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FINANCE COMPANY OR ITS AGENT—EXEMPTED FROM ANY OF PROVISIONS OF AUTOMOBILE DEALERS' AND SALESMEN'S ACT—PROVISO, WHERE COMPANY OR ITS AGENT IS SELLING AT RETAIL MOTOR VEHICLES IN ITS POSSESSION BY DEFAULT IN TERMS OF MORTGAGE CONTRACT—SECTION 6302-1 GC, EFFECTIVE SEPTEMBER 6, 1939, NOW SECTION 4517.01 RC.

SYLLABUS:

The amendment of Section 6302-1, General Code, effective September 6, 1939, as now contained in Section 4517.01, Revised Code, exempts a finance company, or its agent, from any of the provisions of the Automobile Dealers' and Salesmen's Act where such finance company, or its agent, is selling at retail motor vehicles which have come into its possession by a default in the terms of a mortgage contract.

Columbus, Ohio, August 6, 1954

Mr. C. Ervin Nofer, Acting Registrar
Bureau of Motor Vehicles, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"An authorized auctioneer in the State of Ohio wishes to sell repossessed motor vehicles to dealers or at retail by public auction. This proposed auction at the present rate of repossessions, is expected to be conducted once a week.

"The proposed auction will be on the premises of a duly authorized motor vehicle dealer who has entered into an agreement to make storage space available to several finance companies for the purpose of having repossessed motor vehicles put in storage until disposition is made by selling such vehicles.

"Title to motor vehicles sold at auction will be from a finance company as mortgagee to purchaser.

"This auctioneer expects to act as the agent for at least five different mortgagees.

"In your opinion is there a violation of the Dealers' and Salesmen's Licensing Law."

The Automobile Dealers' and Salesmen's Act, Sections 4517.01 to 4517.99, Revised Code, relates to the sale of motor vehicles at *retail.* To the extent, therefore, that sales are made by a finance company to a dealer, who in turn proposes to sell them at retail, the sale would be at *wholesale* and not at *retail.* See Syllabus No. 2, Opinion No. 3131, Opinions of the Attorney General for 1938, page 1935. Obviously, therefore, the sale of repossessed automobiles by a finance company, employing an authorized auctioneer, *to dealers* would not be a violation of the act.

To the extent that the finance company proposes to sell such repossessed automobiles at retail, it would appear that such sales clearly would have been in violation of the Automobile Dealers' and Salesmen's Act prior to September 6, 1939.

In the 1938 Attorney General's opinion, supra, it was held that, except for casual and isolated sales, a finance company could not lawfully sell repossessed automobiles at retail without first having qualified as a "dealer" under the act and having received a license as such "dealer." It was further held that where title was passing directly from the finance company to the purchaser, it would be unlawful for the finance company to designate a duly licensed retail dealer to act as its agent in making such sales. In this connection the opinion stated:

> "* * * Surely it could not be plausibly contended that by the device of agency the finance companies, as principal, could thereby effect a result which would be impossible of attainment if they acted as individuals, unconnected and unassociated with any agents in the premises. It is a well established principle of law that an agency has only that authority which the principal has in the first instance, and under no circumstances can a principal confer on an agent power or authority that the principal himself does not possess. The thought is tersely expressed in the statement 'power can not rise above its source.' This principle of law is stated in 1 Ohio Jurisprudence, p. 622, Section 5, as follows:
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> > 'It is a familiar proposition that what one does by another he does by himself and it hardly need be stated that a man may authorize another to do for him whatever *he may lawfully do for himself;* in other words, that he may lawfully do by the agency of another that which he may lawfully do himself, * * *.' " (Underscoring the writer's.)

Subsequent to the rendition of the 1938 opinion, however, the act was amended to read that its provisions shall not apply to "mortgagees selling at retail motor vehicles which have come into their possession by a default in the terms of a mortgage contract." See Section 6302-1, General

Code, as amended by the 93rd General Assembly, effective September 6, 1939. Such language is still contained in the act as recodified in the Revised Code. See Section 4517.01, Revised Code. Thus, it is clear that since the 1939 amendment, a finance company is fully authorized to sell automobiles coming into its possession by default in the terms of mortgage contracts without qualifying as a "dealer" or without being subject in any respect to the Automobile Dealers' and Salesmen's Act.

The question presented, in effect, is whether such finance company may sell such automobiles through an agent, in this case a licensed auctioneer.

As heretofore noted, the 1938 opinion held that a finance company, being itself then unauthorized to sell motor vehicles at retail, could not sell such motor vehicles through the medium of an agent, regardless of the fact that the agent was properly licensed. Such conclusion was predicated on the fact that the act of the agent legally would be the act of his principal and reference was made to such principle of law as contained in 1 Ohio Jurisprudence, page 622, heretofore quoted.

Conversely, it would appear that a person "may lawfully do by the agency of another that which he may lawfully do himself." Here, the finance company clearly is authorized, by the 1939 amendment, to sell such motor vehicles at retail. I must conclude that its employes or agents have the same authority.

The fact that the agent will act for five different principals instead of one is not forbidden by law. It is true that the act forbids a "salesman" from being employed by more than one "dealer" at the same time.

In Opinion No. 2071, Opinions of the Attorney General for 1947, page 406, it was held that an auctioneer employed by a *dealer* for the selling of motor vehicles was required to obtain a license as a salesman under the Automobile Dealers' and Salesmen's Act, irrespective of any license he might have as an auctioneer under the provisions of Section 5866, et seq., General Code. It was also held that the act forbade the issuance of a salesman's license except for employment by a single dealer. The effect of such holding was to prohibit the employment of an auctioneer by a dealer unless the auctioneer was possessed of a salesman's license and to forbid an auctioneer or any other salesman being employed by more than one dealer. Here, however, the employment of the auctioneer is not by a dealer and the auctioneer is not a salesman, as defined by the act. The provisions of paragraph (I) of Section 4517.01, Revised Code,

defining a person "employed by a dealer" as a "salesman" have no application. Instead, the auctioneer here would be employed by a person to whom none of the provisions of the Automobile Dealers' and Salesmen's Act have any application.

I note that your letter further states that the sales will take place on the premises of a licensed dealer and that the cars will be stored there until sold. While I recognize the potential evils that might incidentally arise from such a situation, I find nothing in the statutes which specifically would prohibit such a course of conduct.

In conclusion, it is my opinion that the amendment of Section 6302-1, General Code, effective September 6, 1939, as now contained in Section 4517.01, Revised Code, exempts a finance company, or its agent, from any of the provisions of the Automobile Dealers' and Salesmen's Act where such finance company, or its agent, is selling at retail motor vehicles which have come into its possession by a default in the terms of a mortgage contract.

Respectfully,
C. WILLIAM O'NEILL
Attorney General