

1984 WL 249884 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 8, 1984

***1 SUBJECT: Constitutions, Discrimination, Franchises, Legislative Bills, Statutes.**

A provision of H. 3611 which requires motorcycle manufacturers incorporated in foreign countries, but not United States motorcycle manufacturers, to pay dealers reasonable compensation for labor and parts in connection with warranty work, would deny dealers of United States manufactured motorcycles equal protection of the laws.

The Honorable T. Moffatt Burriss
Member
House of Representatives

QUESTION:

Does Section 56-16-30 of H. 3611 violate the equal protection clause of the State Constitution by requiring manufacturers incorporated in foreign countries to pay their dealers reasonable compensation but not imposing similar requirements on domestic manufacturers?

OPINION:

Yes. The equal protection concern in this instance is not the rights of foreign manufacturers. It is well settled that equal protection of the laws may only be claimed by similar associations within the jurisdiction of the State. Since a foreign manufacturer is not a corporation within the jurisdiction of South Carolina, it may not invoke the equal protection clause. [Pembina Mining Co. v. Pennsylvania](#), 125 U.S. 181, 9 S.Ct. 737, 31 L.Ed. 650 (1888). Moreover, it is clear that a state may deny or exclude a foreign corporation from doing business or acquiring and holding property within it; the admission of a foreign corporation is purely a matter of comity and always subject to the laws and policies of the admitting state. 36 Am. Jur. 2d, [Foreign Corporations](#), §§ 17, *et seq.*

It must be noted, however, that South Carolina motorcycle dealers are also affected by the statute. Dealers with manufacturers incorporated in foreign countries will receive by law reasonable compensation as required by Section 56-16-30, whereas dealers of domestic manufacturers are not given this protection. Therefore, since two groups, similarly situated, are treated differently, the equal protection clause becomes implicated and it must be determined if such classification is reasonable. ¹ [Dunn v. North Carolina Nat. Bank](#), 276 S.C. 202, 277 S.E.2d 143 (1981). ²

H. 3611 does not provide the Legislature's purpose for its proposed classification of dealers of foreign manufactured motorcycles vis-a-vis dealers of domestic manufactured motorcycles. Moreover, this office has not been able to ascertain any legitimate state interest which would be advanced by the classification of South Carolina dealers in this fashion. Unless some legitimate state interest can be advanced to justify the classification of South Carolina motorcycle dealers, this provision of H. 3611 would be of doubtful constitutionality.

CONCLUSION:

H. 3611 provides that South Carolina motorcycle dealers who do business with foreign manufacturers of motorcycles will be paid the prevailing hourly labor rate for warranty services and the current manufacturer suggested retail price for parts used on warranty work. No similar provision is made for those South Carolina dealers who do business with American manufacturers. Thus, H. 3611 appears to discriminate against the South Carolina motorcycle dealers who choose to do business with American motorcycle manufacturers. H. 3611 does not give the Legislature's purpose or the reasons for this different treatment of South Carolina dealers and we know of no rational reason for such different treatment. Absent some legitimate reason for treating differently the South Carolina dealer who does business with an American manufacturer of motorcycles, this provision of H. 3611 is of doubtful constitutionality. We would advise that as a means for avoiding constitutional difficulties, this provision of H. 3611 could provide the same benefits for South Carolina dealers who do business with American manufacturers as those who do business with foreign manufacturers.

*2 T. Travis Medlock
Attorney General

Footnotes

- 1 It would not matter whether the dealer was a corporation or sole proprietorship, since it is well settled that a corporation is a 'person' within the equal protection clause. 18 Am. Jur. 2d, Corporations, § 21.
- 2 In Dunn, supra, the South Carolina Supreme Court reviewed a 'lock-out' statute which prohibited North Carolina and Georgia corporations from acting as testamentary trustees in South Carolina. The Court did not consider the right of foreign corporations to act as testamentary trustees, but rather the right of South Carolina residents to choose foreign corporations to act as their trustees. The Court held that the statute created classifications by treating testators wishing to use foreign corporations differently. The Court further found that there was no legitimate state interest to support the reasonableness of the legislative classification. It, therefore, held that the statute violated the equal protection provision of the State Constitution.

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