

OPINION NO. 75-086

Syllabus:

Corporations which list automobiles for sale and aid purchasers in their search for an automobile come within the purview of R.C. 4517.18, despite the fact that such a corporation does not take title to or possession of the vehicle.

To: Curtis Andrews, Registrar, Bureau of Motor Vehicles, Columbus, Ohio
By: William J. Brown, Attorney General, December 8, 1975

I have before me your request for my opinion regarding a corporation called Computacar. From the materials which you have furnished, it can be seen that Computacar attempts to bring potential automobile purchasers and sellers together by use of a computer. The corporation primarily acts as a listing service for persons who wish to buy or sell automobiles. For persons selling their automobiles, a basic fee is charged to the owner for the initial listing, and the owner and the corporation further agree that, should the automobile listed be sold, an additional fee would be paid by the owner. Likewise, a basic fee is charged of persons utilizing the service who wish to pur-

chase an automobile. Briefly stated, the procedure by which the above is accomplished is for the potential buyer to specify various details about the automobile which he desires, and through a computer, he is furnished with a listing of all automobiles, which potential sellers have listed with the service. The potential buyer then directly concludes the purchase with the owner of the automobile listed. At no time does the corporation have title to or possession of the automobiles listed. Rather, it merely acts as a listing service designed to facilitate the purchase and sale of automobiles. Specifically, you inquire whether this operation comes within the purview of R.C. 4517.18.

R.C. 4517.18 concerns licensing requirements for motor vehicle dealers. It reads as follows:

"No person shall engage in the business of selling, auctioning, distributing, 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 of the Revised Code."

R.C. 4517.02 provides, in pertinent part, as follows:

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

"No person shall engage in the business of displaying or selling at retail or auctioning motor vehicles in this state or assume to engage in such business without first having a license therefor. . . ."

R.C. 4517.01(G) 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."

In Auto Reality Service v. Brown, 27 Ohio App.2d 77 (1971), a situation very similar to the instant situation was discussed. In that case, a corporation was formed which contacted individuals who wished to sell their automobiles and entered into a listing agreement with the owner to advertise the automobile and to seek potential buyers therefor. The owner would pay a fee to the corporation at the time the automobile was listed and would further agree that a specific additional amount would be paid for finding a buyer in the event a sale was made. Also, the corporation at no time possessed or had title to any of the automobiles listed.

The first branch of the syllabus of Auto Reality Service, supra, reads:

"Where listing agreements are made with owners of automobiles under which the cars are advertised for sale,

and potential buyers sought, but the possession of and title to the vehicles remain with the owner, such business comes within the provisions of R.C. sections 4505.18, 4517.01, 4517.02 and 4517.18 (motor vehicle dealers licensing law)." (Emphasis added.)

The court, at 82, discussed the corporations contentions that it did not come within the purview of dealers' licensing requirements because it never had title to any automobiles, but merely acted as a broker bringing buyers and sellers together, as follows:

"The plaintiff argues that he does not purport to be a dealer in automobiles, and that he is not selling automobiles as contemplated by the automobile dealers' licensing laws. Plaintiff contends that its type of business activities were not within the purview of the statutes in that it was acting in the capacity of a broker, providing listing service only, and neither owning, titling, nor selling any of the automobiles it listed.

"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. The language as used is quite broad, and encompasses within it the regulation of all commercial dealings involving the selling of motor vehicles. We hold that such sections are broad enough in their scope to encompass the business operations of this plaintiff." (Emphasis added.)

I conclude that Auto Reality Service v. Brown, supra, is controlling in the instant situation. The corporation in question in that case and the corporation in the instant case perform the same functions, that being to list automobiles for sale and find potential buyers for such automobiles. In neither case does the corporation ever possess actual title to the automobiles.

In specific answer to your question, it is my opinion and you are so advised that corporations which list automobiles for sale and aid purchasers in their search for an automobile come within the purview of R.C. 4517.18, despite the fact that such a corporation does not take title to or possession of the vehicle.