

OPINION NO. 89-008

Syllabus:

1. Under R.C. 4738.11(A), the Ohio Motor Vehicle Salvage Dealer's Licensing Board is authorized to adopt rules prescribing the physical characteristics of facilities used by motor vehicle salvage dealers. Since no statutory direction is given as to the manner in which the Board is to regulate the size of the area occupied by such facilities or the location of office space, the Board may regulate those factors in any reasonable manner that it deems appropriate.
2. In carrying out its duties under R.C. Chapter 4738, the Ohio Motor Vehicle Salvage Dealer's Licensing Board may reasonably construe R.C. Chapter 4738 and [1988-1989 Monthly Record, vol. 1] Ohio Admin. Code 4501:1-4-04 at 508-09 as permitting the issuance of a motor vehicle salvage dealer's license when the proposed facility consists of a salvage yard with an area of at least fifty thousand square feet and an office of adequate size located on a separate site.

To: William M. Denihan, Director, Department of Highway Safety, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, February 23, 1989

I have before me your request for an opinion on the question whether, under R.C. 4738.11 and rule 4501:1-4-04 of the Ohio Administrative Code, *see* [1988-1989 Monthly Record, vol. 1] Ohio Admin. Code 4501:1-4-04 at 508-09, a motor vehicle salvage dealer's license¹ may be issued when the proposed facility consists of a split location, rather than a single site. Your staff has informed me that the Ohio Motor Vehicle Salvage Dealer's Licensing Board has considered this question as applied to particular facts and has interpreted the relevant statutory and regulatory provisions as permitting the issuance of a motor vehicle salvage dealer's license when the proposed facility consists of a salvage yard with an area of at least fifty thousand square feet and an office of adequate size located on a separate site. Your question is, in essence, whether this interpretation is consistent with R.C. 4738.11 and rule 4501:1-4-04. You have not inquired about the rights of any specific person under these provisions and I am not considering any such rights. *See, e.g.*, 1986 Op. Att'y Gen. No. 86-076 at 2-422 ("It is inappropriate for [the Attorney General] to use the opinion-rendering function to make findings of fact or determinations as to the rights of particular individuals").

¹ R.C. 4738.11 and [1988-1989 Monthly Record, vol. 1] Ohio Admin. Code 4501:1-4-04 at 508-09 also apply to the licensing of salvage motor vehicle auctions and salvage motor vehicle pools. *See* R.C. 4738.01(C), (D). You have not specifically inquired about such licenses and I am not addressing them in this opinion. I note, however, that provisions of statutes and rules applicable to motor vehicle salvage dealers are generally applicable also to salvage motor vehicle auctions and pools, and that the analysis contained herein is, accordingly, generally applicable to such auctions and pools.

R.C. 4738.01 defines a "[m]otor vehicle salvage dealer" as "any person who engages in business primarily for the purpose of selling salvage motor vehicle parts and secondarily for the purpose of selling at retail salvage motor vehicles or manufacturing or selling a product of gradable scrap metal." R.C. 4738.02 provides, with certain exceptions, that "no person shall engage in the business of selling at retail salvage motor vehicles or salvage motor vehicle parts, or assume to engage in any such business without first obtaining a motor vehicle salvage dealer's license" pursuant to R.C. Chapter 4738. R.C. 4738.04 provides that an application for a motor vehicle salvage dealer's license should be submitted to the Registrar of Motor Vehicles. The Registrar may either grant the requested license, *see* R.C. 4738.05, or deny it for the reasons set forth in R.C. 4738.07. Among the grounds for denial are the failure to comply with R.C. 4738.01-.15 and the failure to have an established place of business. R.C. 4738.07(B), (H). If an application is denied, the Registrar must "enter a final order together with his findings and certify the same to the motor vehicle salvage dealer's licensing board." R.C. 4738.07. An applicant who has been refused a license may appeal to the Motor Vehicle Salvage Dealer's Licensing Board as provided in R.C. 4738.12. *See* R.C. 4738.07.

R.C. 4738.09 creates the Ohio Motor Vehicle Salvage Dealer's Licensing Board, and R.C. 4738.10 makes the Board a part of the Department of Highway Safety for certain administrative purposes. R.C. 4738.11(A) provides that the Motor Vehicle Salvage Dealer's Licensing Board:

shall adopt rules prescribing the physical characteristics of facilities used by motor vehicle salvage dealers..., which shall include requirements for fencing or otherwise screening the view of the facilities to at least the extent required for junkyards by [R.C. 4737.07 and 4737.09]. Such rules shall be consistent with the standards adopted by the director of transportation pursuant to the "Highway Beautification Act of 1965," 79 Stat. 1030, 23 U.S.C. §361 [*sic*; was §136 intended?], as amended.

R.C. 4738.11(B) authorizes the Board to "make such other reasonable rules as are necessary to carry out and effect" R.C. 4738.01-.12.

Pursuant to R.C. 4738.11, the Motor Vehicle Salvage Dealer's Licensing Board has enacted [1988-1989 Monthly Record, vol. 1] Ohio Admin. Code 4501:1-4-04 at 508-09, which states, in part:

(A) *The characteristics of the facilities used by motor vehicle salvage dealers...shall consist of the following:*

(1) *A minimum area of fifty thousand square feet.*

(2) Such area to be shielded by a fence meeting the following requirements, except where relieved by zoning rules:

(a) Having a minimum height of six feet with a maximum of ten feet in height.

(b) Such fencing shall shield the premises from ordinary view.

(c) Exceptions to this paragraph must be granted in writing, by the registrar of motor vehicles, provided however, that no exception shall be granted in contravention of the United States Highway Beautification Act of 1965, as amended.

(3) A living hedge of equal height and sufficient density to prevent view of the premises may be substituted for the fence. A living hedge may exceed the ten-foot height limitation.

(4) Reasonable consideration shall be given to the topography of the land by enforcement personnel when inspecting premises for such fence or enclosure, provided, however, that this provision shall not be construed to permit violation of the United States Highway Beautification Act of 1965, as amended, where applicable.

(5) All inventory of the business will be stored behind the fence or enclosure to promote and preserve a positive visual impact of the salvage yard's business on the surrounding neighborhood. All activities of the salvage yard will be conducted in a manner that will sustain a good visual image.

(6) All non-owned vehicles in storage for the general public shall be held in an area segregated and easily identifiable from the inventory

of the licensee. The licensee shall maintain a separate record of all transactions concerning these vehicles.

(B) *The office in which such business will be transacted will be in a building of sufficient size to conduct said business with a minimum of two hundred twenty-five square feet. This area shall consist of the following:*

(1) An area devoted to sales transactions.

(2) An office to maintain records required to operate business by the licensee.

....

(E) Each motor vehicle salvage dealer...shall keep his license, or a certified copy thereof, posted in a conspicuous place in each business establishment. (Emphasis added.)

Rule 4501:1-4-04 thus requires that, in order to hold a license under R.C. Chapter 4738, a motor vehicle salvage dealer must have facilities with a minimum area of fifty thousand square feet and an office in a building with a minimum area of two hundred twenty-five square feet. *See also* R.C. 4738.12 ("[t]he [motor vehicle salvage dealer's licensing] board may suspend or revoke any license if the licensee has in any manner violated the rules issued pursuant to [R.C. 4738.01-.16]..."); 6 Ohio Admin. Code 4501:1-4-06. Your question is whether the office must be located on the same site as the area of fifty thousand square feet, or whether a license may be issued when a facility consists of a salvage yard with an area of at least fifty thousand square feet and an office of adequate size located on a separate site.²

R.C. Chapter 4738 does not specifically address your question, but merely delegates to the Motor Vehicle Salvage Dealer's Licensing Board the authority to adopt rules "prescribing the physical characteristics of facilities used by motor vehicle salvage dealers." R.C. 4738.11(A). The Board is given direction by R.C. 4738.11 as to the manner in which it is to regulate the fencing or other screening of the view of the facilities, but is given no direction as to the manner in which it is to regulate the size of the area occupied by the facilities or the location of office space. The Board may, accordingly, undertake regulation of those physical characteristics of the facilities in any reasonable manner that it deems appropriate. *See Jewett v. Valley Railway Co.*, 34 Ohio St. 601, 608 (1878); 1987 Op. Att'y Gen. No. 87-017; Op. No. 86-076; 1984 Op. Att'y Gen. No. 84-080.

Absent some showing that it is unreasonable to grant a license when the proposed facility is comprised of a split location, it appears that such action is permitted by R.C. Chapter 4738. Such action appears to be consistent with the provisions of R.C. 4738.04 that require an applicant for a motor vehicle salvage dealer's license to include in the application the location of the principal place of business, the county in which the business is to be conducted, and the address of each place of business in the county, and with the provisions of R.C. 4738.05 that require that application be made for a certified copy of the license for each place of business operated in the county. *See also* R.C. 4738.08 (requiring a licensee to notify the Registrar of Motor Vehicles of a change in the "[l]ocation of office or principal place of business").

You have asked whether the granting of a license for a split location is permitted also by rule 4501:1-4-04. Rule 4501:1-4-04, and the other rules in 6 Ohio Admin. Code Chapter 4501:1-4, were adopted by the Motor Vehicle Salvage Dealer's Licensing Board pursuant to its rulemaking authority under R.C. 4738.11. The language of rule 4501:1-4-04, quoted above, does not directly address the issue of whether the office must be located on the site that contains the area of at least fifty thousand square feet. That rule has, however, been construed by the Board as permitting the issuance of a license when the proposed facility is comprised of a split location, and that interpretation appears to be consistent with the language of the rule. Rule 4501:1-4-04(A) describes the characteristics that the facilities of a

² R.C. 4738.04 requires that a separate application for license be submitted for each county in which the business is to be conducted. You have described a situation in which both the storage area and the office are located within the same county, and I am addressing only that situation.

motor vehicle salvage dealer must have, including the minimum total area required. Rule 4501:1-4-04(B) describes the office in which the business is to be transacted, including the minimum total area that the building housing the office must have. The rule does not, expressly or by implication, indicate that the office must be located on the plot of land that holds the rest of the facilities. I find, accordingly, that rule 4501:1-4-04 may reasonably be interpreted as permitting the issuance of a Salvage Motor Vehicle Dealer's License when the proposed facility consists of a salvage yard with an area of at least fifty thousand square feet and an office of adequate size located on a separate site. This interpretation is consistent with 6 Ohio Admin. Code 4501:1-4-03, which provides for copies of licenses for businesses that operate in more than one location in the same county. See R.C. 4738.05. *But cf.* R.C. 4738.07(H) (providing for the denial of an application to an applicant who "[h]as no established place of business"); 6 Ohio Admin. Code 4501:1-4-01(G) ("[a]n 'established place of business' means any site where commercial transactions take place and where merchandise and inventory are stored. Such establishment shall be in accordance with rule 4501:1-4-04..."); 6 Ohio Admin. Code 4501:1-4-15(A)(8) (same as R.C. 4738.07(H)); 1971 Op. Att'y Gen. No. 71-035 (finding that a new motor vehicle dealer was required to have an established place of business including, at a single site, both space for display and space for inspection, servicing, and repair).

In concluding that rule 4501:1-4-04 may reasonably be construed as permitting the licensing of a split location, I am not expressing an opinion as to whether this construction is the only, or best, possible construction of rule 4501:1-4-04. See, e.g., Op. No. 86-076; 1985 Op. Att'y Gen. No. 85-095. Pursuant to R.C. 4738.11, the Motor Vehicle Salvage Dealer's Licensing Board is authorized to exercise its discretion in prescribing the physical characteristics of facilities used by motor vehicle salvage dealers. I, as Attorney General, am not authorized to exercise that discretion on behalf of the Board. See, e.g., Op. No. 86-076; 1985 Op. Att'y Gen. No. 85-007; 1984 Op. Att'y Gen. No. 84-098; 1984 Op. Att'y Gen. No. 84-067. See generally *State ex rel. Copeland v. State Medical Board*, 107 Ohio St. 20, 140 N.E. 660 (1923); *State ex rel. Commissioners of Franklin County v. Gullbert*, 77 Ohio St. 333, 83 N.E. 80 (1907). Rather, where the Board has adopted a reasonable interpretation of its rule, I will defer to that interpretation. See generally *United States v. City of Painesville, Ohio*, 644 F.2d 1186, 1190 (6th Cir.), cert. denied, 454 U.S. 894 (1981) ("[a]n agency's interpretation of its own regulations is controlling unless plainly erroneous" (citations omitted)); *Hocking Valley Railway Co. v. Public Utilities Commission*, 92 Ohio St. 362, 110 N.E. 952 (1915) (a court will not substitute its judgment for that of an administrative body, but determinations made by such a body are subject to judicial review for abuse of discretion). If, in the judgment of the Board, a different result would be preferable, the Board, may, in the reasonable exercise of its discretion under R.C. 4738.11, amend its rules to achieve such a result. See Op. No. 87-017; Op. No. 86-076. See generally R.C. 4501.02 ("[a]ll laws relating to the licensing...of motor vehicle salvage dealers..., designating and granting power to the registrar [of motor vehicles] shall be liberally construed to the end that the practice or commission of fraud in the business...of disposing of salvage motor vehicles may be prohibited and prevented").

It is, therefore, my opinion, and you are hereby advised, as follows:

1. Under R.C. 4738.11(A), the Ohio Motor Vehicle Salvage Dealer's Licensing Board is authorized to adopt rules prescribing the physical characteristics of facilities used by motor vehicle salvage dealers. Since no statutory direction is given as to the manner in which the Board is to regulate the size of the area occupied by such facilities or the location of office space, the Board may regulate those factors in any reasonable manner that it deems appropriate.
2. In carrying out its duties under R.C. Chapter 4738, the Ohio Motor Vehicle Salvage Dealer's Licensing Board may reasonably construe R.C. Chapter 4738 and [1988-1989 Monthly Record, vol. 1] Ohio Admin. Code 4501:1-4-04 at 508-09 as permitting the issuance of a motor vehicle salvage dealer's license when the proposed facility consists of a salvage yard with an area of at least fifty thousand square feet and an office of adequate size located on a separate site.