ALAN WILSON
ATTORNEY GENERAL

April 20, 2016

John F. Laganelli
Acting Executive Director
South Carolina Department of Motor Vehicles
P.O. Box 1498
Blythewood, SC 29016

Dear Mr. Laganelli:

We are in receipt of your opinion request asking "whether motor vehicles may be sold by retail auction to members of the public." In particular, your request letter explains the Department of Motor Vehicles ("the Department") "has historically understood the transfer of motor vehicles to be legally accomplished only by four methods," specifically:

(1) the sale of a vehicle by a licensed dealer;

(2) the sale of a vehicle by a wholesaler to another licensed wholesaler or dealer;

(3) the sale of a vehicle between licensed dealers or wholesalers or certain other specifically named entities as conducted by a *wholesale* auction as regulated by *S.C. Code Ann.* §§ 56-5-510 *et. seq.* and

(4) with certain specifically enumerated exceptions, the sale of a vehicle by an individual who acquired the vehicle for individual use, with the limitation that any person selling *or attempting to sell* of more than five vehicles in a calendar year must be deemed a dealer or a wholesaler pursuant to *S.C. Code Ann.* §§ 56-15-10(h)(4).

See Request Letter at p.1 (emphasis in original). In support of this conclusion, you cite Section 56-15-10's definitions section, specifically subsection (h) and further note that Sections 56-15-310(A) and 56-15-330, both of which address various aspects of dealer licensing, suggest that an entity conducting a retail auction would need to be licensed and have a principal place of business at the location where the vehicles in question are sold. In light of this understanding, you ask the following questions:

(1) [Assuming exceptions set forth in Section 56-15-10(h)(1) through (3) and (5) do not apply,] may an auction firm set up a retail auction inviting members of

the general public, as set forth in the attached solicitation, to exchange motor vehicles by auction, consistent with the requirements of Chapter 15 of Title 56, where neither the auction, hotel or any other participant is required to get a license under Chapter 15 of Title 56?

(2) Regardless of the answer to 1.) above, if a licensed dealer sponsors or attends an auction at a site that is not the dealer's licensed location, and the dealer displays his own inventory, does the dealer violate the display requirements of Section 56-5-310 or the place of business requirements of Section 56-15-330 or both?

(3) Regardless of the answer to 1.) above, if a licensed dealer who sponsors an auction at a site that is not the dealer's licensed location, and the dealer seeks to sell or effect the sale of vehicles not in his own inventory, does the dealer violate the display requirements of Section 56-5-310 or the place of business requirements of Section 56-15-330 or both?

See Request Letter at 5. Our response follows.

Law/Analysis

1. Application of Title 56, Chapter 15's Dealer Licensing Provisions to Retail Auctions

Operating under the assumption that Section 56-15-10(h)(1)-(3) as well as Section 56-15-10(h)(5) do not apply, you ask: "may an auction firm set up a retail auction inviting members of the general public . . . to exchange motor vehicles by auction, consistent with the requirements of Chapter 15 of Title 56, where neither the auction, hotel or any other participant is required to get a license under Chapter 15 of Title 56." Because an auction company meets Section 56-15-10's definition of the phrase "motor vehicle dealer" in that it is an entity that "sells or attempts to effect the sale of any motor vehicle" we believe, consistent with the position of the Department of Motor Vehicles, that an auction company inviting members of the general public to exchange motor vehicles by auction without a dealer's license does so in violation of Title 56, Chapter 15's licensing requirements.

As an initial matter, we find it important to note that this Office, like South Carolina's courts, will "typically defer[] to the administrative agency charged with the enforcement of a statute in question." Op. S.C. Att'y Gen., 2004 WL 736929 (March 23, 2004) (citing Dunton v. South Carolina Board of Examiners in Optometry, 291 S.C. 221, 353 S.E.2d 132 (1987); Faile v. South Carolina Employment Security Commission, 267 S.C. 536, 230 S.E.2d 219 (1976)). In fact, in our March 23, 2004 opinion citing this provision, this Office, asked to interpret Section 56-15-10(h)'s definition of a "dealer" in a similar circumstance, explained that because the administrative agency's interpretation of this provision was reasonable, we would, as a matter of

policy, defer to the agency's position. Op. S.C. Att'y Gen., 2004 WL 736929 (March 23, 2004) (concluding an administrative agency's interpretation of Section 56-15-10(h) requiring an individual subleasing parking spaces to third parties for the purpose of selling vehicles to obtain a dealer license was a reasonable interpretation of Section 56-15-10(h)). Here, as detailed below, we find your construction of Section 56-15-10 reasonable and therefore, consistent with our prior opinions, defer to your position on this issue.

Section 56-15-10(h) of the South Carolina Code explains, with limited exception,[1] that a "[d]ealer" or "motor vehicle dealer" is "any person who sells *or attempts to effect the sale of any motor vehicle*." S.C. Code Ann. § 56-15-10(h) (2015 Supp.) (emphasis added). Further, Section 56-15-10(l) defines the term "sale" as "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." S.C. Code Ann. § 56-15-10(l) (2015 Supp.) (emphasis added). Additionally, Section 56-15-10(n) defines the word "person" as, among other things, "*a natural person, corporation, partnership, trust or other entity* . . . ." S.C. Code Ann. § 56-15-10(n) (2015 Supp.) (emphasis added). Finally, Section 56-15-310(A) of the Code states *inter alia*, "[b]efore engaging in business as a dealer or wholesaler in this State, a person first must make application to the Department of Motor Vehicles for a license." S.C. Code Ann. § 56-5-310(A) (2015 Supp.). Thus, the law is clear that a "dealer" must "make application to the Department of Motor Vehicles for a license" prior to "engaging in business[.]" S.C. Code Ann. § 56-5-310(A).

Applying these definitions to your question, it appears an auction company that sells or attempts to sell a motor vehicle is clearly subject to Title 56, Chapter 15's licensing restrictions. In particular, there is no question an auction company, which according to the circular referenced in your request letter is a corporation, meets Section 56-15-10(n)'s expansive definition of the word "person." See S.C. Code Ann. § 56-15-10(n) (defining a person as, among other things, a "corporation"). Likewise, there is no question such a corporation sells motor vehicles under Section 56-15-10(l)'s equally expansive definition of the word "sale." See S.C. Code Ann. § 56-15-10(l) (defining the word "sale" as including not only the "transfer, agreement for transfer, exchange [or] pledge . . . of any motor vehicle" but also including "any . . . solicitation, looking to a sale, or offer or attempt to sell in any form . . . ."). Thus, in the circumstances mentioned in your letter, namely that the statutory exceptions in Section 56-15-10(h)(1)-(3) and (5) do not apply, it seems clear an auction company wishing to conduct a retail auction of motor vehicles meets Section 56-15-10(h)'s definition of a "dealer" because, for purposes of Section 56-15-10,

[1] See S.C. Code Ann. § 56-15-10(h)(1)-(5) (2015 Supp.) (excluding: (1) "distributors and wholesalers;" (2) individuals "appointed by or acting under the judgment or order of any court;" (3) "public officers while performing their official duties;" (4) "persons disposing of motor vehicles acquired for their own use;" and (5) "finance companies or other financial institutions who sell repossessed motor vehicles and insurance companies who sell motor vehicles they own as an incident to payments made under insurance policies" from Title 56, Chapter 15's licensing requirements).

it is a person who "sells or attempts to effect the sale of any motor vehicle." Accordingly, we believe Title 56, Chapter 15's licensing requirements apply to a retail auction company. See e.g., S.C. Code Ann. § 56-15-310(A) ("Before engaging in business as a dealer or wholesaler in this State, a person first must make application to the Department of Motor Vehicles for a license."); S.C. Code Ann. § 56-15-320(A) ("Before a license as a 'wholesaler' or 'dealer' is issued to an applicant, he shall file an application with the Department of Motor Vehicles and furnish the information the department may require including, but not limited to, information adequately identifying by name and address individuals who own or control ten percent or more of the interest in the business."); S.C. Code Ann. § 56-15-330(1)-(3) (2015 Supp.) (explaining that a dealer cannot receive a dealer's license unless the dealer establishes a principal place of business).

Moreover, while there is a suggestion Title 56, Chapter 15's dealer licensing requirements do not apply to an auction company holding a retail auction of "investment grade" vehicles because the provisions were only intended to protect the public from unfair trade practices in the ordinary course of motor vehicle sales, we disagree with the premise that such legislation does not extend to vehicles sold at a retail auction.[2] In particular, we believe the Legislature by passing Section 56-15-10's definition section and expansively defining the term "dealer," clearly intended to subject any entity meeting this definition to Title 56, Chapter 15's dealer licensing requirements. Indeed, if the Legislature intended to exempt an auction company from dealer licensing restrictions under Title 56, Chapter 15, it could have done so by limiting the definition of "dealer" to allow for a retail auction company exemption. For example, Section 56-15-10(h)(1) expressly exempts "distributors or wholesalers" from Title 56, Chapter 15's dealer licensing requirements by explaining that despite Section 56-15-10(h)'s expansive definition of the phrase "dealer," the term does not encompass "distributors or wholesalers." See S.C. Code Ann. § 56-15-10(h)(1) (defining "dealer" as "any person who sells or attempts to effect the sale of any motor vehicle" but adding "[t]hese terms do not include . . . distributors or wholesalers."). The same dealer licensing exemptions are also available for individuals "appointed by or acting under the judgment or order of any court" as well as "public officers while performing their official duties." See S.C. Code Ann. § 56-15-10(h)(2) (2015 Supp.) (defining "dealer" as "any person who sells or attempts to effect the sale of any motor vehicle" but adding "[t]hese terms do not include . . . receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under the judgment or order of any court."); S.C. Code Ann. § 56-15-10(h)(3) (defining "dealer" as "any person who sells or attempts to effect the sale of any motor vehicle" but adding "[t]hese terms do not include . . . public officers while performing their official duties."). Nevertheless, a review of Section 56-15-10(h)(1)-(5) reflects there is simply no retail auction company exemption to Section 56-15-10(h)'s definition of "dealer." Thus, while the Legislature is keenly aware of how to remove an entity or

[2] Notably, while we agree automotive dealer licensing and regulation is generally aimed at eliminating unfair trade practices, we are unaware of any South Carolina authority suggesting the Legislature intended to regulate the retail sale of motor vehicles while leaving the retail auction of motor vehicles unregulated, especially in light of the Legislature's expansive definition of the term "sale" in Section 56-15-10(l).

individual from Title 56, Chapter 15's dealer licensing requirements, we believe the lack of a retail auction company exemption indicates the Legislature intended to subject retail auction companies to Title 56, Chapter 15's dealer licensing requirements as reflected by Section 56-15-10(h)'s expansive definition of the term "dealer." See Hodges v. Rainey, 341 S.C. 79, 86-87, 533 S.E.2d 578, 582 (2000) (explaining with respect to statutory construction that, "to express or include one thing implies the exclusion of another or the alternative.").

Similarly, the fact the vehicles mentioned in your request letter are purportedly "investment grade" is of no consequence. Section 56-15-10(a) defines the term "motor vehicle" as "any motor driven vehicle required to be registered under Section 56-3-110." S.C. Code Ann. § 56-15-10(a) (2015 Supp). In turn, Section 56-3-110 of the Code explains "[e]very motor vehicle . . . operated or moved upon a highway in this State shall be registered and licensed in accordance with the provisions of this chapter." S.C. Code Ann. § 56-3-110 (2006). Thus, in our view, a retail auction company meets the definition of a "dealer" and is therefore subject to Title 56, Chapter 15's dealer licensing requirements by merely effecting the sale of a vehicle that is capable of meeting Section 56-15-10(a)'s definition of the term "motor vehicle" (i.e. capable of being driven on South Carolina's highways). Again, if the Legislature intended so-called "investment grade" vehicles to be excluded from the definition of "motor vehicle" thereby exempting purveyors of such vehicles from regulation under Title 56, Chapter 15's dealer licensing restrictions, it could have done so by explaining so-called "investment grade" vehicles are not considered "motor vehicles" for purposes of Title 56, Chapter 15. However, because the Legislature failed to do so, instead electing to expansively define the term in Section 56-15-10(a), we believe an auction company conducting a retail auction of "investment grade" vehicles, is, like other individuals and entities meeting the definition of the term "dealer," subject to Title 56, Chapter 15's dealer licensing restrictions. See Rainey, 341 S.C. at 86-87, 533 S.E.2d at 582 (explaining with respect to statutory construction that, "to express or include one thing implies the exclusion of another or the alternative.").

Further, our conclusion that retail auction companies selling motor vehicles must have a dealer's license is consistent with Attorney General's opinion from other states. For instance, a 1982 opinion from the Virginia Attorney General found that an auction company conducting an antique car auction must procure a dealer license from the Department of Motor Vehicles. Op. Va. Att'y Gen., 1982 WL 175778 (March 13, 1982). In so concluding, the Virginia Attorney General relied on the definitions section of the Code of Virginia and determined that because retail auction companies were not specifically exempted from the definition of the phrase "motor vehicle dealer," Virginia law treated an auction company auctioning antique cars as a "motor vehicle dealer" thereby requiring a Virginia dealer's license. Op. Va. Att'y Gen., 1982 WL 175778 (March 13, 1982). Similarly, a 1987 opinion from the Tennessee Attorney General states that an auction company wishing to auction motor vehicles must, in addition to possessing an auctioneer's license, also possess a motor vehicle dealer's license. Op. Tenn. Att'y Gen., 1987 WL 272954 (January 13, 1987). That opinion, consistent with both our analysis as well as the Virginia Attorney General's analysis, explained that a business meeting the Tennessee

Code's definition of the phrase, "motor vehicle dealer[]" must seek such a license in light of the fact the Code did not specifically exempt licensed auctioneers or an auction company from Tennessee's dealer licensing requirements. Op. Tenn. Att'y Gen., 1987 WL 272954 (January 13, 1987); see also, Op. Tenn. Att'y Gen., 2009 WL 684747 (March 11, 2009) (reflecting that Tennessee law requires licensed auctioneers engaged in auctioning a motor vehicle to also possess a valid motor vehicle dealer license). Accordingly, we believe an auction company inviting members of the general public to exchange motor vehicles by auction without a dealer's license does so in violation of Title 56, Chapter 15's dealer licensing requirements.

2. Dealer Inventory Displays and Sections 56-15-310 and 56-15-330

In your second question, you ask whether a licensed dealer violates Section 56-15-310's "display requirements" or Section 56-15-330's "place of business requirements" by sponsoring or attending an auction and displaying his own inventory at a site "that is not the dealer's licensed location." Although Section 56-15-315[3] permits limited off-site displays of automobiles or trucks, "at nonselling temporary events" we believe that because a retail auction cannot qualify as a "nonselling" event, a dealer, by displaying his inventory at a retail auction, would likely violate both Section 56-15-310 and Section 56-15-330 of the Code.

Again, we find it important to note that this Office, as a matter of policy, will defer to an agency's interpretation of a statute so long as such an interpretation is reasonable. Op. S.C. Att'y Gen., 2004 WL 736929 (March 23, 2004). In fact, as we have previously stated:

> The courts have stated that it is not necessary that the administrative agency's construction be the only reasonable one or even one the court would have reached if the question had initially risen in a judicial proceeding... Typically, so long as an administrative agency's interpretation of a statutory provision is reasonable, this office would defer to that interpretation.

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[3] Section 56-15-315 states, in pertinent part:

> (A) Notwithstanding another provision of law, off-site displays of automobiles or trucks are prohibited except as provided in this section. *A licensed South Carolina automobile dealer or dealer of trucks may display not more than ten automobiles or trucks per licensed dealership off-site only at nonselling temporary events lasting no more than ten days hosted by a South Carolina based: charitable organization as defined in the South Carolina Solicitation of Charitable Funds Act for fundraising purposes; school fundraising event; church fundraising event; town fair, town festival; or any other similar festival or event. . . .*
>
> (D) Off-site displays are for display purposes only. Sales or attempts to sell as defined in Section 56-15-10(L), or both, are not permitted off-site. An automobile or truck dealer who sells or attempts to affect the off-site sale of any automobile or truck is in violation of this section and is subject to a two thousand dollar fine. An agent of an automobile or truck dealer who sells or attempts to affect the off-site sale of an automobile or truck is subject to a five hundred dollar fine.

S.C. Code Ann. § 56-15-315 (2015 Supp.) (emphasis added).

Op. S.C. Att'y Gen., 2003 WL 21691878 (June 24, 2003). Here, as detailed below, we believe your Office's interpretation of Sections 56-15-310 and 56-15-330's "display" and "place of business" requirements are reasonable thus defer to you interpretation—that these statutory provisions prohibit licensed dealers from participating in off-site auctions.

As touched on above, Section 56-15-310(A) of the Code requires that: "[b]efore engaging in business as a dealer or wholesaler in this State, a person first must make application to the Department of Motor Vehicles for a license." S.C. Code Ann. § 56-15-310(A). Continuing, Section 56-15-310 explains that a dealer license "must be prominently displayed *at the established place of business*" adding "[t]he license applies to *only one place of business of the applicant* and is not transferable to another person or place of business except that a licensed dealer may exhibit and sell motor homes, as defined by Section 56-15-10, at fairs, recreational or sports shows, vacation shows, and other similar events or shows upon obtaining a temporary dealer's license in the manner required by this section." S.C. Code Ann. § 56-15-310 (emphasis added). In other words, a dealer's license must be displayed at the dealer's established place of business and, with respect to non-motor homes, is not transferable and cannot be displayed anywhere else.

In addition, Section 56-15-330(1) of the Code states that "[n]o dealer may be allowed to maintain a motor vehicle dealer's license unless [t]he 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.*" S.C. Code Ann. § 56-15-330(1) (emphasis added). Continuing, Section 56-15-330(1) describes the minimum requirements of "a bona fide established place of business" adding "[a] bona fide *established place of business does not mean a residence, tent, temporary stand, or other temporary quarters.*" S.C. Code Ann. § 56-15-330(1) (emphasis added). Thus, as stated in a prior opinion of this Office, "[s]ales of motor vehicles at shows or exhibitions . . . violate [Section 56-15-330's place of business] provisions. Op. S.C. Att'y Gen., 2000 WL 1478802 (August 17, 2000).

Applying Sections 56-15-310(A) and 56-15-330(1) in the situation mentioned in your letter—where a licensed dealer displays his inventory at a retail auction that is not his established place of business—we believe such conduct likely violates the terms of Sections 56-15-310(A) and 56-15-330(1). In particular, Section 56-15-310(A) expressly states "[t]he provisions of this section may not be construed as allowing the sale of any type of motor vehicles other than motor homes at authorized temporary locations." S.C. Code Ann. § 56-15-310(A). Additionally, while Section 56-15-315(A) of the Code permits limited off-site displays of vehicles "at nonselling temporary events," subsection (D) of Section 56-15-315 clearly and unambiguously states that "[s]ales or attempts to sell as defined in Section 56-15-10(l), or both, are not permitted off-site." S.C. Code Ann. § 56-15-315(D). Further, as detailed above, Section 56-15-330(1) expressly provides that "a bona fide established place of business does not mean a residence, tent, temporary stand, or other temporary quarters." S.C. Code Ann. § 56-15-330(1). Thus, unless a

dealer complying with Section 56-15-315's limited off-site display requirements could also successfully characterize a retail auction as a "nonselling event," the display of his inventory at a retail auction would necessarily violate Sections 56-15-310(A) and 56-15-330(1). Under the circumstances mentioned in your letter, we believe such a characterization would be untenable.

Specifically, we believe a retail auction cannot accurately be described as a "nonselling event" because the purpose of the event is to sell or attempt to sell motor vehicles. Notably, and as described above, Section 56-15-10(l) expansively defines the term "sale" to include, among other things, "the . . . solicitation, looking to a sale, or offer or attempt to sell in any form, whether spoken or written." Further, Section 40-6-20(2) of the Code, a statute regulating auctioneers, defines an "auction" as "the sale of goods or real estate by means of exchanges between an auctioneer and a member of an audience, the exchanges consisting of a series of invitations for offers made by the auctioneer, offers by members of the audience, and the acceptance by the auctioneer of the highest or most favorable offer." S.C. Code Ann. § 40-6-20(1) (2015 Supp.). Similarly, Black's Law Dictionary (10th ed. 2014) defines the term "auction" as "[a] public sale of property to the highest bidder; a sale by consecutive bidding, intended to reach the highest price of the article through competition for it." Black's Law Dictionary, (10th ed. 2014). Accordingly, it is clear a retail auction cannot be accurately characterized as a "nonselling" event and, as a result, Section 56-15-315's non-selling provision offers no safe harbor for a dealer displaying his inventory at a retail auction. Indeed, the law is clear that a licensed dealer cannot sell motor vehicles other than motor homes at a temporary location that is not the dealer's established place of business, and therefore, a dealer engaging in such conduct would likely violate not only Section 56-15-310(A)'s temporary location restriction, but would also be at odds with Sections 56-15-310(A) and 56-15-330(1)'s language requiring that a dealer's license may only be displayed at a dealer's "established place of business."

3. Applying Sections 56-15-310 and 56-15-330 to a dealer-sponsored retail auction occurring at a site that is not the dealer's licensed location, but selling vehicles that are not in his or her inventory

In your third question you ask whether a dealer violates Section 56-15-310's display requirements or Section 56-15-330's place of business requirements when the dealer "seeks to sell or effect the sale of vehicles not in his own inventory" at "an auction . . . site that is not the dealer's licensed location[.]" Because we have previously explained that statutes such as Section 56-15-310 and 56-15-330 are intended to prevent, "fly by night operators from making improvident sales to innocent consumers and allow the State to better supervise dealers," Op. S.C. Att'y Gen., 2000 WL 1478802 (August 17, 2000) (internal quotations omitted), we believe a dealer who sponsors a retail auction at an off-site location selling motor vehicles that are not in his or her inventory, likely violates Sections 56-15-310 and 56-15-330.

As stated previously, we start our discussion with the recognition that our Office will "typically defer[] to the administrative agency charged with the enforcement of a statute in question" so long as such an interpretation is reasonable. Op. S.C. Att'y Gen., 2004 WL 736929 (March 23, 2004) (citing Dunton v. South Carolina Board of Examiners in Optometry, 291 S.C. 221, 353 S.E.2d 132 (1987); Faile v. South Carolina Employment Security Commission, 267 S.C. 536, 230 S.E.2d 219 (1976)). Here, as discussed below, we find your Office's interpretation of Sections 56-15-310 and 56-15-330 "display" and "place of business" provisions are reasonable, and therefore, consistent with Office policy, defer to your agency's position on this question. Op. S.C. Att'y Gen., 2004 WL 736929 (March 23, 2004).

As discussed above, Section 56-15-310(A) of the Code requires that: "[b]efore engaging in business as a dealer or wholesaler in this State, a person first must make application to the Department of Motor Vehicles for a license." S.C. Code Ann. § 56-15-310(A). Continuing, Section 56-15-310 explains that a dealer license "must be prominently displayed *at the established place of business*" adding "[t]he license applies to *only one place of business of the applicant* and is not transferable to another person or place of business except that a licensed dealer may exhibit and sell motor homes, as defined by Section 56-15-10, at fairs, recreational or sports shows, vacation shows, and other similar events or shows upon obtaining a temporary dealer's license in the manner required by this section." S.C. Code Ann. § 56-15-310 (emphasis added). In other words, a dealer's license must be displayed at the dealer's established place of business and, with respect to non-motor homes, is not transferable and cannot be displayed anywhere else.

Further, and as mentioned above, Section 56-15-330(1) of the Code states that "[n]o dealer may be allowed to maintain a motor vehicle dealer's license unless [t]he 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.*" S.C. Code Ann. § 56-15-330(1) (emphasis added). Continuing, Section 56-15-330(1) describes the minimum requirements of "a bona fide established place of business" adding "[a] bona fide *established place of business does not mean a residence, tent, temporary stand, or other temporary quarters.*" S.C. Code Ann. § 56-15-330(1) (emphasis added). Thus, as stated in a prior opinion of this Office, "[s]ales of motor vehicles at shows or exhibitions . . . violate [Section 56-15-330's place of business] provisions. Op. S.C. Att'y Gen., 2000 WL 1478802 (August 17, 2000).

In the 2000 opinion cited above, this Office, addressing the question of whether a dealer violates Sections 56-15-310 and 56-15-330 of the Code by "simply staffing [an] exhibition[] with a dealer's sales personnel" explained that the answer to such a question hinges on how such individuals "conduct themselves[.]" Op. S.C. Att'y Gen., 2000 WL 1478802 (August 17, 2000). In particular, we said the focus of whether a dealer violates Sections 56-15-310 or 56-15-330 is based on whether the individual salespeople staffing the event engage in conduct akin to "conducting sales" as defined in Section 56-15-10(l), stating that "[i]f the personnel are

conducting sales . . . then they would be in violation of S.C. Code Ann. § 56-15-310." Op. S.C. Att'y Gen., 2000 WL 1478802 (August 17, 2000). Notably, the focus of the statute's prohibition is not rooted in sales of a dealer's inventory, but is instead merely related to sales alone. As mentioned in the opinion, this is because Sections 56-15-310 and 56-15-330's display and established place of business requirements are intended to protect consumers from "improvident sales" while at the same time providing for regulatory supervision of dealers. Op. S.C. Att'y Gen., 2000 WL 1478802 (August 17, 2000). Indeed, as we stated in 1989, statutes like Sections 56-15-310 through 56-15-360 are aimed at providing "meaningful assurance that the continuing warranty and service obligations that follow the sale of a vehicle will be met by a dealer who can be located" and "by confining dealers to their licensed locations, the state is better able to supervise this regulated industry and to assure that the requirements imposed by law are being met." Op. S.C. Att'y Gen., 1989 WL 406119 (March 10, 1989) (quoting Ohio Motor Vehicles Dealers Board v. Central Cadillac Co., 471 N.E.2d 488 (Ohio 1984)); see also, ABC Auto Sales v. Marcus, 255 Wis. 325, 38 N.W.2d 708 (1949) (detailing that the Wisconsin prohibition on tent and temporary sales which, like Section 56-15-330, requires an established place of business, is intended to "eliminate or minimize the evils and mischief of the 'fly by night' operator").

Understanding this, we believe that when a dealer at an off-site retail auction sells or attempts to make a sale as defined in Section 56-15-10(l), doing so likely violates Sections 56-15-310 and 56-15-330's display and established place of business requirements. Specifically, since the expressed intent of these statutes is not tied to the dealer selling only his inventory, but is instead tied to a dealer selling any motor vehicle at a site other than his or her established place of business, we believe Sections 56-15-310 and 56-15-330's display and established place of business provisions necessarily apply. As a result, it is the opinion of this Office that a dealer who sells or attempts to sell a motor vehicle at an off-site retail auction violates Sections 56-15-310 and 56-15-330's display and established place of business requirements regardless of whether the inventory being sold belongs to the dealer or not.

Conclusion

In conclusion, we reiterate that, consistent with Office policy and our prior opinions, this Office "typically defers to the administrative agency charged with the enforcement of a statute in question" so long as such an interpretation is reasonable. Op. S.C. Att'y Gen., 2004 WL 736929 (March 23, 2004). As explained above, we find the agency interpretation of Section 56-15-10(h) and Sections 56-15-310 and 56-15-330 reasonable and therefore subject to deference. As a result, and in response to your first question, it is the opinion of this Office that because an auction company meets Section 56-15-10's definition of the phrase "motor vehicle dealer" in that it is an entity that "sells or attempts to effect the sale of any motor vehicle," an auction company inviting members of the general public to exchange motor vehicles by auction without a dealer's license does so in violation of Title 56, Chapter 15's licensing requirements. Further, and with respect to your second question, we believe that although Section 56-15-315 permits limited off-site displays of automobiles or trucks, "at nonselling temporary events," because a

retail auction cannot qualify as a "nonselling" event, a dealer, by displaying his inventory at a retail auction, likely violates both Section 56-15-310's display requirements as well as Section 56-15-330's established place of business requirements. Finally, with respect to your third question, we believe that since statutes such as Section 56-15-310 and 56-15-330 are intended to prevent, "fly by night operators from making improvident sales to innocent consumers and allow the State to better supervise dealers," Op. S.C. Att'y Gen., 2000 WL 1478802 (August 17, 2000) (internal quotations omitted), a dealer who sponsors a retail auction at an off-site location selling motor vehicles that are not in his or her inventory, likely still violates Section 56-15-310's display requirements as well as Section 56-15-330's established place of business requirements.

Sincerely,

Brendan McDonald
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General