



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 17, 2000

The Honorable James E. Smith, Jr.
Member, House of Representatives
P.O. Box 50333
Columbia, South Carolina 29250

RE: Informal Opinion

Dear Representative Smith:

By your letter of May 16, 2000, you have requested an opinion of this Office. You wish to know "whether South Carolina law prohibits the staffing of dealership sales personnel at manufacturer/promoter sponsored motor vehicle shows, even where the selling of motor vehicles is strictly prohibited."

South Carolina's regulation of manufacturers, distributors, and dealers of automobiles is codified at Chapter 15 of Title 56 of the South Carolina Code of Laws. Section 56-15-310 requires a dealer to obtain a license before engaging in business and prohibits "the sale of any type of motor vehicles other than mobile homes at authorized temporary locations." Section 56-15-330 further provides, in part, that a dealer may not receive a license unless:

The dealer maintains a bona fide established place of business for conducting the business of selling or exchanging motor vehicles which must be the principal business conducted from the fixed location.... A bona fide established place of business does not mean a residence, tent, temporary stand, or other temporary quarters.

These provisions have been interpreted as requiring motor vehicle sales to be made only from a fixed location or established place of business. See Op. Atty. Gen. Mar. 10, 1989. Sales of motor vehicles at shows or exhibitions would therefore violate these provisions. You now ask if simply staffing the exhibitions with a dealer's sales personnel would also violate State law. Your question turns not so much on for whom the personnel actually work, but how they conduct themselves at the exhibition.

South Carolina Code of Laws Section 56-15-10 defines "sale" as including:

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... the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation, mortgage in any form, whether by transfer in trust or otherwise, of any motor vehicle or interest therein or of any franchise related thereto; and any option, subscription or other contract, or solicitation, *looking to a sale, or offer or attempt to sell in any form, whether spoken or written*. A gift or delivery of any motor vehicle or franchise with respect thereto with, or as, a bonus on account of the sale of anything shall be deemed a sale of such motor vehicle or franchise. (Emphasis added)

If the personnel are conducting sales within the meaning of the above definition, then they would be in violation of S. C. Code Ann. § 56-15-310.

A number of principles of statutory interpretation are relevant. First and foremost, of course, is the time-honored tenet that all rules are subservient to the one which requires that legislative intent must prevail. State v. Harris, 268 S.C. 117, 232 S.E.2d 231 (1977). Words used must be given their plain and ordinary meaning without resort to subtle or forced construction for the purpose of limiting or expounding the statute's operation. In other words, the real purpose and intent of the lawmakers will prevail over the literal import of the words. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). The context of the statute must be examined as part of the process of determining the intent of the General Assembly. Hancock v. Southern Cotton Oil Co., 211 S.C. 432, 45 S.E.2d 850 (1948).

This Office has previously opined that numerous jurisdictions have found analogous legislation to be sound public policy. See Op Atty. Gen. March 10, 1989. The protective nature of the statutes prevent "fly by night" operators from making improvident sales to innocent consumers and allow the State to better supervise the dealers. See id. While South Carolina's prohibition of tent sales and off-premises exhibition sales respond to these concerns, the statutes do not extend so far as to restrict exhibitions at which sales are strictly forbidden. Consequently, personnel who only supply information to consumers about the vehicles, without any attempts or offers to sell a vehicle or to persuade consumers to make an immediate purchase, would neither be prohibited. Reading a proscription against the mere staffing of the show with dealer personnel requires too expansive a reading of the statute, and this Office declines to force such a construction. This conclusion is supported by other jurisdictions which have also enacted protective legislation regulating automobile dealers and manufacturers, but have addressed this situation. North Carolina, for example, limits displays of vehicles for sale to the dealer's established place of business unless it "is displayed at a trade show or exhibit at which no selling activities relating to the vehicle take place." N.C. GEN. STAT. § 20-292 (2) Although South Carolina has yet to authorize explicitly the staffing of personnel at exhibitions where selling is forbidden, the General Assembly has neither explicitly disallowed it. As such, it is the opinion of this Office that the staffing of dealer personnel who do not engage in any sales activities at exhibitions where sales are strictly prohibited is not inconsistent with the protections of the statute and, therefore, does not violate State law.

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This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General not officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,

A handwritten signature in black ink, appearing to be 'R. D. Cook', written in a cursive style.

Robert D. Cook
Assistant Deputy Attorney General