



## OHIO BOARD OF MOTOR VEHICLE REPAIR SPECIAL MEETING MINUTES

SEPTEMBER 26, 2018 10:00 AM

Vern Riffe Tower  
77 South High Street  
19<sup>th</sup> Floor, Rm. 1914  
Columbus, Ohio 43215

1. **CALL TO ORDER AT 10A.**

2. **INTRODUCTION OF MEMBERS & GUESTS PRESENT:** Christopher Sterwerf, Jeff Wagner, Mary Katris, Keenan, Matt Dougher, Scott Murray, Blair Cathcart, Giles Allen, Earl Dohner, Jennifer Johansen, Michael Greene, Kimberly Peppers

3. **BOARD DISCUSSION ON RECENT REGISTRATION FEE CHANGES:**

**GREENE:** To give you the history on this, the last fee change prior to this one was September 13<sup>th</sup> of 2006. The board called an emergency meeting because of finances. John Cunningham, who was the financial chief at the CSA (Central Services Agency) is the one who kind of lead the meeting. I was there at that time as an investigator; that was before I was appointed to Director. They discussed raising the fee and stated as long as they kept it at 50% or less then they did not need Controlling Board approval. So, they voted for \$225, which was 50% of the \$150 that was current and they approved that. After that meeting, John Cunningham evidently did some more research and decided that a Controlling Board request was needed to be done. John did that, I was never told of the request until they did my audit this spring; so the Controlling Board approved the \$225. When we had the meeting to raise it to \$300, I was still under the impression as long as we kept it under 50% we didn't need the Controlling Board approval. During the audit, the auditor's legal counsel interpreted that law to say "no, anytime you raise or lower the fee, you need to have Controlling Board approval – raise or lower 50%, doesn't matter.

Their solution to that was to file a retroactive Controlling Board request to change the fee to \$300; we did that. When the Controlling Board legal people got a hold of it, they interpreted the law to say that the \$225 was a cap in the law and there was never, ever discussed a cap in the fee. Because they knew in 1997 that eventually things would (cost of living and everything) would go up. So once that was done, the Controlling Board refused to hear it until the language was changed in the law. We have changed the language; to my knowledge, it's going to be put into a Boards and Commissions clean-up bill?

**ALLEN:** It's called a Technical Clean Up Bill

**GREENE:** A Technical Clean Up Bill during the Lame Duck and it probably shouldn't be any big issue after that; but, in the meantime, we must give back the \$75 people overpaid. Now, there's a couple of different ways of doing that; my suggestion would be to – in the past we've prorated or credited people and changed their expiration dates forward to give them credit for overpaid fees. That would probably be the most financially good way of handling it, responsible of handling it if the board approves of that.

They won't do anything until the board votes on it. The other option would be to pay them in one lump sum. To do that, would have to go the Controlling Board to get \$211,000. If we do it, if we prorated it or give them the credit for the \$75 overpaid, some of them have paid twice since January 1, 2017 – some of them will get a \$150 credit. Our renewal fees and our revenue fees will continue to come in at \$225 throughout that time, it won't be a one large hit on the money. If this bill passes with the new language, then it would go into effect probably in March and we can go to the Controlling Board then, request the fee of \$300, we would change it back \$300 if that's approved by the Controlling Board and we would be right on target for our Fiscal Year 2020 budget because it's based on the \$300 fee.

I'm sure you have questions, I've probably missed something. If you have a question, let me know. Personally, I think we would be smart to prorate it or change the dates and we're able to do that by hand in the new system. We have a list of all those since January 2017 that have paid. We know the amount, we know the people, we know the shops, we know we can do it all and issue new certificates and they will have a different expiration date. Basically, what the Board needs to vote on today is how they want to do this, whether in one lump sum; go to the Controlling Board and ask for \$211,000 – approximately, give or take a little bit. There will be some processing fees for vouchers and that kind of thing -that's the approximate amount. We can do it gradually, we can catch up with that. That's basically where we stand.

**DOUGHER:** Do you propose putting out an e-mail or some type of notification to people giving a little history as to why, giving some background?

**GREENE:** I plan on putting out something once the decision has been made and I'm not sure how I'm going to do that exactly yet. Not all of them have e-mails and so I may just do a mass mailing.

**DOUGHER:** That would be an important point to me is notification.

**GREENE:** Right, right.

**MCKEE:** We should let people know.

**STERWERF:** Like everybody or the affected parties?

**GREENE:** Well, we'll probably just let everybody know. To go through that 202 pages and weed out the ones that need to get a mailing. When we send out the new certificates, they're going to see that too, the date change and let them know that that's coming.

**STERWERF:** Would it be worthwhile to provide a mechanism that if say a shop that doesn't planning on operating past the next renewal that they can petition to have it refunded to them?

**GREENE:** Well, there's going to be some shops that have closed, retired or changed hands in those cases, they will be issued a voucher. Is that what you mean?

**STERWERF:** More accounting work is probably what shops do not want, but if some shops just want or would like to have that cash back in their hands, would you provide a mechanism for those that should want it?

**GREENE:** My opinion is don't give them an option, but that's just my opinion. Because if we have to start sorting through them and getting approval from them before we do something, my thinking is, and Giles may tell me I'm wrong, but I think we should do this straight across the board for everybody and that be done. Either way, if you vote give them back the money, then everybody should get the money back. If you vote to give them a credit, then everybody **should** get the credit. I don't think we should break them down.

**MCKEE:** For me as a business who paid it, I don't want to except the \$75, it's more of a pain in the rear to figure it out accounting wise. I'm definitely looking at it from that aspect. I assume, most businesses are going to be in the same spot as me. Giving us that credit for that extra time is good. If a business closes, changes hands or something like that, I would assume that it would be handled the same way it would be handled if they just paid the \$225.

**GREENE:** Right, right

**MCKEE:** If they are due a credit back then, a voucher and if they're not, then....

**GREENE:** Right

**GREENE:** And some of the ones that have retired or went out of business have already gotten a refund. That's just stuff I'm going to have to sort through, I'm not talking a large number.

**MCKEE:** My opinion is we do exactly what you're saying and just extend their time and whatever that proration period is \$75 or \$150.

**GREENE:** It comes out to 120 days for \$75 or 240 days for \$150.

**MCKEE:** And then if we get that extension or the Controlling Board gives it then you'll have some more math to do, maybe next year for some people, but we'll figure that out.

**GREENE:** Probably, yeah, we'll figure that out.

**WAGNER:** The people that have already paid obviously, had no problem paying it?

**ALLEN:** Did you get back much backlash on the \$75? Just out of curiosity.

**GREENE:** Maybe a half dozen people. And that might have been the same person six times, I don't remember exactly. I don't remember, it wasn't that big of a deal. We went 10 years without anything and like I explained to OBM – I had a meeting with them yesterday. I said, "You know, 10 years ago when we went to \$225 we were paying \$7 or \$8 a square foot for office space, now we're paying \$18 a square foot for office space." I said, "the lease and the car – everything has just sky rocketed, and they can't expect the fees to stay the same as they were in 1997. There's just no way." But we did good by not having to raise it for 10 years. At the time when they had the meetings in September of '06 the agency literally had \$38,000 to get by until July 1 of 2007. That was it! As John Cunningham said in that meeting, the board had the responsibility to cover their expenses, whatever it took to cover the operation of the Board. I think that's the way we talked about it, if I remember correctly, in November of December of 2016 we did it again.

**WAGNER:** You mentioned Giles. What's your input here? (DIRECTED TOWARDS GILES ALLEN).

**ALLEN:** So, I'm limited on what I can say here, we're in a public meeting. I can't provide necessarily, legal advice in a public meeting....uh

**STERWERF:** Should we go into Executive Session?

**ALLEN:** You can't go into Executive Session for it, uhmmm. I would say that there has been – questions have been raised and Mike's aware of these of just whether or not you're able to prorate it. Financially, you can't just do the proration, but questions have been raised whether or not because – because the fee was – it's different from someone voluntarily over paying, this is the board telling them that they have to pay this much and now it's well you actually didn't. So, there's a question about whether or not – where if someone pays \$250 and they meant to pay \$225 and you call them to say "hey, we can send it back or we can just prorate it" that's different, they voluntarily that – they choose to send that money. Whereas this was the board telling them "you have to pay \$300" – in reality they only had to pay \$225 and then you're telling them "hey, we're still going to keep your money, we're going to prorate you" I have not found anything to show whether or not there's an issue you there.

Mike was on some e-mail and he said that they've done that in the past. I did a little bit of research, I was able to find whether or not there was an issue there with that, dealing with this type of an issue; but I would just put that on your radar as you're going forward – I don't know if there's an issue. I haven't been able to find where there would be, but that is something that was brought up.

**MCKEE:** Let's say the board puts this through and agrees to this before we do anything we're going to run this up the chain and to verify - that we don't look like we don't know what we're doing – you know what I'm saying? So we'll know, before anything is put out, I really don't want to drive all the way back up here if they say "no".

**ALLEN:** Yes

**MCKEE:** We're not going to do it and in two months they say "Oh, yeah, you can't do that either"

**ALLEN:** No,no.....

**MCKEE:** That's what I'm worried about.

**ALLEN:** Exactly. As I made clear, when I sent the letter to you guys not to go into detail of that, but the money does have to be paid back. That is clear. How that happens, there are avenues but with those avenues there are different costs and I think Blair can speak on that in terms of what those different avenues would cost outside of just the refunding of the money. That's basically my line, it's kind of in line of what Mike is trying to describe.

**STERWERF:** That's one reason why I thought maybe putting an "Opt Out" of proration – I don't think anybody will take advantage of it; very few people will be taking advantage of it and that way it would possibly give us an out there where.....

**ALLEN:** And that is entirely up to you. I guess, in saying this you guys can vote, pretty much, to do it however you want but, you're going to have limitations, I imagine with the system itself, I don't understand the system. I don't know or understand how the computer system works. Whatever limitations imposed by that – that's just the nature of dealing with that. I don't know

what that involves. Legally, I've already kind of detailed what has to happen from that standpoint.

**MCKEE:** I assume this has never happened before, so there's no precedence or nothing to go back and look at?

**ALLEN:** It's never happened with this board. Other boards, it's happened before. I don't know.

**GREENE:** Well, what's made this one a little different is the interpretation that the \$225 is the cap. The raising without going to the Controlling Board has happened before – the Controlling Board told me that. They didn't think the request we put in to raise it retroactively – they didn't think anything about that.

**MCKEE:** Ok

**GREENE:** What happened was when they interpreted it "wait a minute, you can't because \$225 is your max" and that's never come up before that, I know of. If you think it will be better and the Board thinks it will be better to give them an option, I don't have a problem with that. It's the logistics of getting past this is going to take a little more time. OBM is really concerned about that – you know "how soon can you resolve this." But, I can explain that to them that this is the way the board voted to do it and maybe that makes it little bit less restrictive or gives us a little more leeway giving them an option.

**STERWERF:** Maybe the way the letter is written, if the option is towards the end, it's there, it's on paper in the fine print but not advertised blatantly.

**DOUGHER:** The other thing to worry about is the deadline, you know they want to get this handled, obviously. So you're going to have to associate some kind of deadline because there's going to be some people that get a paper from us.....

**GREENE:** And the issue with the deadline for OBM is, if we end up giving money back then we're going to have to do it with the Controlling Board. There's a separate Controlling Board request and that's were their issue & the recovery part. By changing the expiration dates – we continue to have revenue coming in, plus we have time to get the language changed and do the Controlling Board request when that gets passed, if it gets passed and go from there. They want to bring this to some kind of conclusion and so do I. This is the time to get it straightened out so that the next time someone new interprets the law, there's absolutely no question at all the way it's read. We changed the wording in 4775.08 from the original wording: "*The initial and annual renewal fee for a motor vehicle repair registration certificate and for a temporary motor vehicle repair registration certificate is one hundred fifty dollars for each business location at which the motor vehicle repair operator conducts business as an operator, except that the motor vehicle repair board, with the approval of the controlling board, may establish fees in excess of or less than that amount, provided that such fees do not exceed or are not less than that amount by more than fifty per cent.*" So that was interpreted by the Controlling Board to say "it's \$150, you can get it raised by 50% and that's a cap. So the change in it is this: "*The initial and annual renewal fee for motor vehicle repair registration certificate and temporary motor vehicle repair registration certificate shall be established by the board for each business location with approval of the controlling board.*" No amount, no percentage, no anything. So it cannot be miss interpreted. This is the time to get it fixed so this won't happen again in the future.

**WAGNER:** So, what's their time frame, Mike? You said that they were in a hurry, did they give you an actual time?

**GREENE:** Well, I think they just want to know if we're going to have to go back or if we're going to have to go to the Controlling Board now to get more money and how long it's going to take to recover that. I believe that's OBM's problem. If this all passes and goes through and everything, the budget we're doing right now, '20 and '21, will be fine because it's based on \$300 fees. We can't make money on this, but we have to cover our operation cost. That's the way they're looking at it, "How are you going to recover this or how quick is it going to be resolved and is there a point where you're going to have to start laying off staff or you're going to have to start cutting back on this or that. If is a lump sum thing, you know I look for them to push me for that next. If it's not a "lump some" thing, I think if everything else passes, we'll be ok. We'll be covered.

**WAGNER:** So, if we do the letter and if we do put some provisions in there towards the end for an opt.....

**STERFWERF:** Opt out

**WAGNER:** So then, can we put a time frame in there, in the letter. Can we say failure to respond within in certain days, we will automatically, then just assume that you will put it in escrow or whatever you want to do?

**ALLEN:** That's up to you.

**WAGNER:** Can we do that? I guess I'm asking.

**ALLEN:** I wouldn't see any issue with it.

**WAGNER:** Or, we can just do an automatic....

**ALLEN:** I think the issue would become if you had shops that had closed, and they just don't ever get a letter.

**GREENE:** I'm keeping track of them, they're going to get their money back regardless. That's pretty easy to track.

**ALLEN:** I know when this has happened with other boards in the past, they've just paid it back in one lump sum, but it was a little bit of a different issue because they were just taking funds in excess of their statutory amount. They didn't have the option to increase, it was just their statutory amount was X and they decided that they were going to change you Y. You can't do that. That was a little different because they were just, I guess kind of building reserves of funds so they can do it. It's been years and years ago but that's the only other time they were able to kind of figure out something were this has sort of happened. So, in terms of repayment, that's going to come down to what the cost is in terms of the process. Central Services is going to have to look at, you know, "basically, you're going to have two avenues, that's two different repayment processes. I would say, in my opinion not necessarily a legal opinion but opinion, having an opt out is probably better. That way you can't have somebody comeback and say "you took my money illegally, I want it back and you're not giving it back to me." If they at least had the option to get it back, you're not replacing one headache with another – sort of speak. That's kind of where my mind is but, again, this is up to you guys.

**STERWERF:** The two things that make sense to me are the shops are entitled to that money, we should provide them the mechanism to do it. I don't think many people will take it up.

**WAGNER:** I don't either.

**STERWERF:** And it makes sense to do the proration.

**MCKEE:** We did it wrong, whether we agree with why they said we did it or not; that's us making it right either way.

**STERWERF:** Right.

**DOHNER:** I just don't understand why it's all interpreted, we did this and somebody else interpreted different. This here says "yes" and this here said "no" – it's confusing!

**STERWERF:** It's law.

**DOHNER:** I went through this in the military. Certain people may not like you, so they will deny what you wrote up unless you can get approval from them saying "Hey, it was ok" then they can't come back on you. I think we've tried that but it ain't working.

**GREENE:** The best way I can describe it is, and I talked to Robbie about this, is when we were on the Patrol there were traffic laws and criminal laws that were interpreted differently by different courts or different judges. When you had a case that was important to you, you might want it to go to before one judge and not the other because of that reason. It's interpretation of law and unfortunately everybody has a different opinion. It's just that this time it's interpreted three different ways and we're going to have to fix it.

**ALLEN:** And I guess to that point, I can provide whatever interpretation you want but at the end of the day, it's the Controlling Board and the legislature, if they decide they going to interpret it "X" way – they are the legislature. That is their prerogative, that is their power, that is their authority.

**DOHNER:** But if you give us an interpretation of what you think it's going to be, will the people up the line agree with you or shoot you down, too?

**ALLEN:** Uuummm, the interpretation that I provided was supported by my office, but the attorneys who work with the legislature provided a different interpretation and

**DOHNER:** I rest my case

**ALLEN:** They are two different interpretations but, at the end of the day, part of it is I can't share my interpretation or my reasoning with the legislature. They're not my client, I am bound by attorney/client privilege, so they are active in their role. I've seen a copy of their memo. I have questions about how they arrived at their point. It doesn't matter.

**WAGNER:** So, there's no pushing the issue with them on the interpretation. It's done.

**GREENE:** Yes

**ALLEN:** That is the interpretation they have chosen to proceed with. So basically you will have to operate with that until.....

**GREENE:** The language changes.

**ALLEN:** Yeah, until the language changes or there is a new Controlling Board.

**STERWERF:** So, it is what it is; we have to deal with what we've got

**ALLEN:** It's not that that one interpretation was right or wrong, necessarily but it's just the person who decided to provide the interpretation – provide it to the people who can decide if you're right or wrong.

**GREENE:** If we can get the language changed there's no question about the interpretation. It takes all of the doubt out of there.

**WAGNER:** The grey area

**GREENE:** Right.

**STERWERF:** Playing in the grey area gets us in the situation we're in today.

**GREENE:** And if we had known that the language was going to be a problem, we would have worked on changing it a long time ago, but we've never had it interpreted that way before. We've been to the controlling board before.

**WAGNER:** It's just a common sense factor, like you said, why would you cap any type.....

**STERWERF:** Some things are tied to inflation and some are tied to the set amount, no matter what.

**GREENE:** If you remember the mechanical legislation that was pending, HB 199, put an absolute cap on our registration fee if it passed. That was clear as a bell, there was no question \$200 a year for mechanical, collision and everybody was going to be the cap. There was no questioning that, it wasn't worded like this. That was my argument if they wanted it to be a cap, it would have said it was a cap.

**ALLEN:** Blair can probably provide more background in terms of what the cost would be involved in terms of different avenues.

**CATHCART:** I actually do not have a number here. The one caveat to the crediting plan would be that there is programming associated with doing this. Just like the fees that were to come into the eLicensure system that has been set up to do that on boarding could be costly, it could be trivial, it could be five lines in the system that you can change that or I think you mentioned be even to go in manually change the expiration date

**GREENE:** Right, we did change the fee when this came out back to \$225 in the system. That was very minimal, it took them 5 minutes and we did it over the phone. It was nothing to that, so that was a very cheap deal there. I explained to OBM yesterday that we can do this in house. It'll take us a week or ten days to get through all of them but we can do it. There is a fee associated with the vouchers and I'm not certain if they will give us some kind of a break on that or not. Right now, if I put in for a shop to get a refund, if a guy retires and says "hey, I'm paid up to next year, can I get my money back? I'm retiring such and such a date." Well it costs me \$12 to process that voucher. If I have to do 3000 of them, we've got to figure what's that going to be or if there's some other way of doing it that doesn't cost. CSA has told that there's another way of doing it and it would be lengthy and it would be costly but it wouldn't be the amount to process one. It would be some kind of blanket deal. I don't know what that would cost yet.

**STERWERF:** With the opt out, I imagine we would have to put a reasonable time period in there to allow them to process it and make a decision?

**WAGNER:** Yeah, that's what I was asking



**STERWERF:** My thoughts are like 30 days or 60 days. What are people thinking, how quickly

**WAGNER:** I was thinking 30.

**MURRAY:** I think 30 is sufficient notification.

**GREENE:** I'll give you a heads up on the mailings. Just give you an example, we talked about the eLicensing program and mailed out the first correspondence on that in September of 2017. We mailed out correspondence in November, we mailed out correspondence in March, mailed out the security codes and directions on how to do this and I have shops calling me now that never opened any of that mail. Never looked at; never got their security code, never knew we needed their e-mail, never knew we were going to an online system.

**ALLEN:** Is it worth sending them certified mail?

**WAGNER:** That's what I was getting ready to ask!

**GREENE:** Well, I've got a story on that, too. If they see "certified mail" from us, most of them won't touch it because they think it's got something to do with prosecution,

**MCKEE:** They've done something wrong.

**GREENE:** Or we're jerking their registration or something of that nature. If you want it certified out, we'll do it.

**ALLEN:** That's up to you guys.

**GREENE:** I don't know what that would cost us.

**ALLEN:** That's up to you guys.

**STERWERF:** Will we be making it available on the website, sending e-mails and normal mail.

**GREENE:** Yes.

**MCKEE:** They had to register an e-mail to sign in, right?

**GREENE:** Yes, some of them.

**STERWERF:** It's their choice if they ignore it; we made it available to the public.

**GREENE:** Some of the have opted out of that.

**DOUGHER:** You can broadcast fax which is not too expensive.

**GREENE:** Broadcast fax?

**DOUGHER:** I use something called Westfax. It's easy to use; it won't get to everybody, you have to have a fax number. People will look at faxes today as opposed to e-mails.

**MCKEE:** If we do all these things and they don't reply then they get it extended.

**GREENE:** They're still going to get a credit.

**MCKEE:** Either way they're going to get it.

**WAGNER:** Put in the letter "if we don't hear back, we're just going to assume that you want to put in as credit."

**STERWERF:** It's just that if we have any active shops that would have wanted to push the issue. If we don't that opt out language in there and they want to push the issue it could be more of a headache.

**GREENE:** I think that's a good idea.

**STERWERF:** Ok, are we going to make a motion to vote on this then? Can I hear a motion to accept the planned fee structure as Mike presented it with the addition of an opt out option being communicated that expires in 30 days?

**MOTION TO ACCEPT: MCKEE**

**SECOND: MURRAY**

**VOTE: MOTION CARRIED**

**MOTION TO ADJOURN: MURRAY**

**SECOND: WAGNER**

**VOTE: MOTION CARRIED**

4. **ADJOURNMENT: NEXT BOARD MTG. – NOVEMBER 14, 2018 LOCATION:**  
Vern Riffe Tower, 77 South High Street, 19<sup>th</sup> Floor, Room 1914, Columbus, 43215.