

Opinion No. 67-13

January 24, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Robert R. Salazar, Commissioner, Department of Motor Vehicles State Capitol Building Santa Fe, New Mexico

QUESTION

FACTS

At the present time there are four firms licensed to do business in New Mexico as dealers of motor vehicles, which all have the same trade name. Dealers are licensed pursuant to Sections 64-8-1, et seq., N.M.S.A., 1953 Compilation. There are currently laws in new Mexico which provide for the reservation of trade names. See Section 51-2-8, N.M.S.A., 1953 Compilation and Sections 49-4-7, et seq., N.M.S.A., 1953 Compilation. We are assuming for the purposes of this opinion that the firms using the same trade name are all valid, legal entities.

QUESTION

Should the Department of Motor Vehicles continue to license all four firms under the same name or should only one firm be licensed under the name?

CONCLUSION

See analysis.

OPINION

{*17} ANALYSIS

Section 64-8-1 (b), N.M.S.A., 1953 Compilation sets forth the information which must be contained in an application for a dealer's license as follows:

"B. Application for a dealer's or wrecker's of vehicles license shall be made upon the form prescribed by the division and shall contain the name and address of the applicant; and when the applicant is a partnership, the name and address of each partner; or when the application is a corporation, the names of the principal officers of the corporation and the state in which incorporated and the place where the business is to be conducted, and the nature of such business, and such other information as may be required by the division. Every such application shall be verified by the oath or affirmation of the applicant, if an individual, or in the event an applicant is a partnership

or corporation, then by a partner or officer thereof. Every such application shall be accompanied by the fee required by law."

Section 64-8-2(a), N.M.S.A., 1953 Compilation, sets forth the {^{*}18} conditions necessary for approval of the license as follows:

"(a) The division, upon receiving application accompanied by the required fee, and when satisfied that the applicant is of good character, and so far as can be ascertained has complied with and will comply with the laws of this state with reference to the registration of vehicles and certificates of title and the provisions of this act, shall issue to the applicant a license which shall entitle the licensee to carry on and conduct the business of a dealer or wrecker of vehicles, as the case may be, during the calendar year in which the license is issued. Every such license shall expire on December 31st of each year, and may be renewed upon application and payment of the fee required by law."

If the application contains the information required by Section 64-8-1, supra, the Department must issue the license if it is satisfied that three conditions are met. First, the proper fee must be paid. Second, the Department must be satisfied the applicant is of good character. Third, and last, it must be reasonably sure that the applicant has and will comply with the laws of the state pertaining to (a) registration of vehicles, (b) certificates of title and (c) the provisions of this act (Sections 64-1-1 to 64-2-16, 64-3-1 to 64-5-2, 64-6-1 to 64-7-3, 64-8-1 to 64-10-10, 64-11-12 to 64-11-14, N.M.S.A., 1953 Compilation.

If the above conditions and requirements are met, the Department **must** issue the license. The statutory conditions which must be met prior to issuance of a license do not include matters pertaining to trade names. Therefore, whether or not there may be problems concerning the reservation of trade names, does not affect the operations of the Department and the Department could not refuse to issue licenses for the reason that there are a number of firms using the same name. It is our opinion that the Department should issue a license to all firms if the conditions discussed above are met.

By Myles E. Flint

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