

1972 WL 25293 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 21, 1972

**\*1 Re: Constitutionality of Acts (A Bill to Regulate Business Practices Between Motor Vehicle Manufactures, Distributors and Dealers—Senate Bill No. 356, Section 5(3)(k))**

The Honorable Thomas F. Hartnett  
Member  
House of Representatives  
Education and Public Works Committee  
State House  
P. O. Box 11225  
Columbia, South Carolina 29211

Dear Representative Hartnett:

You have requested an opinion as to the constitutionality of Section 5(3)(k) of the above-identified Senate Bill. This Section provides as follows:

To compete with a motor vehicle dealer operating under an agreement or franchise from such manufacturer, distributor or wholesaler in the relevant market area, such area to be determined exclusively by equitable principles; provided, however, that a manufacturer, distributor, or wholesaler shall not be deemed to be competing when operating a dealership either temporarily for a reasonable period, in any case not to exceed one year, or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of such dealership on reasonable terms and conditions; and, provided, further, that a distributor shall not be deemed to be competing when a wholly owned subsidiary corporation of such distributor sells motor vehicles at retail if, for at least three years prior to January the first, nineteen hundred and seventy-two, such subsidiary corporation has been a wholly owned subsidiary of such distributor and engaged in the sale of motor vehicles at retail.

In my letter to you of April 12, 1972, relative to this same bill, I stated that in my opinion Section 5(3)(l) would operate to deprive persons of liberty and property without due process of law in violation of Article 1, Section 3 of the South Carolina Constitution (1971 Cum. Supp.) and could not be justified as a reasonable exercise of police power. There does not appear to be any significant distinction between Sections 5(3)(1) and 5(3)(k) since the latter would also tend to create limited monopolies, would exclude otherwise qualified persons from obtaining dealerships and would interfere with the right of manufacturers to establish additional dealerships for their cars.

Accordingly, it is my opinion that Section 5(3)(k) is unconstitutional similarly as Section 5(3)(1). For discussion, please see my letter of April 12, 1972.

Very truly yours,

Edwin B. Brading  
Assistant Attorney General

1972 WL 25293 (S.C.A.G.)