

OPINION NO. 84-082**Syllabus:**

Pursuant to R.C. 4517.02, a corporation which charges consumers for information about automobiles which are available from dealers in a particular market area is required to comply with the motor vehicles dealer licensing requirements of R.C. Chapter 4517.

To: Kenneth R. Cox, Director, Ohio Department of Highway Safety, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, December 19, 1984

I have before me your request for my opinion concerning whether a company which is not licensed as a motor vehicle dealership may provide, by means of a computer system, information about automobiles available from dealers in a particular market area to consumers who are required to pay for the information. Your request letter states:

The suggested mode of operation is that the company would contact dealers in a particular market area and obtain information for its data base on the various makes, models, options, color, price, etc., of automobiles available from the dealership. The dealers do not pay the company a fee for their inclusion in the business.

Consumers who are interested in purchasing a car and want to use the company's data base will be required to pay a fee. If the consumer finds information on a car that he is interested in, he may obtain a computer printout of the information for an additional fee. The dealer involved will sell the car to the person for the price listed on the printout. However, the consumer is not obligated to purchase the vehicle from the dealer by purchasing the printout. The company will not receive any compensation from licensed motor vehicle dealers.

The company also intends to allow individuals who wish to sell used automobiles by means of a casual sale to put information in the computer data base about their vehicles. The company plans to charge a fee to private individuals who desire to use the computer system to sell their vehicles.

In past years, the Bureau relied upon the Attorney General's ruling in 1975 Op. Att'y Gen. No. 75-086, which states that corporations which list automobiles for sale and aid purchasers in their search for an automobile come within the purview of 4517.18, despite the fact that such a corporation does not take title to or possession of the vehicle. However, Ohio Revised Code 4517.18 has been repealed and Section 4517.02 also relied upon in the previous opinion has been revised since the opinion was written.

Please advise the Department as to the legality of an automobile computer service pursuant to Ohio Revised Code Chapter 4517 and in light of Op. No. 75-086 which is based upon statutes in effect prior to 1977.

I begin with a general discussion of R.C. 4517.18 and R.C. 4517.02 as they existed at the time of the issuance of 1975 Op. Att'y Gen. No. 75-086. Prior to its repeal in 1977-1978 Ohio Laws, Part I, 842 (Am. S.B. 264, eff. Nov. 4, 1977), R.C.

4517.18 prohibited any person from engaging in the business of "selling, auctioning, distributing, displaying, offering for sale or dealing in motor vehicles at retail" unless the person had a license as required by R.C. 4517.01 to R.C. 4517.18. 1974 Ohio Laws, Part II, 1139 (Am. Sub. H.B. 1161, eff. Sept. 30, 1974). Prior to its revision in Am. S.B. 264, R.C. 4517.02 provided, 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. . . .

. . . .

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. . . .

1965 Ohio Laws 1124 (Am. H.B. 696, eff. Nov. 5, 1965). Thus, the former version of R.C. 4517.02 provided that no person other than a salesman, dealer, or motor vehicle auction owner, licensed according to law, could engage in the business of selling at retail or of auctioning motor vehicles within the state. Prior to its amendment in Am. S.B. 264, R.C. 4517.01(J) defined "dealer" generally for purposes of R.C. 4517.02 and R.C. 4517.18 to include "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. . . ." 1967-1968 Ohio Laws, Part I, 1664 (Am. H.B. 490, eff. Dec. 11, 1967). R.C. 4517.01(G), which has undergone no revision, defines "retail sale" or "sale at retail" to mean, "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."

As noted above, in Op. No. 75-086, my predecessor was asked to opine as to whether a company which provided computerized automobile listing services came within the motor vehicle dealer licensing law, specifically R.C. 4517.18. In Op. No. 75-086, my predecessor relied on the case, Auto Reality Services, Inc. v. Brown, 27 Ohio App. 2d 77, 272 N.E.2d 642 (Franklin County 1971) as dispositive of the question before him. In Auto Reality Services, Inc., the court concluded that a corporation which enters into listing agreements with the owners of automobiles, where the motor vehicles are advertised for sale and potential buyers are sought, but the possession of and title to the vehicles remain with the owner, must comply with motor vehicle dealers licensing requirements. In Auto Reality Services, Inc., the court discussed the contention of the corporation that it did not come within the purview of the motor vehicle dealer licensing law 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.

27 Ohio App. 2d at 82, 272 N.E.2d at 645-46. Finding Auto Reality Services, Inc. as controlling, my predecessor concluded in Op. No. 75-086 that automobile listing corporations came within R.C. 4517.18 even though such corporations did not take title to or possession of the vehicle.

With this general discussion in mind, I reach your specific question whether Op. No. 75-086 should be followed in the aftermath of both the repeal of R.C. 4517.18 and the revision of R.C. 4517.02, and thus whether a corporation which provides computerized automobile listing services is required to comply with the motor vehicle dealer licensing requirements of R.C. Chapter 4517. R.C. 4517.02 currently provides in pertinent part as follows:

(A) Except as otherwise provided in this section, no person shall:

(1) Engage in the business of displaying or selling at retail new motor vehicles or assume to engage in such business, unless he is licensed as a new motor vehicle dealer under sections 4517.01 to 4517.45 of the Revised Code, or is a salesperson licensed under such sections and employed by a licensed new motor vehicle dealer;

(2) Engage in the business of displaying or selling at retail used motor vehicles or assume to engage in such business, unless he is licensed as a dealer under sections 4517.01 to 4517.45 of the Revised Code, or is a salesperson licensed under such sections and employed by a licensed used motor vehicle dealer or licensed new motor vehicle dealer;

(3) Engage in the business of regularly making available, offering to make available, or arranging for another person to use a motor vehicle, in the manner described in division (M) of section 4517.01 of the Revised Code, unless he is licensed as a motor vehicle leasing dealer under sections 4517.01 to 4517.45 of the Revised Code;

(4) Engage in the business of motor vehicle auctioning or assume to engage in such business, unless he is licensed as a motor vehicle auction owner under sections 4517.01 to 4517.45 and 4707.01 to 4707.99 of the Revised Code;

(5) Engage in the business of distributing motor vehicles or assume to engage in such business, unless he is licensed as a distributor under sections 4517.01 to 4517.45 of the Revised Code.

In essence, R.C. 4517.02 now prohibits anyone from displaying or selling new or used motor vehicles and from leasing, auctioning, or distributing motor vehicles without an appropriate license. When Op. No. 75-086 was written, R.C. 4517.02 prohibited anyone other than a licensed dealer, salesman or motor vehicle auction owner from selling, displaying, or auctioning motor vehicles, and R.C. 4517.18 prohibited persons from selling, auctioning, distributing, displaying, offering for sale, or dealing in motor vehicles at retail without having the appropriate license. It is apparent that the prohibitions found in the previous version of R.C. 4517.02 and R.C. 4517.18 have been incorporated into the current version of R.C. 4517.02.

R.C. Chapter 4517 was amended by Am. S.B. 264 to provide for more specific regulation of persons dealing in various ways with motor vehicles. R.C. Chapter 4517 now specifically provides for new motor vehicle dealers, see R.C. 4517.01(K), R.C. 4517.04, used motor vehicle dealers, see R.C. 4517.01(L), R.C. 4517.05, motor vehicle leasing dealers, see R.C. 4517.01(M), R.C. 4517.06, motor vehicle auction owners, see R.C. 4517.01(Q), R.C. 4517.07, distributors, see R.C. 4517.01(T), R.C. 4517.08, and salespersons, see R.C. 4517.01(N), R.C. 4517.09. R.C. 4517.02 was amended to reflect these changes. There is no indication that the General Assembly intended to weaken the prohibitions against the unlicensed

selling of and dealing in motor vehicles, or that the General Assembly intended legislatively to overrule Auto Reality Services, Inc. and Op. No. 75-086. As stated in the preamble to Am. S.B. 264, the bill was designed to "require motor vehicle leasing dealers to be licensed; establish additional requirements for the licensing of new and used motor vehicle dealers; increase the license fees for new and used motor vehicle dealers, distributors, auction owners, and salespersons; and make other changes in the motor vehicle dealers' and salespersons' licensing law." The changes effected by Am. S.B. 264 are fully consistent with the general legislative purpose of the motor vehicle dealer licensing law which, as expressed in Auto Reality Services, Inc., is "to prevent fraud upon the public in the sale of motor vehicles." 27 Ohio App. 2d at 82, 272 N.E.2d at 646.

In the situation you describe, the corporation is, under the analysis of Auto Reality Services, Inc. and Op. No. 75-086, engaged in the business of selling motor vehicles. Consequently, a license is required under R.C. 4517.02 in order for the corporation to conduct such business.¹

In conclusion, it is my opinion, and you are so advised, that pursuant to R.C. 4517.02, a corporation which charges consumers for information about automobiles which are available from dealers in a particular market area is required to comply with the motor vehicle dealer licensing requirements of R.C. Chapter 4517.

¹ I note that R.C. 4505.18(B) provides that no person shall "[d]isplay or display for sale or sell as a dealer or acting on behalf of a dealer, a motor vehicle without having obtained a manufacturer's or importer's certificate or a certificate of title therefor as provided in sections 4505.01 to 4505.19, inclusive, of the Revised Code. . . ." Thus, a motor vehicle dealer must obtain a certificate of title before he may sell a motor vehicle. As I have concluded, in the situation you describe, the corporation is a dealer engaged in the business of selling motor vehicles, and therefore, under R.C. 4505.18, must obtain a manufacturer's or importer's certificate or a certificate of title prior to the sale of any motor vehicle. See Auto Reality Services, Inc. v. Brown, 27 Ohio App. 2d 77, 272 N.E.2d 642 (Franklin County 1971).