
OPINION NO. 90-026**Syllabus:**

A company that prepares and distributes a catalog containing information about automobiles which are available through various dealerships in a particular market area is not engaged in the business of selling motor vehicles pursuant to R.C. 4517.02 where the company receives no commission on the sale of automobiles, has no financial interest in an automobile dealership, maintains no business relationship and has no direct contact with potential automobile buyers, and where the company's compensation for such service is limited to a flat fee charged to automobile dealers without regard to the number of automobiles sold as a result of the catalog service.

To: William M. Deniham, Ohio Department of Highway Safety, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, April 11, 1990

I have before me your request for my opinion concerning whether a company that prepares and distributes a catalog containing information about automobiles which are available through various dealerships in a particular market area is engaged in the sale of motor vehicles pursuant to R.C. 4517.02. The company in question prepares a catalog containing advertisements used by motor vehicle dealers in a particular market area. Each dealership pays a standard fee for inclusion in the catalog. The company distributes the catalogs to membership groups such as credit unions, consumer clubs, AAA (American Automobile Association) clubs, and certain financial institutions for the use of the members of such groups. The company receives no commission for automobile sales made as a result of its catalog, nor does it make referrals of customers to dealers or participate in any way in the sale of automobiles. The fee which is paid by the dealerships for inclusion in the catalog is not dependent upon sales. The company has no financial interest in any automobile dealership or membership group, but obtains compensation solely from the fees paid by participating dealerships. The company does maintain a type of telephone "hot line" to answer questions of the credit unions and other groups and to resolve differences which might arise between a group member and an advertising dealer after the purchase has been made. The company receives no compensation from any source for this service.

R.C. 4517.02 prohibits a person from engaging in the motor vehicle business without a license. It provides, in pertinent part:

(A) Except as otherwise provided in this section,¹ no person shall:

(1) Engage in the business of displaying or selling at retail new motor vehicles or assume to engage in such business, unless he is licensed as a new motor vehicle dealer under sections 4517.01 to 4517.45 of the Revised Code, or is a salesperson licensed under such sections and employed by a licensed new motor vehicle dealer;

(2) Engage in the business of offering for sale, displaying for sale, or selling at retail or wholesale used motor vehicles or assume to engage in that business, unless he is licensed as a dealer or registered as a motor vehicle wholesaler under sections 4517.01 to 4517.45 of the Revised Code, or is a salesperson licensed under such sections and employed by a licensed used motor vehicle dealer or licensed new motor vehicle dealer, or is a salesperson employed by a registered motor vehicle wholesaler;....(Footnote added.)

Thus, without the appropriate license, a person may not engage or assume to engage in the business of displaying or selling at retail new motor vehicles or engage or assume to engage in the business of offering for sale, displaying for sale, or selling at retail or wholesale used motor vehicles. "Persons" is defined by R.C. 4517.01(A) to include corporations. "Engaging in business" includes "commencing, conducting, or continuing in business...." R.C. 4517.01(F). Further, the statutory definition of "business" with respect to the motor vehicle dealers' licensing laws is very broad. It includes "any activities engaged in by any person for the object of gain, benefit, or advantage either direct or indirect." R.C. 4517.01(E).

Engaging in the business of selling motor vehicles has been found to include business activities not typically considered the sale of motor vehicles. For example, in *Auto Reality Service, Inc. v. Brown*, 27 Ohio App. 2d 77, 272 N.E.2d 642 (Franklin County 1971),² the court determined that a corporation which provided a

¹ R.C. 4517.02(B) and (C) contain exceptions to the general prohibition against engaging in the motor vehicle business without the appropriate license; however, none of the exceptions are applicable in the instant situation.

² The holding in *Auto Reality Service v. Brown*, 27 Ohio App. 2d 77, 272 N.E.2d 642 (Franklin County 1971) was based on former R.C. 4517.02 and R.C. 4517.18. R.C. 4517.02 has been amended since the *Auto Reality*

listing service whereby it advertised and sought potential buyers for automobiles owned by individuals who wished to sell them was engaged in the business of selling motor vehicles and was thereby subject to the motor vehicle dealers' licensing laws. The corporation in that case charged a fee to the owner for the service of taking a photograph of the automobile, gathering information about the automobile and advertising in the newspaper and on the radio. Interested persons were able to visit the corporation's office to gain more information about the automobiles and to be put in touch with the appropriate owners. If a sale was made, the seller would pay an additional fee to the corporation. At no time did the corporation have possession of or title to any of the automobiles, nor did the corporation maintain a sales showroom or lot for the display of automobiles. Although the court noted a distinction between a traditional used car dealership and the activities of the corporation, it nonetheless held that the motor vehicle dealers' licensing laws applied to the corporation.

It is true that the plaintiff has been conducting its business in an entirely different fashion than would a traditional licensed used car dealership. However, the fact remains that the commodity around which its operation revolves is automobiles, and the transactions involved are those of buying and selling such automobiles.

The clear intent of the legislature in enacting the automobile dealers' licensing laws was to prevent fraud upon the public in the sale of motor vehicles.

Id. at 82.

The holding in *Auto Reality, supra*, was relied upon by my predecessor in 1975 Op. Att'y Gen. No. 75-086 wherein it was determined that a corporation which acted as a listing service for persons buying or selling automobiles was subject to the motor vehicle dealers' licensing laws. The corporation furnished potential buyers with computer-generated lists of automobiles which potential sellers had listed with the corporation. A basic fee was charged of both potential buyers and sellers, and an additional fee was charged of a seller if the automobile was sold. The corporation never had title to or possession of the automobiles. My predecessor, relying on the reasoning of *Auto Reality*, determined that "corporations which list automobiles for sale and aid purchasers in their search for an automobile come within the purview of [the statute prohibiting the unlicensed sale of automobiles], despite the fact that such a corporation does not take title to or possession of the vehicle." Op. No. 75-086 at 2-343.

In 1984 Op. Att'y Gen. No. 84-082, I determined that a company which provided directly to consumers, for a fee, information that the company had gathered from automobile dealers in the market area concerning the make, model, price and other details of automobiles for sale, was required to comply with the motor vehicle dealer licensing requirements of R.C. Chapter 4517. I determined that the company, which received no compensation from the motor vehicle dealers and never took title to or possession of the automobiles, was nevertheless engaged in the business of selling motor vehicles under the analysis of *Auto Reality*.

Each of the companies at issue in *Auto Reality*, Op. No. 75-086 and Op. No. 84-082, was found to be engaged in the business of selling motor vehicles although none of the companies ever took possession of or title to the automobiles and none of them actually sold an automobile. The basis for the finding that they

decision and R.C. 4517.18 has been repealed. However, I determined in 1984 Op. Att'y Gen. No. 84-082 that "the prohibitions found in the previous version of R.C. 4517.02 and R.C. 4517.18 have been incorporated into the current version of R.C. 4517.02." *Id.* at 2-278. R.C. 4517.02 was amended again effective March 19, 1987. This amendment did not weaken the previous prohibitions but added a prohibition against offering used motor vehicles for sale without the appropriate license. Thus, the reasoning of *Auto Reality* is still valid.

were engaged in the business of selling motor vehicles is the fact that in each case the business of the company revolved closely around the buying and selling of automobiles. In each case, the company attempted to "match" individual buyers with sellers and it was necessary for the buyers to contact the company for information about the automobiles in order to effect a sale. Thus, the company became an integral part of any sales transaction which occurred as a result of its business activities.

The company in the question now before me, however, is not an integral part of the sales transaction. This company is engaged in the business of advertising rather than the business of selling motor vehicles. To some extent, of course, the business of advertising assists the buyer in locating a seller and the seller in locating a buyer. However, the advertising company simply distributes information provided by the automobile dealers, which information a potential buyer may choose to use or disregard. The company maintains no business relationship and has no direct contact with the buyer, and its business relationship with the seller is limited to the provision of advertising services.³

The activities of this company are not unlike that of a newspaper company that solicits and prints advertisements for automobile dealerships and individuals who wish to sell their automobiles. Although the advertisement may assist in the sale of an automobile, the newspaper company is not an integral part of the transaction. It is the advertisement, not the newspaper company, that helps to effect the sale. The fact that the advertising company maintains a telephone "hotline" to answer questions of the buyer that might arise after the sale does not affect my opinion since any contact between the buyer and the company after the sale is clearly not part of the sales transaction.⁴

The determination that the company at issue is not engaged in the business of selling motor vehicles is consistent with the purpose underlying the licensing law. The intent of the legislature in requiring the licensing of all persons engaged in the business of selling motor vehicles is to prevent fraud upon the public. *Auto Reality; North Dixie Theatre, Inc. v. McCullion*, 613 F.Supp. 1339 (D.C. Ohio 1985). If a person is not an integral part of a sales transaction, however, that person has no opportunity and no motivation to defraud the buyer. Thus, no purpose would be served by requiring such a person to obtain a license.

It is, therefore, my opinion and you are hereby advised, that a company that prepares and distributes a catalog containing information about automobiles which are available through various dealerships in a particular market area is not engaged in the business of selling motor vehicles pursuant to R.C. 4517.02 where the company receives no commission on the sale of automobiles, has no financial interest in an automobile dealership, maintains no business relationship and has no direct contact with potential automobile buyers, and where the company's compensation for such service is limited to a flat fee charged to automobile dealers without regard to the number of automobiles sold as a result of the catalog service.

³ Based on the facts which you presented in your opinion request, it appears that no direct contact between the buyer and the company is necessary to effect a sale, and I have so assumed for purposes of this opinion.

⁴ Your request letter indicated that the company in question has corporate offices in Van Nuys, California and maintains no office or telephone in this state. These facts may, in certain circumstances, have some bearing on the determination of whether a company is subject to Ohio's motor vehicle dealers' licensing law. See, e.g., 1980 Op. Att'y Gen. No. 80-026. However, since I have determined that the company in question is not engaged in the business of selling motor vehicles, I need not address that issue.