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AUTOMOBILE DEALER'S AND SALESMAN'S LICENSING ACT —
NO INHIBITION AGAINST ONE WHO HAS MOTOR VEHICLE
DEALER'S LICENSE FROM OBTAINING MOTOR VEHICLE
SALESMAN'S LICENSE, PROVIDING HE IS OTHERWISE QUALI-
FIED.

SYLLABUS:

Under the Automobile Dealer's and Salesman's Licensing Act, there is no inhibition against one who has a motor vehicle dealer's license from obtaining a motor vehicle salesman's license, providing he is otherwise qualified.

Columbus, Ohio December 29, 1944

Hon. Cylon W. Wallace, Registrar, Bureau of Motor Vehicles
Columbus, Ohio

Dear Sir:

You request my opinion on the following question:

“Calling your attention to the provisions of the Automobile Dealer's and Salesman's Licensing Act and with particular reference to Section 6302-5 (5), will you kindly give us your opinion as to whether or not a salesman's license can be issued upon proper application and fulfillment of other requirements to an applicant who is at the same time duly registered and licensed as a new or used car dealer under that Act; such salesman's license to authorize the selling of motor vehicles for another duly licensed dealer?”

Section 6302-2, General Code, as amended, specifies that a license is required to engage in the business of selling motor vehicles as a dealer and sets forth the form of the application containing various questions, which questions are for the purpose of obtaining data considered essential in determining the applicant's qualifications.

Section 6302-3, General Code, as amended, sets forth circumstances under which a dealer's license may be denied and provides further for an appeal from said denial.

Section 6302-4, General Code, as amended, provides that no salesman shall engage in the business of selling at retail motor vehicles without first obtaining a license to do so.

It also sets forth a form of application, which form is to be executed by the applicant and requires the disclosing of certain information which is considered essential in determining the applicant's qualifications.

Section 6302-3, General Code, provides in part as follows:

"The registrar shall deny the application of any person for a license as salesman and refuse to issue such license if he finds that such applicant (1) has made any false statements of a material fact in his application, or (2) has not complied with the provisions of this act, or (3) is of bad business repute, or (4) has been guilty of any fraudulent act in connection with the business of selling motor vehicles, or (5) has not been designated to act as salesman for a motor vehicle dealer duly licensed to do business in this state under the provisions of this act, or intends to act as salesman for more than one licensed motor vehicle dealer at one time."

Section 6302-1, General Code, as amended, defines a dealer as follows:

"'Dealer' includes all persons hereinbefore defined, regularly engaged in the business of selling, displaying, offering for sale or dealing in motor vehicles at an established place of business which is used solely and exclusively for the purpose of selling, displaying, offering for sale or dealing in motor vehicles, which place of business in the case of a dealer in new motor vehicles shall have space, under roof, for the display of not less than one new motor vehicle and facilities and space therewith for the inspection, servicing and repair of not less than one motor vehicle."

Section 6302-1, General Code, defines a salesman as follows:

"'Salesman' includes any person as hereinbefore defined who for a commission, compensation or other valuable consideration is employed by a dealer to sell, display, * * *."

It will be noted that the Automobile Dealer's and Salesman's Licensing Act makes a distinction between a salesman and a dealer.

Under the act there is no prohibition against an applicant, who has

a dealer's license, from receiving a salesman's license. Neither is there any restriction against a salesman obtaining a dealer's license. The only restriction is provided in section 6302-5, clause 5, above cited. Under said clause, a person in order to obtain a salesman's license must have been designated to act as salesman for a licensed dealer and may not act as a salesman for more than one licensed dealer at one time.

Ministerial boards, authorized to grant licenses to engage in trades, businesses, or professions, act as fact finding bodies to ascertain whether applicants for such licenses conform to legislative formulae by which right to license is fixed. (State Board of Medical Registration and Examination v. Scherer, 46 N. E. (2d) 602.)

There is nothing in the Automobile Dealer's and Salesman's Licensing Act that would restrict a duly licensed dealer in motor vehicles from obtaining a motor vehicle salesman's license.

It is true that clause 5 of section 6302-5, General Code, prohibits a salesman from acting for more than one dealer but while a dealer could act as a salesman for himself under his dealer's license, he would not be considered under the act as a salesman. Therefore, he would not be disqualified on that ground. If he did obtain a salesman's license he, of course, is limited in that capacity to one dealer.

As the law now stands, it is my opinion that one who possesses a motor vehicle dealer's license, if otherwise qualified, may also obtain a motor vehicle salesman's license.

Respectfully,

THOMAS J. HERBERT

Attorney General