

1984 WL 249880 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 4, 1984

**\*1 SUBJECT: Antitrust, Franchises, Interstate Commerce, Legislative Bills, Sales Practices, Statutes.**

The provisions of H. 3611 placing certain restrictions on the establishment and relocation of motorcycle franchises is outside the reach of antitrust laws under the 'state action' exemption.

The Honorable Larry A. Martin  
Member  
House of Representatives

DISCUSSION:

House Bill 3611 provides a comprehensive system to regulate business practices between motorcycle manufacturers, distributors, dealers and wholesalers. Section 56-16-40 of the bill governs the establishment and relocation of new motorcycle dealerships and requires a manufacturer to first notify existing motorcycle dealers in the relevant market area of its intent to establish an additional new dealership or to relocate an existing dealership. Within fifteen days after receiving notice, an existing dealership may commence a civil action in a court of competent jurisdiction challenging the manufacturer's proposed action. Thereafter, until the court determines good cause for permitting the establishment or relocation, the manufacturer is prohibited from doing so.

QUESTION:

Do the provisions of Section 56-16-40 of H. 3611 violate the Sherman Act ([15 U.S.C. § 1 et seq.](#))?

OPINION:

No. The United States Supreme Court case of [New Motor Vehicle Bd. v. Orrin W. Fox Co.](#), 439 U.S. 96, 99 S.Ct. 403, 58 L.Ed.2d 361 (1978) is directly on point. The Court in [Fox](#) considered the California Automobile Franchise Act, which required approval by the California New Motor Vehicle Board before opening a new retail motor vehicle dealership within the market area of an existing franchise. The regulatory scheme in California is almost identical to the one proposed in H. 3611. In California, an automobile manufacturer who proposes to establish a new retail automobile dealership, or to relocate one, must first give notice to the Board and each of its existing franchisees within the 'relevant market area' (defined as ten miles from site of proposed new dealership). If any existing dealer protests within fifteen days, the Board is required to convene a hearing within sixty days to determine good cause for refusing to permit the establishment or relocation.

In ruling upon the antitrust issue, the Court noted that the California Legislature had enacted 'a system of regulation, clearly articulated and affirmatively expressed, designed to displace unfettered business freedom in the matter of the establishment and relocation of automobile dealerships.' [Id.](#) at 109, 99 S.Ct. at —, 439 L.Ed.2d at 376. It, therefore, held that such regulation was outside the reach of the antitrust laws under the 'state action' exemption. See, [Parker v. Brown](#), 317 U.S. 341, 63 S.Ct. 307, 87 L.Ed. 315 (1943).

The only substantial difference between the South Carolina Bill and California's Act is that in South Carolina the protest will be made by bringing an action in a court of law rather than before an administrative board. However, this distinction does not in any way affect antitrust considerations. Therefore, it is the opinion of this office that Section 56-16-40 of H. 3611 would be exempt from antitrust laws as 'state action.'

\*2 It should also be noted that the United States Supreme Court in Fox considered the issue of whether the temporary delay in the establishment or relocation of a dealership pending the Board's adjudication of the protest would violate the manufacturer's procedural due process. Assuming, without deciding, that the manufacturer had such a due process protected right, the Court held that the state was nevertheless empowered to enact a general scheme of business regulation that imposed reasonable restrictions upon the exercise of such rights. This decision followed a line of cases in which the Court has recognized the power of a state to legislate against injurious practices in their internal commercial and business affairs. See, [New Motor Vehicle Board v. Orrin W. Fox Co.](#), *supra* at 107, 99 S.Ct. at —, 58 L.Ed.2d at 374. Therefore, it is our opinion as well that Section 56-16-40 of H. 3611 would not violate manufacturers' procedural due process under the Fourteenth Amendment of the United States Constitution.

Richard B. Kale, Jr.  
Senior Assistant Attorney General

1984 WL 249880 (S.C.A.G.)

---

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.