better. Any help you can provide is always welcome.

Sincerely,

A handwritten signature in black ink that reads "John M. Torrance". The signature is written in a cursive, flowing style.

John M. Torrance
Executive Director

JMT/leh

This public document was published at a total cost of \$102.56. 29 copies of this public document were published in this first printing at a cost of \$102.56. The total cost of all printings of this document, including reprints is \$102.56. This document was published by the Office of State Inspector General, State of Louisiana, Post Office Box 94095, 224 Florida Street, Suite 303, Baton Rouge, LA 70804-9095 to report its findings under authority of LSA-R.S. 39:7-8. This material was printed in accordance with the standards for printing by state agencies established pursuant to LSA - R.S. 43:31.

A copy of this report has been made available for public inspection at the Office of State Inspector General and is posted on the Office of State Inspector General's website at www.doa.louisiana.gov/oig/inspector.htm. Reference should be made to Case No. 1-06-0013. If you need any assistance relative to this report, please contact Bruce J. Janet, CPA, State Audit Director at (225) 342-4262.

REPORT FRAUD, WASTE, AND ABUSE

To report alleged fraud, waste, abuse, or mismanagement relative to state programs or operations, use one of the following methods:

- Complete complaint form on web site at www.doa.Louisiana.gov/oig/inspector
- Write to Office of State Inspector General, P. O. Box 94095, Baton Rouge, LA 70804-9095
- Call the Office of State Inspector General at (225) 342-4262