

OPINION NO. 71-035

Syllabus:

Space for inspection, servicing and repair of at least one motor vehicle must be provided at the premises of the "place of business" of a dealer in new motor vehicles, the same place of business at which space is provided for the display of at least one new motor vehicle.

To: C. Donald Curry, Registrar, Bureau of Motor Vehicles, Columbus, Ohio
By: William J. Brown, Attorney General, July 22, 1971

I am in receipt of your predecessor's request for my opinion on the following question:

"We would like to have your opinion on the word 'therewith' as used in [Section 4517.01 (J), Revised Code].

"Is it your opinion that the facilities and space for the inspection, servicing, and repair of a motor vehicle be on the same premises as the place of business which is used for selling, displaying, offering for sale, or dealing in motor vehicles, or can the service facilities be located elsewhere."

Your question arises under the definition of the word "Dealer", contained in Division (J) of Section 4517.01, Revised Code, a part of Chapter 4517, Revised Code, the Chapter that establishes and regulates the licensing of automobile dealers and salesmen. Division (J), supra, reads as follows:

"'Dealer' includes all persons engaged in the

business of selling, displaying, offering for sale, or dealing in motor vehicles at an established place of business which is used 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 at least one new motor vehicle and facilities and space therewith for the inspection, servicing, and repair of at least one motor vehicle. A place of business which is used for selling, displaying, offering for sale, or dealing in motor vehicles shall be considered as used exclusively for those purposes even though farm machinery is sold or displayed for sale thereat, or if repair, accessory, gasoline and oil, storage, parts, service, or paint departments are maintained thereat, if such departments are operated for the purpose of furthering and assisting in the business of selling, displaying, offering for sale, or dealing in motor vehicles. Places of business or departments in a place of business used to dismantle, salvage, or rebuild motor vehicles by means of using used parts, are not considered as being maintained for the purpose of assisting or furthering the selling, displaying, offering for sale, or dealing in motor vehicles.

"Any person, firm, or corporation who sells, displays, or offers for sale camping trailers as defined in division (N) of this section is not subject to the requirement that his place of business be used exclusively for the purpose of selling, displaying, offering for sale, or dealing in motor vehicles, and is not subject to the requirement that such 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, provided that nothing contained in sections 4517.01 to 4517.99, inclusive, of the Revised Code shall be construed as prohibiting taking orders for the sale of camping trailers, as defined in division (N) of this section or travel trailers as defined in section 4501.01 of the Revised Code, at sports or camping shows."

Licensing of automobile dealers and salesmen was undertaken in 1937 with the enactment of Sections 6302-1 and 6302-22, General Code, by Amended House Bill No. 531, 117 Ohio Laws, 680, which contained the following recitation:

"To provide for the licensing of motor vehicle dealers and salesmen and the regulation of the sale of motor vehicles; to prohibit fraudulent and unfair

practices in the business of selling motor vehicles
and installment contracts arising out of such sales;
* * *."

As indicated in the recitation, the adoption of licensing followed a period of chaotic competition, harmful alike to dealers, salesmen and the public, and the enactment reflected a purpose to eliminate fly-by-night dealers, those only incidentally engaged in automobile sales and other undesirable practices in the industry. 5 Ohio State Law Journal, 377, 386-87.

One of the corrective devices has included pre-licensing tests of minimal financial responsibility on the dealer's part. The application for license must include a financial statement and information respecting business reputation. These requirements are found in Section 4517.02 (F) and (G), Revised Code, as follows:

"(F) A statement of the previous history, record, and association of the applicant and of each owner, partner, officer, and director, which statement shall be sufficient to establish to the satisfaction of the registrar the reputation in business of the applicant;

"(G) A statement showing whether the applicant has previously applied for a motor vehicle dealer's license or a motor vehicle auction owner's license and the result of such application, and whether the applicant has ever been the holder of any such license which was revoked or suspended;

"* * * * * * * * *"

A license may be denied for bad business reputation, habitual financial default, insolvency or inadequate financial resources. Section 4517.06 (C), (G) and (H), Revised Code, reads as follows:

"(C) Is of bad business repute or has habitually defaulted on financial obligations;

"(G) Is insolvent;

"(H) Is of insufficient responsibility to assure the prompt payment of any final judgments which might reasonably be entered against him because of the transaction of his business as a motor vehicle dealer or auction owner during the period of the license applied for;

"* * * * * * * * *"

Again, the application must demonstrate the existence of one or more places of business and license may be denied where the applicant has no "established place of business". Section 4517.02 (D)

and Section 4517.06 (I), Revised Code. These Sections read as follows:

Section 4517.02 (D)

"(D) The county in which the business is to be conducted and the address of each place of business therein;

"* * * * *"

Section 4517.06 (I)

"(I) Has no established place of business which is used or will be used exclusively for the purpose of selling, displaying, offering for sale, or dealing in motor vehicles;

"* * * * *"

Such historical and statutory context sheds light on the legislative purpose respecting an "established place of business", as defined in Section 4517.01 (J), supra. In other words, a "place of business" is one indicia of stability, capital resources and capacity to serve the public. The physical requirements of a place of business for a dealer in new motor vehicles, however, are minimal, involving only space, under roof, for the display of at least one vehicle and space and facilities for the inspection, service and repair of at least one vehicle.

There can be no doubt that both types of space are required to be provided at each place of business. The conjunctive "and" links the two as parts of a "place of business" in division (J), supra. Moreover, each "place of business" must be separately listed by an applicant for license under Section 4517.02 (D), supra. Considering these statutory provisions together and in the more general context, it appears that, with respect to dealers in new motor vehicles, the word, "therewith" in division (J), supra, to which you refer, must be read to require that facilities and space for inspection, service and repair of one vehicle must be maintained on the premises of the place of business, as a part of the space and facilities of such place of business and on which premises space for display of one new vehicle must also be maintained.

While the general meaning of the language is clear, in my opinion, I also recognize that the application of it to the wide variety of potential fact situations that business and geographic necessities may impose on dealers, will demand the exercise of some judgment. Briefly, I must caution against the application of the principle arbitrarily or unreasonably. The principle here, as is generally true of legal doctrines, cannot be administered without the exercise of sound judgment in light of the overall purpose of the Chapter.

In specific answer to your question, it is my opinion and

you are so advised that space for inspection, servicing and repair of at least one motor vehicle must be provided at the premises of the "place of business" of a dealer in new motor vehicles, the same place of business at which space is provided for the display of at least one new motor vehicle.