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AUTOMOBILE DEALERS AND SALESMEN LICENSING LAW
—MANUFACTURER OF MOTOR VEHICLES NOT REQUIRED
TO BE LICENSED AS A DEALER OR SALESMAN NOT RE-
QUIRED TO OPERATE THROUGH A LICENSED DEALER OR
SALESMAN—SALE AND DELIVERY OF MOTOR VEHICLES
TO MUNICIPAL CORPORATION OR TO TURNPIKE COM-
MISSION—SECTIONS 4517.01 THROUGH 4517.99 RC.

SYLLABUS:

The provisions of sections 4517.01 to 4517.99, inclusive, of the Revised Code, the Automobile Dealers and Salesmen Licensing Law, do not require that a manufacturer of motor vehicles be licensed as an automobile dealer or salesman, or that such manufacturer must operate through a licensed dealer or salesman, in order to sell and deliver motor vehicles to a municipal corporation or to the Turnpike Commission.

Columbus, Ohio, September 3, 1954

Mr. C. Ervin Nofer, Acting Registrar, Bureau of Motor Vehicles,
Columbus, Ohio

Dear Sir:

I have your letter requesting my opinion as to whether there has been any violation of the automobile dealers and salesmen licensing law by reason of the following transactions:

A manufacturer of motor vehicles submitted to a municipal corporation, at various times, bids for the furnishing of several types of motor vehicles. Upon three occasions such manufacturer was found to be the

lowest bidder and was awarded contracts for the furnishing of a total of 152 motor vehicles. The motor vehicles were delivered by the manufacturer directly to the municipal corporation.

Another manufacturer of motor vehicles submitted a bid for the sale of two motor vehicles to the Ohio Turnpike Commission. The bid was accepted, and the two motor vehicles are to be delivered by the manufacturer directly to the Turnpike Commission.

The manufacturers are not licensed as dealers or salesmen, and the sales were not made through licensed dealers or salesmen.

The automobile dealers and salesmen licensing law is contained in sections 4517.01 to 4517.99, inclusive, of the Revised Code. The provisions of this law govern the operations of persons who engage in the business of selling motor vehicles at retail, and require that such persons be licensed, by the registrar of motor vehicles, as either dealers or as salesmen.

Pertinent parts of this law are as follows:

Section 4517.18:

“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 4517.02:

“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 dealer 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 * * *”

Section 4517.03:

“No salesman shall 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. * * *”

(Emphasis added.)

It will be noted that the prohibition against selling motor vehicles without a license, and the requirement for either a dealer's or salesman's license to sell motor vehicles refer only to sales of motor vehicles *at retail*.

For the purposes of the automobile dealers and salesmen licensing law, the phrase, "at retail", is specifically defined, in section 4517.01, Revised Code:

"(E) 'Retail sale' or 'sale at retail' means the act or attempted act of selling, bartering, exchanging, or otherwise disposing of a motor vehicle to a *person for use as a consumer.*"

(Emphasis added.)

It seems clear, therefore, that neither the price at which a motor vehicle is sold nor the number of motor vehicles involved in a sale (except possibly in reference to a casual or isolated sale which is not considered herein) has any bearing upon whether such sale is a "sale at retail". The sole criterion provided is that the sale of the motor vehicle, or motor vehicles, be to a *person* for use, by such person, as a consumer.

In your inquiry, it is stated that several motor vehicles were sold to a municipal corporation, after competitive bidding therefor, and that the Ohio Turnpike Commission has made an award for the purchase of two motor vehicles to the successful bidder. It may be presumed that both the municipal corporation and the Turnpike Commission are purchasing said motor vehicles for use by them as consumers. If the municipal corporation and the Turnpike Commission are "persons" as that word is used in section 4517.01 (E), supra, then such sales of motor vehicles to them are sales made "at retail", and, without reference to any exemptions which may be provided in the automobile dealers and salesmen licensing law, such sales are required to be made by or through licensed dealers or salesmen.

The word "persons" is, also, specially defined for the purposes of the automobile dealers and salesmen licensing law as follows:

"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." (Section 4517.01 (A).)

The Ohio Turnpike Commission "is a body both corporate and politic * * * and the exercise by it of the powers conferred * * * shall be held to be essential governmental functions of the state." Section 5537.02 Revised Code. The Ohio Supreme Court has defined "body politic", in the case of *Urich v. Kolesar*, 132 Ohio State, 115, at page 118, as follows:

"What is a 'body politic'? There is nothing in this statute to indicate that the words are employed in other than their common

acceptation. 'Politic' is a derivative from a root signifying 'citizen'. It would seem therefore, that the phrase connotes simply a group or body of citizens organized for the purpose of exercising governmental functions. Such a group may be large or small, and it may be a group within a group. * * * Balentine's Law Dictionary defines the phrase 'body politic' as 'a term often applied to a municipal corporation. A county is such a body.' * * *

It seems clear that both the municipal corporation and the Turnpike Commission are *public* corporations, exercising some part of the governmental functions of the state. As such, are they included within the quoted definition of "persons"?

That part of the definition which reads, "individuals, firms, partnerships, associations, joint stock companies, * * * and any combinations of individuals" does not apply to or include, either a municipal corporation or the Turnpike Commission. Since both are bodies corporate, *supra*, it may be urged that they are included in the remaining part of the definition, to-wit, the word "corporations". However, the legislature seems clearly to intend otherwise. In Chapter I of the Revised Code under the heading, "Definitions", section 1.02 provides, in part:

"As used in the Revised Code, unless the context otherwise requires: * * *

"(B) 'Person' includes a *private* corporation;"
(Emphasis added.)

So far as municipal corporations are concerned, this definition is repeated in Title VII, Municipal Corporations, section 701.01:

"In the interpretation of Title VII of the Revised Code, unless the context shows that another meaning was intended:

"(A) 'Person' includes a *private* corporation;"
(Emphasis added.)

Having specified that "person" shall include a *private* corporation, the legislature implies that a *public* corporation shall be excluded. Obviously the context of section 4517.01 (A), Revised Code, *supra*, does not require a different interpretation; there is nothing immediately preceding or following "persons", "corporations", or the whole definition, which requires, or implies, the inclusion of "public" to modify "corporations".

An examination of other sections of the Revised Code substantiates this conclusion. The legislature has defined "person" or "persons" many

times, for different purposes. In addition to the three definitions quoted herein, *supra*, there are thirty-three statutory definitions of either "person" or "persons". In each of these the definition includes "corporation" or "corporations", but in all of them the context, and the text, and purpose of the laws in which they are contained, clearly indicate that it is a *private* corporation which is intended. In one instance the text and purpose of the law, uniform declaratory judgment act, would seem to require that municipal corporations be included, and that definition includes the words, "municipal corporation, or other corporation" Section 2721.01 R.C.

Since the word "persons" as defined in section 4517.01 (A), Revised Code, *supra*, does not include public corporations, the sales of motor vehicles to a municipal corporation or to the Turnpike Commission, both of which are public corporations, are not subject to the provisions of the automobile dealers and salesmen licensing act.

Accordingly, it is my opinion that the provisions of sections 4517.01 to 4517.99, inclusive, of the Revised Code, the Automobile Dealers and Salesmen Licensing Law, do not require that a manufacturer of motor vehicles be licensed as an automobile dealer or salesman, or that such manufacturer must operate through a licensed dealer or salesman, in order to sell and deliver motor vehicles to a municipal corporation or to the Turnpike Commission.

Respectfully,
C. WILLIAM O'NEILL
Attorney General