

2071

1. AUCTIONEER—DULY LICENSED AND APPOINTED—ENGAGED BY DEALER IN MOTOR VEHICLES TO AUCTION MOTOR VEHICLES—REQUIRED TO BE LICENSED AS MOTOR VEHICLE SALESMAN—SECTIONS 5868, 6302-1 G. C.
2. REGISTRAR OF MOTOR VEHICLES—MAY NOT ISSUE ANOTHER LICENSE AS SALESMAN OF MOTOR VEHICLES TO ONE WHOSE LICENSE IS IN FORCE AND EFFECT.

## SYLLABUS:

1. An auctioneer, duly licensed and appointed in accordance with the provisions of Section 5868, General Code, engaged by a dealer in motor vehicles to auction motor vehicles is required, by virtue of the provisions of the "automobile dealers' and salesmen's licensing act," Sections 6302-1 to 6302-24, inclusive, General Code, to be licensed as a motor vehicle salesman.

2. The registrar of motor vehicles may not issue another license as salesman of motor vehicles to one who is already the holder of a salesman's license which is in force and effect.

Columbus, Ohio, July 25, 1947

Hon. Edward T. Fogo, Registrar, Bureau of Motor Vehicles  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"With reference to the provisions of the Dealer's and Salesman's License Law complications have arisen concerning the issuance of a Salesman's license to a duly authorized auctioneer engaged to auction motor vehicles for a registered dealer or dealers. Specifically:

1. Does an auctioneer of motor vehicles engaged by a dealer to auction motor vehicles require a Salesman's license?

2. If such auctioneer does require a Salesman's License is it possible for the Registrar of motor vehicles to issue more than one Salesman's License in the case where the auctioneer is employed by several dealers but who only acts in such capacity for one dealer at a time?

As a further explanation it is **not** uncommon for an auctioneer to enter into a contract or agreement with several dealers to auction motor vehicles at stated intervals. In a specific instance an auctioneer has an agreement with four different dealers wherein he auctions motor vehicles for one dealer every Monday throughout the year, for another dealer every Tuesday throughout the year, for the third dealer every Wednesday throughout the year and for the fourth dealer every Thursday throughout the year. Transfers of the Salesman's License is impractical."

A license to engage in the occupation of auctioneer is required under the terms of Section 5866, General Code, which reads as follows:

“A person shall not exercise the occupation of auctioneer or sell by public auction, vendue or outcry, any property or effects, except utensils of husbandry, household furniture, real estate, produce, horses, sheep, hogs and meat cattle, without a license as herein provided. Whoever exercises such occupation or sells or attempts to sell, by public vendue, auction or outcry, any property or effects, except as herein provided, without such license, shall forfeit and pay not more than five hundred dollars nor less than one hundred dollars, to be recovered in the name of the state.”

Provision for the granting of such licenses is made in Section 5868, General Code, which reads as follows:

“The court of common pleas, or a judge thereof on vacation, may appoint and license suitable persons residing in the county, to exercise the occupation of auctioneer and make sales by auction, according to law, for one year from the date of such appointment. Such person so appointed may exercise such occupation in any county in the state during such appointment.”

Referring to the above section the Supreme Court in the case of *Holsman v. Thomas, City Clerk, et al.*, 112 O. S., 397, 147 N. E., 750, 39 A. L. R., 760, said:

“\* \* \* It is a general enactment defining only the general provisions under which a state license to engage in the occupation of auctioneer may be secured. A state license when obtained has to be used in conformity with the specific laws which govern the classes of sales made by auction. One could not under this law auction drugs forbidden under other laws to be sold at all. This holding is made inevitable by the plain terms of the statute which reads that ‘the court of common pleas \* \* \* may appoint and license suitable persons \* \* \* to \* \* \* make sales by auction, *according to law* \* \* \*.’”

Among the specific laws which govern the sale of motor vehicles will be found Section 6302-4, General Code, the pertinent part of which reads as follows:

“No salesman, as herein defined, shall on or after the first day of April, 1938, engage in the business of selling at retail motor vehicles in this state or advertise or assume to engage in such business without first having a license therefor. \* \* \* ”

The word "salesman" as it is used in the above section is defined in Section 6302-1, General Code, 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 and offer for sale or deal in motor vehicles. \* \* \* "

Earlier in the above section the word "person" is defined as follows:

" \* \* \* 'Persons' includes individuals, firms, partnerships, associations, joint stock companies, corporations and combinations of individuals of whatsoever form and character \* \* \* ."

It will be noted that the above definition of the word "persons" does not exclude an individual licensed and appointed under the provisions of Section 5868, General Code, supra, to exercise the occupation of auctioneer and make sales by auction.

An auction is nothing more than a particular type of sale. It is a "public competitive sale." *Crandall v. The State of Ohio*, 28 O. S., 479, 481. Obviously the employment of an auctioneer contemplates the payment of "a commission, compensation or other valuable consideration." An auctioneer, therefore, when employed by a dealer, is a "salesman" as that word is defined in Section 6302-1, General Code, supra, and used in Section 6302-4, General Code, supra. Under the terms of the latter section a salesman may not "engage in the business of selling at retail motor vehicles \* \* \* without first having a license therefor."

The phrase "engaging in business" as used in the "automobile dealers' and salesmen's licensing act," Sections 6302-1 to 6302-24, inclusive, General Code, is defined in Section 6302-1, General Code, as follows:

" \* \* \* 'Engaging in business' means commencing, conducting or continuing in business as well as liquidating a business when the liquidator thereof holds himself out to be conducting such business. However, making a casual or isolated sale is not engaging in business \* \* \* ."

The word "business" is defined in the same section as follows:

" \* \* \* 'Business' includes any activities engaged in by any person or caused to be engaged in by him for the object of gain, benefit or advantage either direct or indirect. \* \* \* "

It might be argued that although an auctioneer is a salesman within the meaning of that word as it is used in Section 6302-4, General Code, supra, if he makes a casual or isolated sale of a motor vehicle he is not engaging in the business of selling at retail motor vehicles and therefore is not subject to the prohibition contained in Section 6302-4, General Code. But since your inquiry relates to an auctioneer engaged by a dealer and not generally to auctioneers, in view of another provision of the "automobile dealers' and salesmen's licensing act," it becomes unnecessary to determine whether such auctioneer is engaging in the business of selling motor vehicles. That provision is contained in Section 6302-3, General Code, which reads in part as follows:

" \* \* \* No dealer licensed under the provisions of this act shall, directly or indirectly, solicit the sale of a motor vehicle through a pecuniarily interested person nor shall such dealer pay, or cause to be paid, any commission or compensation in any form whatsoever to any person in connection with the sale of a motor vehicle, unless such person is duly licensed as a salesman in the employ of said dealer \* \* \* "

An auctioneer engaged by a dealer to sell at auction motor vehicles is certainly "a pecuniarily interested person" within the purview of the above section. The scope of his employment amounts at least to a solicitation of the sale of a motor vehicle. It follows then that under the terms of Section 6302-3, General Code, supra, a duly licensed dealer may neither engage an auctioneer to sell motor vehicles nor pay any compensation to such auctioneer in connection with the sale of a motor vehicle unless such auctioneer "is duly licensed as a salesman in the employ of said dealer \* \* \* ."

A question similar to yours but relating to the real estate broker's license law was answered in 1927 in an opinion by the then Attorney General. At that time the definition of the phrase "real estate broker" contained in Section 6373-25, General Code, did not, as it does at present, include a person who "auctions" real estate. Sections 5866 and 5868, General Code, supra, however, then read as they do today. The syllabus of that opinion, reported in Opinions of the Attorney General for 1927, at page 1680, reads as follows:

"Any auctioneer who offers for sale real estate at auction is required by the provisions of Sections 6373-25 et seq., General Code, to secure a license as a real estate broker, irrespective of

the fact that such auctioneer is already licensed as an auctioneer under the provisions of law applicable thereto.”

This opinion was approved and followed in an opinion reported in Opinions of the Attorney General for 1928, at page 1249, and remains unreversed.

In view of all this, it is my opinion, in specific answer to your first inquiry that an auctioneer, duly licensed and appointed in accordance with the provisions of Section 5868, General Code, engaged by a dealer in motor vehicles to auction motor vehicles is required, by virtue of the provisions of the “automobile dealers’ and salesmen’s licensing act,” to be licensed as a motor vehicle salesman.

Your second question reads:

“If such auctioneer does require a Salesman’s License is it possible for the Registrar of Motor Vehicles to issue more than one Salesman’s License in the case where the auctioneer is employed by several dealers but who only acts in such capacity for one dealer at a time?”

By way of explanation you have suggested the case of an auctioneer who sells for one dealer on Mondays, for another dealer on Tuesdays, for a third dealer on Wednesdays, and for still another dealer on Thursdays throughout the year.

An auctioneer is in the same position as any other salesman in so far as the “automobile dealers’ and salesmen’s licensing act” is concerned. It is necessary then to determine whether the registrar of motor vehicles may issue more than one salesman’s license to a salesman employed by several dealers.

The question seems to be answered directly by the terms of Section 6302-5, General Code, the pertinent part of which reads 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 \* \* \* intends to act as salesman for more than one licensed motor vehicle dealer at one time \* \* \* ”

Would a salesman acting for one dealer on Mondays, for another on Tuesdays, for a third dealer on Wednesdays and for still another on

Thursdays be acting for more than one dealer "at one time," within the meaning of that phrase as it is used in the above section?

Unfortunately the phrase "at one time" is not defined in the "automobile dealers' and salesmen's licensing act." If the legislature intended by the use of that phrase to permit the issuance of several licenses to one salesman so long as it was the intention of the licensee, for example, to act under authority of each license on separate days, it is only reasonable to expect that clear provision would also have been made for the issuance of more than one license to the same individual. The fact is, however, that the "dealers' and salesmen's licensing act" is completely devoid of any such provision.

In the act reference is continually made to a license as salesman and never to licenses as salesman. I have already referred to Section 6302-1, General Code, *supra*, in connection with your first inquiry. In that Section a salesman is described as being employed by a "dealer" and not by a dealer or dealers. Nowhere in the act is there even a suggestion that one individual may be licensed at one time as a salesman for more than one dealer.

In view of this it seems to me that Section 6302-5, General Code, *supra*, does not permit the issuance of several licenses to one salesman but instead forbids the issuance of a license when it appears the applicant is either already licensed as a salesman or seeking to be licensed at the same time as salesman for more than one dealer.

This conclusion seems to be consistent with views expressed by my immediate predecessor in an opinion reported in Opinions of the Attorney General for 1944, at page 721. Although the question in that opinion was whether the holder of a motor vehicle dealer's license could also obtain a license as salesman for another dealer, the following statement in that opinion casts some light upon the instant question:

"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."

In view of all this it is my opinion that the registrar of motor vehicles may not issue another license as salesman of motor vehicles to one who is already the holder of a salesman's license which is in force and effect.

Before closing I feel that it is proper for me to point out that as a general rule statutes which do not convey a clear and definite meaning should be given a construction which will not cause their operation to result in hardship, injustice or absurd consequences. If, however, the meaning of a statute is plain, and its provisions are susceptible of but one interpretation, it must be given no other construction than that which its words demand, notwithstanding hardship or injustice which might thereby result.

The conclusions at which I have arrived in this opinion may cause the statutes which I have considered to result in hardship or injustice to auctioneers. But in view of the fact that these statutes are plain and unambiguous and convey a clear and definite meaning, they must be read in the light of their language and not their results. If I were to take it upon myself to arrive at conclusions based upon what I think the statutes under consideration should provide, I would be making not construing the law, performing the function of the General Assembly not of the Attorney General.

Respectfully,

HUGH S. JENKINS,  
Attorney General.