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A DEALER MAY ENGAGE IN THE LEASING OF MOTOR VEHICLES AT THE SAME LOCATIONS AT WHICH HE CONDUCTS A "DEALERSHIP" BUT MAY NOT CONDUCT SUCH A "DEALERSHIP" AT THE SAME LOCATION AT WHICH A SEPARATE CORPORATION IS ENGAGED IN THE LEASING OF MOTOR VEHICLES SINCE THE DEALER MUST OPERATE FROM HIS OWN ESTABLISHED PLACE OF BUSINESS— §§4517.01 (J), R.C., CHAPTER 1517., R.C., §§4517.02, R.C., 4517.18, R.C.

SYLLABUS:

A "dealer" as defined in Section 4517.01 (J), Revised Code, may engage in the leasing of motor vehicles at the same location at which he conducts a "dealership" licensed as required by Section 4517.02, Revised Code, but may not conduct such a "dealership" at the same location at which a separate corporation is engaged in the leasing of motor vehicles, since pursuant to Section 4517.01 (J), Revised Code, the dealer must operate from his own established place of business.

Columbus, Ohio, January 17, 1962

Hon. C. W. Ayers, Registrar
Bureau of Motor Vehicles, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

"I have recently had it brought to my attention that automobile dealers in the State of Ohio are presently engaging in sale of new and used motor vehicles and the leasing of new motor vehicles from the same location.

"I understand that in some instances the dealers are utilizing one corporation to both lease and sell motor vehicles while in other instances, they have formed a separate corporation which operates from the same location as their car dealership.

"I would like an opinion as to whether an auto agency which engages in either of the foregoing practices may be considered a dealer within the meaning of Section 4517.01 (J), Revised Code."

Section 4517.01 (J), Revised Code, provides:

"(J) '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."

The question presented by your request necessitates that I consider whether a "dealer" as defined in Section 4517.01 (J), Revised Code, may engage in an activity which is incidental and related to the sale of motor vehicles but which is not specifically set forth in the definition. In this respect it is to be noted that Section 4517.01 (J), Revised Code, defines a "dealer" as any person, "engaged in the business of selling, displaying, offering for sale, or *dealing in motor vehicles.*"

Thus, it becomes necessary to determine whether the legislature intended to permit a "dealer" to engage in activities which are incidental to the sale of motor vehicles, but which do not require a license.

The dealers' and salesmen's licensing act, then Section 6302-1, *et seq.*, General Code, now Chapter 4517., Revised Code, was enacted in 1938, 117 Ohio Laws, 682, (Amended House Bill No. 531) for the purpose of regulating the sale of motor vehicles to protect the public from the commission of frauds. In this respect the title of the original bill reads as follows:

"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; to regulate the issuance of license plates or placards to motor vehicle dealers and certain other persons and to regulate the use of such license plates or placards, and to amend sections 6290, 6290-1, 6301, 12616-2 and 12621 of the General Code, and to enact supplemental sections to be known as sections 6301-1, 6301-2 and 12621-1 of the General Code. Section 4517.02, Revised Code, provides, in part:

"No person other than a salesman or dealer licensed according to sections 4517.01 to 4517.18, inclusive, of the Revised Code, shall engage in the business of selling motor vehicles at retail within this state.

"No person shall engage in the business of selling at retail motor vehicles in this state or assume to engage in such business without first having a license therefor, excepting that in the case of the dissolution of a partnership by death, the surviving partners may operate under the license for a period of sixty days, and the heirs or representatives of deceased persons and receivers or trustees in bankruptcy appointed by any competent authority may operate under the license of the person succeeded in possession by such heir, representative, receiver, or trustee in bankruptcy.

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Section 4517.18, Revised Code, provides:

“No person shall engage in the business of selling, displaying, offering for sale, or dealing in motor vehicles at retail without having a license therefor as required by sections 4517.01 to 4517.18, inclusive, of the Revised Code.”

Section 4517.18, Revised Code, prohibits “dealing in motor vehicles at retail”, without a license.

Section 4517.01 (G), Revised Code, provides:

“(G) ‘Retail sale’ or ‘sale at retail’ means the act or attempted act of selling, bartering, exchanging, or otherwise disposing of a motor vehicle to an ultimate purchaser for use as a consumer.”

The word “retail” is defined in Webster’s 3rd International Dictionary as “the sale of commodities or goods in small quantities to ultimate consumers.” It would appear, therefore, that the phrase “dealing in motor vehicles at retail” as used in Section 4517.18, Revised Code, is synonymous with “retail sale” or “sale at retail” as used in Section 4517.01 (G), Revised Code.

Sections 4517.02 and 4517.08, Revised Code, do not prohibit a “person” from leasing or renting a motor vehicle without a license.

The question remains, however, whether the legislature in defining a “dealer” in Section 4517.01 (J), Revised Code, intended to limit the scope of a dealer’s activities to those which he might perform as a result of his license and those matters specifically relating to painting, repair, servicing, etc. In this respect it is necessary to consider the meaning and effect of the phrase “dealing in motor vehicles” as used in the first sentence of Section 4517.01 (J), Revised Code. This phrase is not used in describing those activities which require a license and it is safe to assume that had the legislature intended to limit a dealer to these specific activities they would have so stated.

Section 3517.06 (I), Revised Code, provides a dealer’s license may be denied if the dealer does not have an established place of business used exclusively for selling, displaying, offering for sale, or dealing in motor vehicles. Thus, I must conclude that the legislature intended and envisioned transactions by dealers involving motor vehicles such as, the wholesale of vehicles to other dealers, the leasing of motor vehicles, the

rental of motor vehicles, etc., which though directly related to a dealership may be performed by anyone without a license.

Therefore, in answer to your first question, it is my opinion that a "dealer" as defined in Section 4517.01 (J), Revised Code, may engage in the leasing or rental of motor vehicles since such activity constitutes "dealing in motor vehicles" as that phrase is used in Section 4517.01 (J), Revised Code.

Your second question requires me to determine whether a dealer may operate at the same location with another person engaged in a legitimate business dealing in motor vehicles in a manner not requiring a license.

Section 4517.01 (A), Revised Code, provides:

"As used in sections 4517.01 to 4517.18, inclusive, of the Revised Code:

"(A) 'Persons' includes individuals, firms, partnerships, associations, joint stock companies, corporations, and any combinations of individuals."

Sections 4517.01 (J), 4517.02 and 4517.06 (I), Revised Code require the licensee to maintain a place of business used exclusively for selling, displaying, offering for sale or dealing in motor vehicles. It seems apparent that such activities must be conducted by the licensee and that even though another individual might paint, service or repair cars without a license or for that matter lease or rent such motor vehicle without a license, such activity cannot be carried on at the same location with a licensed motor vehicle dealer. This would seem to be equally true even though the individual owned all of the stock of the dealership and the leasing company. The dealer must operate from an established place of business, and the only logical interpretation is that the place of business must be operated *by the dealer*.

Therefore, it is my opinion and you are accordingly advised that a "dealer" as defined in Section 4517.01 (J), Revised Code, may engage in the leasing of motor vehicles at the same location at which he conducts a "dealership" licensed as required by Section 4517.02, Revised Code, but may not conduct such a "dealership" at the same location at which a

separate corporation is engaged in the leasing of motor vehicles, since pursuant to Section 4517.01 (J), Revised Code, the dealer must operate from his own established place of business.

Respectfully,

MARK MCELROY

Attorney General