

Opinion No. 79-31

September 11, 1979

OPINION OF: Jeff Bingaman, Attorney General

BY: Anthony P. Marquez, Assistant Attorney General

TO: Mr. Ruben Miera, Secretary of Transportation, Transportation Department, PERA Building, Santa Fe, New Mexico 87503

MOTOR VEHICLES

The Motor Vehicle Division of the State Department of Transportation may extend the use of the temporary transportation permits to qualified vehicle manufacturers who have been issued a motor vehicle dealers' license.

FACTS

Several trailer and bus manufacturers within the State of New Mexico currently sell directly to individuals or companies rather than to vehicle dealers. These manufacturers allow the purchaser to drive the unit to the home town or state, where the unit will be registered, with the special manufacturer's plate affixed. Subsequently, the manufacturers have some difficulty in recovering the plate.

QUESTIONS

Can the Motor Vehicle Division of the State Department of Transportation extend the use of the temporary transportation permits, provided in Section 66-3-6 NMSA 1978, to vehicle manufacturers?

CONCLUSIONS

Yes.

ANALYSIS

Section 66-1-4(B)(11) NMSA 1978 provides the following:

"B. As used in the Motor Vehicle Code:

* * *

(11) "dealer" means every person, excluding those who have financed or repossessed vehicles, engaged in the business of buying, selling or exchanging vehicles, if he trades, sells or barter three or more vehicles, motor vehicles or trailers subject to registration

in this state, in any calendar year, other than a motor vehicle titled or registered for his personal use; * * *"

OPINION

As defined by Section 66-1-4(B)(11) NMSA 1978, therefore, a manufacturer who sells three or more trailers as buses may qualify as a dealer within the meaning of the Motor Vehicle Code.

A dealer in vehicles or motor vehicles, trailers, semi-trailers, house trailers or pole trailers of a type subject to registration under the Motor Vehicle Code is required to obtain a license from the Motor Vehicles Division before conducting such a business. Section 66-4-1(A)(1) NMSA 1978. Since Section 66-3-6(B) NMSA 1978 provides that the Motor Vehicle Division shall issue temporary transportation permits to dealers licensed under the Motor Vehicle Code who hold current special plates issued under Section 66-3-402 NMSA 1978, a trailer or bus manufacturer must first obtain a dealer's license before the Motor Vehicle Division can issue him temporary transportation permits.

{*76} The New Mexico Legislature has adopted a broad definition of dealer which provides that only those persons who have financed or repossessed vehicles are excluded from this definition. Section 66-1-4(B)(11) NMSA 1978. Similarly, in California the California Supreme Court noted that the legislature in its wisdom had set forth an extremely broad definition of the term "dealer" and had specifically excluded only five categories of persons from the California Motor Vehicle Code. **See Merrill v. Department of Motor Vehicles**, 71 Cal. 2d 907, 80 Cal. Rptr. 89, 458 P.2d 33 (1969). The court in that case recognized the right of a discount house to obtain an automobile dealer's license. A trailer or bus manufacturer is, therefore, entitled to a dealer's license provided he is of good character and satisfies the statutory requirements set forth in Sections 66-4-1 and 66-4-2 NMSA 1978.

In addition, the definition of "motor vehicle dealer" or "dealer" as used in the Motor Vehicle Dealers Franchising Act, Sections 57-16-1 to 57-16-16 NMSA 1978, includes any person who sells or solicits or advertises the sale of new or used motor vehicles, but specifically excludes the following four categories of persons:

"(1) receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court;

(2) public officers while performing their duties as such officers;

(3) persons making casual sales of their own vehicles duly registered and licensed to them by the state of New Mexico; and

(4) finance companies, banks and other lending institutions covering sales of repossessed vehicles; Section 57-16-3(B) NMSA 1978."

"Manufacturer," as used in the Motor Vehicle Dealers Franchising Act, is separately defined and is not included in any of the four categories of persons excluded from the definition of motor vehicle dealer or dealer. Section 57-16-3(D) NMSA 1978.

In conclusion, any trailer or bus manufacturer who sells three or more trailers or buses directly to individuals or companies in any calendar year is a "dealer" within the meaning of the Motor Vehicle Code and is eligible for a motor vehicle dealer's license. Upon issuance of a motor vehicle dealer's license to a qualified manufacturer, the Motor Vehicle Division of the State Transportation Department may thereafter extend the use of temporary transportation permits provided in Section 66-3-6 NMSA 1978 to vehicle manufacturers.

ATTORNEY GENERAL

Jeff Bingaman, Attorney General