

September 11, 1996

OPINION NO. 96-045

David J. Towell, Chairman  
Ohio Motor Vehicle Dealers Board  
111 West Market Street  
Akron, Ohio 44303

Dear Chairman Towell:

I have received your request for a formal opinion on the question whether the Motor Vehicle Dealers Board ("the Board")<sup>1</sup> has the authority to require that, in order to acquire or renew a new or used motor vehicle dealer's license, the dealer must carry insurance coverage of the type commonly known as a "garagekeeper liability insurance policy." Your letter indicates that the Board hears cases concerning dealers who are accused of violating license provisions of the Revised Code or of taking action that would jeopardize their licenses. *See* R.C. 4517.33. The Board feels that the interests of the public would be served by a requirement that car dealers carry insurance coverage. It is the Board's belief that new car dealers commonly carry the type of coverage in question, but few used car dealers do. Thus, it is suggested that a mandate of coverage would provide some protection for the consumer.<sup>2</sup> The central issue is whether the Board's statutes provide authority to impose a requirement of insurance coverage. This opinion considers the matter of liability insurance in

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<sup>1</sup> The Ohio Revised Code refers to the board in question as the Motor Vehicle Dealers Board. *See* R.C. 4517.30. The Board was previously known as the Motor Vehicle Dealers' and Salespersons' Licensing Board, *see* 1979-1980 Ohio Laws, Part I, 704, 712, and prior to that as the Motor Vehicle Dealers' and Salesmen's Licensing Board, *see* 1937-1938 Ohio Laws 680, 685. *See generally* 10 Ohio Admin. Code Ch. 4501:1-3.

<sup>2</sup> A major reason for licensing motor vehicle dealers is to prevent the commission of fraud in the sale of motor vehicles to consumers. *See* R.C. 4501.02; *see also Ohio Motor Vehicle Dealers Bd. v. Central Cadillac Co.*, 14 Ohio St. 3d 64, 65, 471 N.E.2d 488, 490 (1984) (regulation of motor vehicle dealers affords protection to consumers); *Auto Reality Service, Inc. v. Brown*, 27 Ohio App. 2d 77, 81, 272 N.E.2d 642, 645 (Franklin County 1971); 1991 Op. Att'y Gen. No. 91-019.

general and is not restricted to a particular type of policy.<sup>3</sup>

In order to answer your question, it is helpful to review the means by which new and used motor vehicle dealers are regulated. The Department of Public Safety has general authority to "administer and enforce the laws relating to the registration, licensing, sale and operation of motor vehicles." R.C. 5502.01(A). Within the Department there is a Bureau of Motor Vehicles, administered by the Registrar of Motor Vehicles. The Registrar is responsible for administering laws of the state relating to the registration and titling of motor vehicles and the licensing of motor vehicle dealers. R.C. 4501.02(A). With the approval of the Director of Public Safety, the Registrar may adopt rules to carry out the laws that he administers. R.C. 4501.02(A)(1).

Another entity with responsibility relating to the regulation of motor vehicle dealers is the Motor Vehicle Dealers Board. The Board consists of eleven members — the Registrar of Motor Vehicles or his designee and ten members appointed by the Governor. R.C. 4517.30. The Board is part of the Department of Public Safety for administrative purposes in two respects: (1) the Registrar is the executive officer of the Board, and the Registrar or a designee serves as secretary of the Board; and (2) the Bureau of Motor Vehicles provides employees to exercise clerical, inspection, or other powers or duties for the Board. R.C. 4517.31. The Board is authorized to "make such reasonable rules as are necessary to carry out and effect its duties under [R.C. Chapter 4517]," including rules relating to hearing procedures. R.C. 4517.32. The Board may also "make rules governing its actions relative to the suspension and revocation" of dealers' licenses. R.C. 4517.33.

Both the Registrar of Motor Vehicles and the Motor Vehicle Dealers Board have duties relating to the licensing of motor vehicle dealers. Applications for new or used motor vehicle dealers licenses are submitted to the Registrar of Motor Vehicles, who decides whether to grant or deny them. R.C. 4517.04-.05, .10, .12. The Board hears appeals from the Registrar's decisions, and

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<sup>3</sup> Although your letter indicates that insurance coverage of the type proposed would include bonding and would protect consumers, not every liability insurance policy would provide coverage for all claims that a consumer might make. For example, in *Heritage Mutual Insurance Co. v. Ricart Ford, Inc.*, 105 Ohio App. 3d 261, 663 N.E.2d 1009 (Franklin County 1995), the Franklin County Court of Appeals found that an automobile dealer's garage insurance policy covered personal injuries and advertising injuries, but did not cover consumer claims, such as unfair competition, brought under the Ohio Consumer Sales Practices Act, *see* R.C. Chapter 1345, since those claims were not included within the contractual definitions. Further, the rider providing liability coverage under the Federal Truth-in-Lending Act, 15 U.S.C.A. §1601 *et seq.*, applied to damages arising only under Section 130 of that Act, and not to damages arising under other sections. Therefore, when the dealer settled a complaint filed by the Attorney General for declaratory judgment, a preliminary and permanent injunction, consumer restitution, civil penalties, and fees for alleged violations of the Ohio Consumer Sales Practices Act and alleged violations of the Federal Truth-in-Lending Act, the insurer had no duty to defend or indemnify the dealer. *See also, e.g., Bob-Boyd Lincoln Mercury v. Hyatt*, 32 Ohio St. 3d 300, 513 N.E.2d 331 (1987) (automobile dealership's garage insurance policy did not include as an insured a prospective customer who took a car on a test drive).

"may make investigation to determine the correctness and legality of the order of the registrar." R.C. 4517.33. Upon its own motion or upon receipt of a verified complaint, the Board investigates the conduct of licensees and is required to "suspend or revoke or notify the registrar to refuse to renew" a dealer's license "if any ground existed upon which the license...might have been refused, or if a ground exists which would be cause for refusal to issue a license." R.C. 4517.33. The Board may suspend or revoke a license if the licensee has violated applicable rules, *see* R.C. 4517.32-.33; 10 Ohio Admin. Code Ch. 4501:1-3, or has been convicted of a felony or of violating a law relating to motor vehicle sales, *see* R.C. 4517.33; [1995-1996 Ohio Monthly Record, vol. 2] Ohio Admin. Code 4501:1-3-09, at 2367; *Jurek v. Ohio Motor Vehicle Dealers Bd.*, 99 Ohio App. 3d 437, 651 N.E.2d 3 (Cuyahoga County 1994), *discretionary appeal denied*, 72 Ohio St. 3d 1413, 647 N.E.2d 1387 (Cuyahoga County 1995).

Thus, in order to acquire a motor vehicle dealer's license, application must be made to the Registrar and, if the application is denied, an appeal may be made to the Board. Moreover, the Board is authorized to determine when a license should be suspended or revoked and when renewal should be refused. The standard is whether any ground existed upon which a license might have been refused or whether any ground exists which would be cause for refusal to issue a license. *See* R.C. 4517.33. The Board, therefore, has authority to determine when grounds exist that are cause for denial, suspension, or revocation of a motor vehicle dealer's license. In making such determinations, the Board is responsible for implementing the applicable statutory provisions. The Board has discretion to adopt any reasonable construction of the statutes that it administers, and the construction adopted by the Board is accorded deference by the courts. *See Geisert v. Ohio Motor Vehicle Dealers Bd.*, 89 Ohio App. 3d 559, 562, 626 N.E.2d 960, 963 (Lake County) ("[c]ourts have held that an administrative agency must be given due deference in interpreting its own statutes"), *motion to certify overruled*, 68 Ohio St. 3d 1405, 623 N.E.2d 563 (1993); 1992 Op. Att'y Gen. No. 92-051; 1989 Op. Att'y Gen. No. 89-008.<sup>4</sup>

R.C. 4517.04 and 4517.05 set forth the information that must be included in an application for a new or used motor vehicle dealer's license. The information includes names and addresses of the applicant and other interested persons and a statement of history, record, and association "that shall be sufficient to establish to the satisfaction of the registrar the reputation in business of the applicant." R.C. 4517.04(E). Statements of previous applications, revocations, or suspensions are

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<sup>4</sup> An example of the broad discretion granted to a rule-making body was addressed in *Doyle v. Ohio Bureau of Motor Vehicles*, 51 Ohio St. 3d 46, 554 N.E.2d 97 (1990). There a provision of statute prohibited the issuance of a driver's license to, or retention of a driver's license by, a person "who is an alcoholic." R.C. 4507.08. The Ohio Bureau of Motor Vehicles, through the Registrar, adopted a rule defining the term "alcoholic" to include a person convicted of three offenses of driving while intoxicated in a three-year period. The Ohio Supreme Court found that, when an individual's license was suspended pursuant to that rule, the individual was not denied due process of law, even though he was not permitted to present evidence that he was not an alcoholic. The court noted that the proceeding was administrative rather than judicial and that a driver's license is a privilege and not an absolute property right.

required, as are statements of violations of odometer tampering provisions. R.C. 4517.04(F)-(H). There is no statutory requirement that an application for a motor vehicle dealer's license include proof of any type of insurance coverage, but R.C. 4517.04 and 4517.05 permit the Registrar to require information in addition to the items listed. *See, e.g.*, 10 Ohio Admin. Code 4501:1-3-07.

R.C. 4517.12 sets forth grounds for the denial of a motor vehicle dealer's license. Among them are false statements in the application, failure to comply with applicable statutes, bad business reputation or a history of default on financial obligations, insolvency, fraud, lack of an established place of business, and recent denial or revocation of a license. R.C. 4517.12(A). The statute also states that the Registrar of Motor Vehicles shall deny a motor vehicle dealer's license if the Registrar finds that the applicant "[i]s of insufficient responsibility to ensure the prompt payment of any final judgments that might reasonably be entered against the applicant because of the transaction of business as a motor vehicle dealer...during the period of the license applied for, or has failed to satisfy any such judgment." R.C. 4517.12(A)(8).

The failure to have insurance coverage is not listed as grounds for denial of a dealer's license. Proof of insurance coverage, however, might be relevant to a determination of the question of "insufficient responsibility" to ensure the payment of judgments.

In interpreting and applying the "insufficient responsibility" provision of R.C. 4517.12(A)(8), the Board might conclude that the procurement of insurance is a means of establishing that an applicant for a new or used motor vehicle dealer's license is not of "insufficient responsibility" to ensure the prompt payment of a final judgment that might reasonably be entered against the applicant because of the transaction of business during the period of the license. The statute does not establish the procurement of insurance as a requirement for the issuance of a motor vehicle dealer's license, nor does it permit the Board to require that each dealer acquire an insurance policy. *See, e.g., Wachendorf v. Shaver*, 149 Ohio St. 231, 237, 78 N.E.2d 370, 374 (1948) ("nothing may be read into a statute which is not within the manifest intention of the Legislature as gathered from the act itself"); 1994 Op. Att'y Gen. No. 94-069. Therefore, the Board does not have authority to require that, in order to acquire or renew a new or used motor vehicle dealer's license, the dealer must carry insurance coverage. A requirement of that nature could be adopted only pursuant to a statute clearly authorizing an insurance requirement. *See generally* R.C. 4517.27 (providing for the Registrar to adopt rules requiring that a manufactured home broker maintain a bond of a surety company and a special or trust bank account); [1995-1996 Ohio Monthly Record, vol. 2] Ohio Admin. Code 4501:1-3-06, -12, at 2367-68.

Existing statutes, however, would permit the Board, in the reasonable exercise of its discretion, to recognize insurance coverage as a factor for consideration in determining whether there are grounds for denying, suspending, or revoking a new or used motor vehicle dealer's license for insufficient responsibility to ensure the prompt payment of final judgments pursuant to R.C. 4517.12(A)(8). The extent to which insurance coverage establishes responsibility to ensure the payment of judgments depends, of course, upon the terms of the particular insurance policy. *See*

note 3, *supra*.<sup>5</sup>

For the reasons discussed above, it is my opinion, and you are advised, that the Motor Vehicle Dealers Board does not have authority to require that, in order to acquire or renew a new or used motor vehicle dealer's license, the dealer must carry insurance coverage.

Respectfully,

BETTY D. MONTGOMERY  
Attorney General

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<sup>5</sup> By comparison, Ohio requires a motor vehicle owner or operator to maintain proof of financial responsibility to respond in damages for liability on account of motor vehicle accidents and specifies the types of proof that are recognized, including proof of insurance coverage. *See* R.C. 4509.01(K), .101(A), (K); .44-.47, .51; 10 Ohio Admin. Code 4501:1-2-01. *See generally* *Bob-Boyd Lincoln Mercury v. Hyatt*, 32 Ohio St. 3d 300, 305, 513 N.E.2d 331, 336 (1987) ("[w]hile an automobile insurance policy may be the simplest to obtain and the most logical way of maintaining proof of financial responsibility, it is not the *only* way to maintain proof of financial responsibility").

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SYLLABUS:

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