

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**For The Calendar Years**

**1963 - 1964**

January 13, 1964

To: Paul A. MacDonald, Secretary of State

Re: Registrations as Dealers in New or Used Motor Vehicles

In your memo of December 31, 1963, you have asked four questions. Each question has a specific factual situation related to it. Consequently it will be necessary to set forth the applicable facts, questions, answers, and reasons separately.

Facts No. 1:

A dealer in Maine since 1922, who has a franchise to sell trucks and has all the other requirements of the law except a mechanic, has requested a renewal of his dealer registration. He states that his repair work is referred to repair shops in the area and although his customers have the services of a trained mechanic, he does not "keep employed at least one mechanic . . . ."

Question No. 1:

Must a dealer in new motor vehicles keep a mechanic employed full time in order to qualify for plates, under this statute?

Answer No. 1:

Yes.

Reasons No. 1:

The answer to the question asked is contained in the language of R. S. chapter 22, section 26. The pertinent parts are quoted:

"Every . . . dealer in new . . . motor vehicles may, . . . make application upon a blank provided by the Secretary of State for a general distinguishing number, color or mark . . . . The board, if satisfied that the applicant maintains a permanent place of business in the State where said applicant will be engaged in the business of buying and selling of motor vehicles, . . . and if satisfied that *the applicant meets the minimum standards herein set forth*, shall order the Secretary of State to issue a certificate of registration . . . . To qualify as a dealer in new motor vehicles . . . an applicant must *possess a franchise contract from a manufacturer of motor vehicles . . . ; must have proper facilities for the display and storage of new and used motor vehicles, a repair department capable of taking care of at least 2 motor vehicles simultaneously, exclusive of grease pit or rack; must maintain an office and parts department suitable to conduct business; must possess sufficient tools and equipment for proper servicing and keep employed at least one mechanic having a thorough knowledge of the product handled, . . . .*" (Emphasis supplied).

The legislature has stated that a dealer in new motor vehicles may have dealer plates, so-called, when he is able to comply with certain standards it has established. It follows that if he cannot comply with those standards, he is not eligible for dealer plates for new motor vehicles.

One of the standards set up by the legislature is that an applicant must "keep employed at least one mechanic having a thorough knowledge of the product handled." If a dealer does not comply with *all* the "minimum standards herein set forth" he is not eligible for dealer plates.

There will be hardship cases, but the board cannot waive the provisions of the statute. It must follow the law and can issue dealer plates only in accordance therewith.

See Reasons No. 4 for more detailed discussion of board's duties.

Facts No. 2:

The statute sets forth certain requirements for used car dealers with so-called grandfather rights applying to present holders of dealer or transit registration plates who have made 12 bona fide sales during the 12 months preceding the effective date of the act.

The exception pertains to repair and servicing facilities and mechanics. There seems to be no exception as to the necessity for:

- (a) Proper facilities for the display of motor vehicles.
- (b) A suitable office in which to conduct business.
- (c) A suitable sign identifying the place of business.

Question No. 2:

Is it necessary for a used car dealer who has grandfather rights to comply with (a), (b) and (c), as listed above?

Answer No. 2:

Yes.

Reasons No. 2:

This question is based on provisions contained in R. S., ch. 22, sec. 26. The pertinent parts are quoted:

*"Every . . . dealer in . . . used motor vehicles may, . . . make application . . . for a general distinguishing number, color or mark. . . . The board, if satisfied that the applicant maintains a permanent place of business in the State where said applicant will be engaged in the business of buying and selling of motor vehicles, . . . and if satisfied that the applicant meets the minimum standards herein set forth, shall order the Secretary of State to issue a certificate of registration. . . . To qualify as a dealer in used motor vehicles, . . . an applicant must have proper facilities for the display of used motor vehicles, a suitable office in which to conduct business, and a suitable sign identifying the place of business; must maintain a repair department capable of taking care of at least 2 motor vehicles simultaneously, exclusive of grease pit or rack, and sufficient tools and equipment for proper servicing; and must keep employed at least one mechanic having a thorough knowledge of the product handled;"* (Emphasis supplied).

Thus, the legislature has laid down certain minimum standards for the board to use in determining when a dealer is eligible for used motor vehicle dealer plates. In this particular category the legislature has granted to those dealers or holders of transit registration plates, who have filed evidence of at least 12 bona fide sales during the calendar year 1963, certain exemptions from these minimum standards.

The exemptions are limited to those "pertaining to repair and servicing facilities and mechanics." A dealer in used motor vehicles who had dealer or transit plates before January 1, 1964, and sold 12 motor vehicles in

1963, is exempt from the three items quoted. He is not exempt from "proper facilities for the display of used motor vehicles, a suitable office in which to conduct business and a suitable sign identifying the place of business." If he does not have the last three items listed, the board cannot issue him registration plates as a dealer in used motor vehicles.

See Reasons No. 4 for more detailed discussion of board's duties.

Facts No. 3:

In some instances an individual has made more than 12 sales in the preceding 12 months but has recently incorporated or joined in a partnership, or, in some cases, dissolved a partnership; so that the latest entity has not made the necessary 12 sales.

Question No. 3:

Are the rights derived under the statute assignable or transferable to the corporation or later legal entity?

Answer No. 3:

No.

Reasons No. 3:

This question concerns the so-called grandfather clause relative to used car dealers which has been set forth and discussed in the previous question. The particular portion of the statute reads: "present holders of motor vehicle dealer registration plates, or to holders of transit registration plates."

The answer depends of the words "present holder" and "holder." The statute speaks as of its effective date. The "present holder" of a motor vehicle dealer plate and the "holder" of a transit plate is the person, corporation, partnership or other legal entity to whom such plates were issued in 1963. That legal entity is the one entitled to the benefit of the grandfather clause, so-called. If an individual held plates and has now become a partnership or corporation, then the new entity must qualify as a used motor vehicle dealer without benefit of the so-called grandfather clause. The reverse is also true.

Such rights are very strictly personal to the "holder" of the plates. These plates are no different from the plates on a personal car. If the car is sold or ownership transferred, the car must be reregistered. In short, any rights derived under the statute are not assignable or transferable.

Facts No. 4:

An applicant has had transit plates in 1963 and unquestionably qualifies as a used car dealer so far as facilities for display, office, sign, repair department, tools and mechanics are concerned but has reported no sales during the year 1963, although he claims to have twenty vehicles for sale at the present time.

Question No. 4:

Under Section 27, would the Board be justified in refusing to give him used car plates because of his inactivity as a dealer, on the grounds that he is not a manufacturer or dealer in motor vehicles, as enumerated in the first sentence of Section 26?

Answer No. 4:

See Reasons for answer.

Reasons No. 4:

Under R. S., ch. 22, section 27:

"The board, after examining an application for dealer or transporter registration plates, may order the Secretary of State not to issue same stating the reason therefor."

The authority of the board to issue motor vehicle dealer registration plates is found in section 26 which has been quoted extensively in this opinion. Now we look at another angle of this section. The board in order to issue such plates must be satisfied of three things:

- (1) ". . . that the applicant maintains a permanent place of business in the State where said applicant *will be engaged in the business of buying and selling of motor vehicles*, and
- (2) ". . . with the other facts stated in the application, and
- (3) ". . . that the applicant meets the minimum standards herein set forth." (Emphasis supplied).

It is one of the functions of the board to examine the evidence in each case to satisfy itself as to whether or not the applicant "*will be engaged in the business of buying and selling of motor vehicles.*"

It should be noted, from the statement of facts, that although the applicant has sold no motor vehicles in 1963, he claims to have 20 vehicles *for sale* at the present time. The board is not bound by the activity, or lack of activity, in the past. The board must determine if the applicant "*will be engaged in the business of buying and selling of motor vehicles.*" This means that the board shall be satisfied that he will buy and sell motor vehicles in the coming year. It should examine all the evidence in making its determination.

At the present time there is evidence that he has bought 20 motor vehicles. Presumably he will sell some or all in the future.

Further, if the board is satisfied that *all three conditions* are met by the applicant it "*shall order the Secretary of State to issue a certificate of registration.*" Thus, issuance is mandatory when all statutory conditions are met to the satisfaction of the board. When the board cannot order issuance of a certificate of registration, it must order the Secretary of State not to issue the same.

GEORGE C. WEST

Deputy Attorney General

January 16, 1964

To: David Garceau, Commissioner, Banks and Banking

Re: Sales of Negotiable Checks and Money Orders by Agents of Banks

Facts:

The 101st Legislature enacted P. L. 1963, chapter 176, "An Act Relating to Sale of Negotiable Checks and Money Orders." This act exempted "financial institutions" and "national banking associations" from its provisions.