MEMORANDUM

To: TADA Members
From: Karen Coffey
Date: February 10, 2004
Re: “Blue Law”

Enclosed is a letter from Carol Kent, Assistant Director for Enforcement with the Motor Vehicle Division, Texas Department of Transportation, regarding the “blue law.”

Transportation Code § 728.002(a) states: “A person may not, on consecutive days of Saturday and Sunday: (1) sell or offer for sale a motor vehicle; or, (2) compel an employee to sell or offer for sale a motor vehicle.”

While the statute has been challenged by certain used car dealers in El Paso, please note that the Division’s position is as follows:

...We intend to vigorously pursue such licensees [who violate the law] once the injunction has been lifted, to the point of requesting that the penalty for such violation should be a weekend closure for every weekend open in violation...Therefore, we are still accepting complaints of Blue Law violations and will be holding these for prosecution pending the reaffirmation of the constitutionality of the law.

The Honorable Ward Koehler, Senior Judge of the 8th Court of Appeals to the 383rd Judicial District Court, El Paso County, Texas, has been assigned, as of October 14, 2003, to Carmax Auto Superstores, Inc. and El Paso Independent Automobile Dealers Association, et al. v. State of Texas, et al.

TADA, TIADA, Texas Motorcycle Dealers Association, and the RV Dealers of Texas have intervened in the above-styled cause of action. If you have any questions, please call me at 1-800-749-8232.
February 4, 2004

Ms. Karen Coffey
c/o TADA
P.O. Box 1028
Austin, Texas 78767-1028

Re: Blue Law Violations

Dear Ms. Coffey:

As you are aware, the case challenging the constitutionality of the Blue Law is, and has been in the courts for approximately 4 years now. Regardless, until such time as the courts should declare the law unconstitutional, the law should still be considered to be a valid law and all licensees should be abiding by the law.

Since the case came back from the Supreme Court, there seems to be a question as to whether or not the injunction prohibiting us from enforcing the Blue Law is still in effect. Our attorney general has advised us to consider it still in effect to prevent our management and board from being held in contempt should we proceed with any prosecution. There seems however, to be some dealers who feel this is a good time to take advantage of such injunction and violate the law with no consequences. We intend to vigorously pursue such licensees, once the injunction has been lifted, to the point of requesting that the penalty for such violation should be a weekend closure for every weekend open in violation. We feel this would be an appropriate remedy for those dealers who have put themselves in a position that is unfair to those dealers who have patiently abided by the law in this time period. Therefore, we are still accepting complaints of Blue Law violations and will be holding these for prosecution pending the reaffirmation of the constitutionality of the law.

Sincerely,

Carol J. Kent
Asst. Director – Enforcement

cc: Ms. Minda Welch
    Mr. Drew Campbell
    Mr. Walter Wainwright
    Mr. Jon Bouquet
    Mr. Mike Marks
    Mr. Lee Chapman