

2000

REVOKING MOTOR VEHICLE DEALER'S AND SALESMEN'S
LICENSES FOR SUNDAY SELLING, TAXING, LICENSING, OR
REGULATION OF THE SALES OF MOTOR VEHICLES —
§§4517.12, 3773.24, R.C.

SYLLABUS:

1. A municipal ordinance forbidding the operation of an automobile sales room on Sunday is not a law within the purview of Section 4517.12, Revised Code, which authorizes the motor vehicle dealers' and salesmen's licensing board to suspend or revoke any license for a violation of any law relating to the selling, taxing, licensing, or regulation of the sales of motor vehicles.

2. The violation referred to in Section 4517.12, Revised Code, is concerned with a violation of a law which is directly related to the regulation of motor vehicle dealers and salesmen, and Section 3773.24, Revised Code, dealing with the transaction of business on Sunday is not so related. A violation of that section, therefore, is not a violation of any law relating to the selling, taxing, licensing, or regulation of the sales of motor vehicles within the purview of Section 4517.12, Revised Code.

Columbus, Ohio, February 13, 1961

Hon. C. W. Ayers, Registrar
Bureau of Motor Vehicles, Columbus 16, Ohio

Dear Sir:

Your request for my opinion reads, in part, as follows:

"I am herewith requesting your opinion whether or not the Motor Vehicle Dealers' and Salesmen's Licensing Board has authority under Section 4517.12, Ohio Revised Code, to suspend or revoke a dealer license if such dealer sells or displays for sale a motor vehicle on the Sabbath, in violation of the Columbus, Ohio code and/or Section 3773.24, Ohio Revised Code.

"Section 2379.01—Columbus City Codes, 1959, is as follows:

" 'Automobile Sales Rooms

"No person shall keep open any automobile sales room for the purpose of doing business, or otherwise display any automobile for sale, on a Sunday within the city; provided, however, this section shall not apply to any person who conscientiously observes any other day of the week as the Sabbath.'

"* * *

* * *

* * *"

Your request then sets forth Section 3773.24, Revised Code, as existing prior to its amendment in 1959, effective July 17, 1959, 128 Ohio Laws, 1031. As so amended, the section now reads as follows:

"No person, firm, or corporation shall engage in common labor or suffer or permit a building or place to be open for transaction of business, or require a person in his employ or under his control to engage in common labor or to open a building or place for the transaction of business on Sunday. In prosecutions under this section complaints shall be made within ten days after a violation.

"This section does not apply to work of necessity or charity, and does not extend to persons who conscientiously observe the seventh day of the week as the sabbath, and abstain thereon from doing things prohibited on Sunday.

"This section shall not apply to:

"(A) Traveling or the providing of services and commodities incidental thereto;

“(B) Recreation, sports, amusements, entertainment, or exhibitions or the providing of services and commodities incidental thereto ;

“(C) Fairs held under the authority of the state or a political subdivisions, or independent fairs, or the providing of services and commodities incidental thereto ;

“(D) The operation of publicly owned places of entertainment, recreation, or education, by a public officer, concessionaire, exhibitor, or employees of all or any of them, or any other person, or the providing of services and commodities incidental thereto.”

I will assume that Section 2379.01, Columbus City Code, 1959, reads as set forth in your letter.

At the outset, it will be noted that both the city ordinance and the state law are of a criminal nature with penalties provided for violations, and, in any particular case, only a court of law can determine whether either provision has been violated. With this in mind, I will consider your specific question as to the authority of the motor vehicle dealers' and salesmen's licensing board under Section 4517.13, Revised Code, said section reading in part :

* * *

* * *

* * *

“The board may suspend or revoke any license if the licensee has in any manner violated the rules and regulations issued pursuant to sections 4517.01 to 4517.18, inclusive, of the Revised Code, or has violated section 4501.02 of the Revised Code, or has violated any law relating to the selling, taxing, licensing, or regulation of sales of motor vehicles.”

In view of the above provision, the question to be decided appears to be whether the provisions in question are laws relating to the sale of motor vehicles.

The city ordinance clearly relates to the sale of motor vehicles ; however, I do not consider this ordinance to be a law within the purview of Section 4517.12, *supra*. The term “law” as generally used does not apply to municipal ordinances (39 Ohio Jurisprudence 2nd, Section 296, page 20), and a consideration of the cases dealing with the question indicates that the particular statute involved must be considered in ascertaining the effect of a municipal ordinance thereon. Clearly, the legislature can not delegate the authority to legislate, nor to declare the principles or standards of law (1 Ohio Jurisprudence 2nd, Section 27, page 428). Thus, the

legislature is without power to make any part of the regulation of the conduct of automobile dealers and salesmen dependent upon the will of the various municipal governments and I do not believe that such could have been the intention in the enactment of the provision of Section 4517.12, *supra*, here pertinent. I conclude, therefore, that the word "law" as used in said Section 4517.12, should be given its ordinary meaning and that it does not include a municipal ordinance.

Coming to a possible violation of Section 3773.24, Revised Code, said statute is without doubt a law; but is it a law relating to the sale of motor vehicles? The section makes no mention of motor vehicles or their sale but deals in general terms with the transaction of business; and has been held to relate directly to the promotion of the public health. The intent of this law (as existing prior to its amendment in 1959) is discussed in *State, v. Kidd*, 167 Ohio St., 521, starting at page 523 of the opinion, as follows:

"Many years ago in a case involving a predecessor statute to present Section 3773.23, Revised Code, Judge Minshall, writing the opinion in the case of *State v. Powell*, 58 Ohio St., 324, 340, 50 N.E., 900, 901, 41 L.R.A., 854, made the following observations:

"The policy of Sunday laws is based upon the observed fact, derived from long experience and the custom of all nations, that periods of rest from ordinary pursuits are requisite to the well-being, morally and physically, of a people. * * * This is the foundation and policy of all statutes regulating the observance of a day of rest; and whether the day selected is one consonant to the religious views of a portion of the people or not, does not affect the validity of the regulation, where no religious observance is enjoined.'

"Section 3773.24, Revised Code, in no way interferes with the freedom of religious worship or the free exercise of religious beliefs, nor was it designed to. As was said by Judge Thurman in the early case of *Bloom v. Richards*, 2 Ohio St., 387, 392:

"Wisdom requires that men should refrain from labor at least one day in seven, and the advantages of having the day of rest fixed, and so fixed as to happen at regularly recurring intervals, are too obvious to be overlooked. * * *"

I am of the opinion that the 1959 amendments to the statute would not alter the general purposes as discussed in *State, v. Kidd, supra*.

Section 4517.12, *supra*, is clear that the violation of law must be a violation of a law relating to the sale of motor vehicles. This provision

was enacted in the original bill which provided for the licensing of dealers and salesmen and should be considered in relation to the entire context of the bill (Amended House Bill No. 531 of the 92nd General Assembly (1937), 117 Ohio Laws, 680). The title of that bill read in part 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, * * *.”

The purposes of Section 3773.24, *supra*, could not be considered to come within this title, as the said section has no connection with the subject matter contained therein.

I am aware of the decision of the Court of Appeals (Franklin County) in *Teegardin v. Foley*, 76 Ohio Law Abs., 545 (1956) holding that a violation of Chapter 1317., Revised Code, dealing with retail installment sales, could be considered as a ground for revocation or suspension under Section 4517.12, Revised Code. In this case, however, the court based its decision on the premise that the great majority of all automobile retail sales are made on an installment basis and that, therefore, the provisions of Chapter 1317. are directly related to automobile sales. At page 548 of *Teegardin, supra*, it is stated:

“While Chapter 1317 R.C. (*supra*), nowhere specifically mentions the sale of automobiles, or any other specific chattel, as being intended to be regulated by its provisions, it requires no difficult process of reasoning to conclude that the sale of all goods and chattels sold on an installment plans are governed and in effect regulated by its provisions.

“It is well recognized, and the evidence in the instant case substantiates the fact, that the great majority of all automobile retail sales are made on an installment basis. This fact is further emphasized by the frequent reference to installment sales, in Chapter 4517, R.C., *supra*. The ability of the retail seller of an automobile to successfully dispose of the time payment note he is required to accept is of prime importance to both the seller and the buyer. The balance of the provisions of Chapter 1317, R.C., *supra*, is also highly regulatory of the retail seller and substantially affects the retail automobile industry. * * *”

After reviewing all applicable provisions in the instant matter, I am unable to find any direct relationship such as was found in the *Teegardin*

case, *supra*. Nowhere in Chapter 4517., *supra*, is there any reference to Sunday laws, or selling on any day for that matter. Further, the clear purposes of the original bill, Amended House Bill No. 531, *supra*, do not contain any references to Sunday laws, nor could any be reasonably implied.

Whether Section 3773.24, *supra*, precludes the selling of motor vehicles on Sunday is a question which in all probability will be ultimately answered by the courts. As discussed above, however, it was not the purpose of the law to regulate the sale of motor vehicles. The sale of a motor vehicle on Sunday has no connection with whether or not the seller is dealing in accordance with the motor vehicle laws and to hold otherwise would result in the opening of the door to any number of statutes which might affect motor vehicle dealers and salesmen in some indirect manner. I conclude, therefore, that a violation of Section 3773.24, Revised Code, is not a violation of a law relating to the selling of motor vehicles within the purview of Section 4517.12, *supra*.

Accordingly, it is my opinion and you are advised :

1. A municipal ordinance forbidding the operation of an automobile sales room on Sunday is not a law within the purview of Section 4517.12, Revised Code, which authorizes the motor vehicle dealers' and salesmen's licensing board to suspend or revoke any license for a violation of any law relating to the selling, taxing, licensing, or regulation of the sales of motor vehicles.

2. The violation referred to in Section 4517.12, Revised Code, is concerned with a violation of a law which is directly related to the regulation of motor vehicle dealers and salesmen, and Section 3773.24, Revised Code, dealing with the transaction of business on Sunday is not so related. A violation of that section, therefore, is not a violation of any law relating to the selling, taxing, licensing, or regulation of the sales of motor vehicles within the purview of Section 4517.12, Revised Code.

Respectfully,
MARK McELROY
Attorney General