

OPINION NO. 92-051**Syllabus:**

1. R.C. 4517.03(B) allows a licensed new or used motor vehicle dealer to display and sell manufactured homes at a manufactured home park owned by the dealer, regardless of whether the manufactured home park is adjacent to the dealer's established place of business.
2. R.C. 3733.11(M) allows a manufactured home dealer licensed under R.C. Chapter 4517 to sell a manufactured home that was previously titled by a dealer when the manufactured home is titled in the name of an individual and the sale is made on behalf of that individual; it does not matter whether the manufactured home is located in a manufactured home park owned by the selling dealer.
3. Any person who has been licensed as a new or used motor vehicle dealer under R.C. Chapter 4517 and who sells only manufactured homes may operate under R.C. 3733.11(M) without obtaining any physical facilities in addition to those required for licensure.
4. A new motor vehicle dealer who sells only manufactured homes is, pursuant to R.C. 4517.03(B), not required to have any outdoor display area.
5. Existing administrative rules governing the licensure of used motor vehicle dealers require each used motor vehicle dealer to have a lot of the size and description set forth in 7 Ohio Admin. Code 4501:1-3-08, regardless of whether the dealer sells manufactured homes.

**To: Charles D. Shipley, Director, Department of Highway Safety,
Columbus, Ohio**

By: Lee Fisher, Attorney General, September 30, 1992

You have asked for an opinion on several questions relating to the sale of manufactured homes by new and used motor vehicle dealers licensed pursuant to R.C. Chapter 4517. For purposes of R.C. Chapter 4517, the term "motor vehicle" includes a manufactured home. R.C. 4501.01(B), (O); R.C. 4517.01(B). Provisions governing new and used motor vehicle dealers thus apply to persons who deal in manufactured homes. See R.C. 4517.01(J), (K), (L).¹

**Licensed Dealer May Display and Sell Manufactured Homes at a
Manufactured Home Park Owned by the Dealer**

Your first question is whether R.C. 4517.03(B) allows a licensed dealer to display and sell manufactured homes at a manufactured home park owned by the dealer when the manufactured home park is adjacent to the dealer's established place of business. Your second question asks whether such display and sale is permissible at a manufactured home park owned by the dealer when the manufactured home park is at a location not adjacent to the dealer's established place of business.

R.C. 4517.03(B) provides that no new motor vehicle dealer shall sell, display, offer for sale, or deal in motor vehicles at any place except an established place of business that is used exclusively for those purposes. R.C. 4517.03(B) also requires that such a place of business include:

space, under roof, for the display of at least one new motor vehicle and facilities and space therewith for the inspection, servicing, and repair of at least one motor vehicle; except that a new motor vehicle dealer selling manufactured homes is exempt from the requirement that his place of business have space, under roof, for the display of at least one new motor vehicle and facilities and space therewith for the inspection, servicing, and repair of at least one motor vehicle.
(Emphasis added.)

See also R.C. 4517.12. These are the only statutory provisions governing the type of physical facility that a new motor vehicle dealer must have.² The exception set forth in R.C. 4517.03(B) exempts a new motor vehicle dealer who sells manufactured homes from space requirements that are applicable to other new motor vehicle dealers.

R.C. 4517.03(C) provides that no used motor vehicle dealer shall sell,

¹ As used in R.C. Chapter 4517, the term "dealer" or "motor vehicle dealer" includes new and used motor vehicle dealers and also motor vehicle leasing dealers. See R.C. 4517.01(J). Since your questions relate to the sale of manufactured homes, this opinion discusses new and used motor vehicle dealers, but does not discuss vehicle leasing dealers.

² The Motor Vehicle Dealers Board is authorized to adopt rules to implement certain of the provisions of R.C. Chapter 4517. See R.C. 4517.30, .32; 7 Ohio Admin. Code Chapter 4501:1-3. No existing rules impose upon a new motor vehicle dealer standards relating to the type or amount of space that must be available or to the ownership of a manufactured home park.

display, offer for sale, or deal in motor vehicles at any place except an established place of business that is used exclusively for those purposes. The statute contains no requirements regarding the amount of space or type of facilities that must be present at the place of business.³

With respect to the sale of manufactured homes located in a manufactured home park, R.C. 4517.03 states that nothing contained in R.C. Chapter 4517 "shall be construed as prohibiting the sale of a manufactured home located in a manufactured home park by a licensed motor vehicle dealer who is the owner of the manufactured home park." This language indicates that a motor vehicle dealer may sell a manufactured home — even though the manufactured home is not located at an established place of business that is used exclusively for selling, displaying, offering for sale, or dealing in motor vehicles — if the manufactured home is located in a manufactured home park that the dealer owns.

It is clear that a manufactured home park cannot constitute an established place of business for a new or used motor vehicle dealer in accordance with R.C. 4517.03(B) and (C), since such a park is not used exclusively for the purpose of selling, displaying, offering for sale, or dealing in motor vehicles. See R.C. 3733.01(A) ("[m]anufactured home park' does not include any tract of land used solely for the storage or display for sale of manufactured homes"). R.C. 4517.03 says nothing about the location of the manufactured home park in relation to the dealer's established place of business. Whether the manufactured home park and the dealer's place of business are adjacent is irrelevant for purposes of the statute. Thus, R.C. 4517.03 allows a licensed new or used motor vehicle dealer to display and sell manufactured homes at a manufactured home park owned by the dealer, regardless of whether the manufactured home park is adjacent to the dealer's place of business. *Accord* Ohio Legislative Service Commission, *Summary of 1977 Enactments January - October* 153 (1977) (Am. S.B. 264) (the act "permits any dealer who owns a house trailer park to sell a house trailer located at the park").

Authority of a Licensed Dealer to Sell Manufactured Homes Pursuant to R.C. 3733.11(M)

Your next three questions pertain to R.C. 3733.11(M), which states:

Notwithstanding any other provision of the Revised Code, the owner of a manufactured home that was previously titled by a dealer may utilize the services of a manufactured home dealer licensed under Chapter 4517. of the Revised Code or a person properly licensed under Chapter 4735. of the Revised Code to sell or lease the manufactured home.

In general, a motor vehicle dealer must obtain the title to a motor vehicle in order to sell the motor vehicle. R.C. 4505.18(B) states that no person shall display, display for sale, or sell "as a dealer or acting on behalf of a dealer, a motor vehicle without having obtained a manufacturer's or importer's certificate or a certificate of title therefor," as provided in R.C. 4505.01-.21. A manufactured home is included as a motor vehicle for purposes of R.C. Chapter 4505. R.C. 4505.01(A)(2).

There are, however, types of sales for which a person must be licensed as a dealer under R.C. Chapter 4517 even though he does not himself hold title to motor vehicles. For example, R.C. 4517.02(A)(6) requires that a person who provides space

³ 7 Ohio Admin. Code 4501:1-3-08 establishes physical standards for the place of business of a used motor vehicle dealer. The rule does not mention ownership of a manufactured home park, whether or not adjacent to the dealer's established place of business.

for the sale of motor vehicles at a flea market be licensed as a dealer under R.C. Chapter 4517. A person who serves a brokerage function between the buyer and seller must also be licensed under R.C. Chapter 4517. *See, e.g.*, 1984 Op. Att'y Gen. No. 84-082; 1975 Op. Att'y Gen. No. 75-086. *See generally* 1990 Op. Att'y Gen. No. 90-026.

R.C. 3733.11(M) permits the owner of a manufactured home "that was previously titled by a dealer" to sell or lease his manufactured home either through the services of a "manufactured home dealer" licensed under R.C. Chapter 4517 or through the services of a person properly licensed under R.C. Chapter 4735 to sell or lease real estate. There is no express reference in R.C. Chapter 4517 to the term "manufactured home dealer"; that term apparently refers to a motor vehicle dealer who deals primarily in manufactured homes. *Cf.* R.C. 4505.20 (permitting a dealer to sell a manufactured home that has come into the possession of a secured party by a default in the terms of a security instrument when the certificate of title remains in the possession of the secured party, and defining "dealer" to mean "any dealer that is licensed pursuant to [R.C. Chapter 4517] and is engaged primarily in the business of selling manufactured homes"). The reference in R.C. 3733.11(M) to a manufactured home "that was previously titled by a dealer" appears to mean a manufactured home for which a dealer previously held a manufacturer's or importer's certificate or a certificate of title as provided in R.C. Chapter 4505 and, upon sale, obtained a certificate of title in the name of the purchaser. *See* R.C. 4505.03-.06, .18(B).

Licensed Manufactured Home Dealer May Sell Manufactured Homes Pursuant to R.C. 3733.11(M) Regardless of the Location of the Manufactured Homes

You have asked whether R.C. 3733.11(M) allows "a licensed dealer to sell a manufactured home titled in the name of an individual and on behalf of an individual, if the manufactured home is located in a manufactured home park owned by the selling dealer." You have also asked whether the answer is different if the manufactured home is not located in a manufactured home park owned by the selling dealer.

R.C. 3733.11(M) begins with the language "[n]otwithstanding any other provision of the Revised Code," thereby indicating a legislative intent to create an exception to any contrary statutory provision. R.C. 3733.11(M) permits the owner of a motor vehicle that was previously titled by a dealer to "utilize the services of a manufactured home dealer licensed under [R.C. Chapter 4517]...to sell or lease the manufactured home." There is no requirement in R.C. 3733.11(M) that the dealer must hold title to the manufactured home in order to provide services. Further, a requirement that the dealer himself hold title would be incongruous; even without the provisions of R.C. 3733.11(M), the owner of a manufactured home could sell the home to a manufactured home dealer for the dealer to sell or lease.

For R.C. 3733.11(M) to be meaningful, it must grant some authority in addition to that provided in other statutory provisions. *See* R.C. 1.47. The authority so granted is that provided by the plain language of R.C. 3733.11(M): if a manufactured home was previously titled by a dealer, a licensed manufactured home dealer may sell that home on behalf of the individual who owns the home when the manufactured home is titled in the name of that individual. The services offered by a manufactured home dealer in those circumstances are similar to the services offered by a person licensed for real estate transactions under R.C. Chapter 4735. *See* R.C. 4735.01.

R.C. 3733.11(M) does not mention the location of the manufactured home or establish any restrictions on the owner's selection of a licensed manufactured home dealer. It must, therefore, be concluded that R.C. 3733.11(M) allows any

manufactured home dealer licensed under R.C. Chapter 4517 to sell a manufactured home that was previously titled by a dealer when the manufactured home is titled in the name of an individual and the sale is made on behalf of that individual; it does not matter whether the manufactured home is located in a manufactured home park owned by the selling dealer.⁴ It should be noted that a new motor vehicle dealer is permitted to sell used motor vehicles as an incident to the operation of the new motor vehicle business, and it is assumed that a new motor vehicle dealer who sells used manufactured homes pursuant to R.C. 3733.11 is acting under this authority. See R.C. 4517.01(L), 4517.02(A)(2), 4517.03(B).

Dealer Does Not Need Physical Facilities in Addition to Those Required for Licensure in Order to Sell Manufactured Homes Pursuant to R.C. 3733.11(M)

Your final question is whether a licensed dealer who sells only manufactured homes may operate under R.C. 3733.11(M) while having only an office in an office building and no outdoor display area.⁵ R.C. 3733.11(M) imposes no requirements concerning the types of facilities that a dealer must have to undertake transactions pursuant to its provisions. The requirements relating to office and display facilities that are applicable to a dealer are, therefore, those imposed in connection with his securing a license. As discussed above, R.C. 4517.03(B) establishes space requirements for new motor vehicle dealers but creates an exception for a new motor vehicle dealer selling manufactured homes. See also R.C. 4517.12. There are no statutory requirements establishing space requirements for used motor vehicle dealers.

Existing administrative rules require that a dealer's business be "equipped with a suitable sign, properly maintained and prominently displayed," identifying the ownership of the business in letters at least six inches high. 7 Ohio Admin. Code 4501:1-3-03. There are also provisions governing the establishment of an expanded display area. 7 Ohio Admin. Code 4501:1-3-10. In addition, 7 Ohio Admin. Code 4501:1-3-08 sets forth physical requirements for the established place of business of a used motor vehicle dealer, stating, in part:

A used motor vehicle dealer shall have an established place of business which shall include a lot of no less than three thousand five hundred square feet, not including driveways, with adequate ground cover of a hard surface to prevent the collection of dust, mud, water or other unsightly conditions and shall be separated from any other business or residence with a permanent physical barrier. There shall be a permanent structure on the premises of no less than one hundred eighty square feet which shall include, at minimum, windows, electric lighting, heating, a telephone in service, a desk, three chairs and a filing cabinet, all of which shall be kept in a neat and orderly fashion.

Rule 4501:1-3-08 contains no exceptions for persons who deal in used manufactured homes.

⁴ In a recent case, *Stevenson v. Kraynak*, No. 92 VF 57, slip op. at 1 (Chardon Mun. Ct. Aug. 7, 1992), it was concluded that R.C. 4517.03 "prohibits the sale of a manufactured home by a licensed dealer unless that manufactured home is physically located in a manufactured home park owned by the person holding a valid Motor Vehicle Dealer License." It appears, however, that the *Stevenson* case did not consider R.C. 3733.11(M) and, therefore, is not determinative of the issues addressed in this opinion.

⁵ Because your question relates to a licensed dealer who sells only manufactured homes, this discussion is addressed to that type of dealer.

An administrative rule that is validly adopted pursuant to statutory authority has the force and effect of law. *See, e.g., State ex rel. Cuyahoga County Hospital v. Ohio Bureau of Workers' Compensation*, 27 Ohio St. 3d 25, 500 N.E.2d 1370 (1986). Thus, new and used motor vehicle dealers must comply with applicable statutes and rules in acquiring their licenses under R.C. Chapter 4517.⁶ Once a dealer has acquired his license, he may sell manufactured homes under R.C. 3733.11(M) without acquiring any additional physical facilities. As noted above, it is assumed that a new motor vehicle dealer who sells used manufactured homes pursuant to R.C. 3733.11 does so as an incident to the operation of his new motor vehicle business.

The statutes and rules discussed above do not require that a new motor vehicle dealer who sells manufactured homes have any outdoor display area. They do, however, require that a used motor vehicle dealer have a lot of the size and description set forth in rule 4501:1-3-08. R.C. 3733.11(M) imposes no additional requirements upon a licensed dealer. A person who has been licensed as a new or used motor vehicle dealer under R.C. Chapter 4517 and who sells only manufactured homes may operate under R.C. 3733.11 without obtaining any physical facilities in addition to those required for licensure. *See* note 5, *supra*.

Conclusion

It is, therefore, my opinion, and you are advised, as follows:

1. R.C. 4517.03(B) allows a licensed new or used motor vehicle dealer to display and sell manufactured homes at a manufactured home park owned by the dealer, regardless of whether the manufactured home park is adjacent to the dealer's established place of business.
2. R.C. 3733.11(M) allows a manufactured home dealer licensed under R.C. Chapter 4517 to sell a manufactured home that was previously titled by a dealer when the manufactured home is titled in the name of an individual and the sale is made on behalf of that individual; it does not matter whether the manufactured home is located in a manufactured home park owned by the selling dealer.
3. Any person who has been licensed as a new or used motor vehicle dealer under R.C. Chapter 4517 and who sells only manufactured homes may operate under R.C. 3733.11(M) without obtaining any physical facilities in addition to those required for licensure.
4. A new motor vehicle dealer who sells only manufactured homes is, pursuant to R.C. 4517.03(B), not required to have any outdoor display area.
5. Existing administrative rules governing the licensure of used motor vehicle dealers require each used motor vehicle dealer to have a lot of the size and description set forth in 7 Ohio Admin. Code 4501:1-3-08, regardless of whether the dealer sells manufactured homes.

⁶ As noted in 1989 Op. Att'y Gen. No. 89-008, an administrative body that is authorized to adopt rules to implement its regulatory duties may adopt any reasonable scheme that is consistent with the relevant statutes, and, within these limitations, may change its rules as it deems appropriate. *Accord* 1991 Op. Att'y Gen. No. 91-073. Thus, where requirements for licensure of a dealer are imposed by administrative rule but are not mandated by statute, those requirements are subject to change by action of the Motor Vehicle Dealers Board. *See* note 2, *supra*.