

No. 241

MOTOR VEHICLES—DEALERS—LICENSING

Held: Any person or corporation whose primary purpose is the loaning of money and who secures title to an automobile in the process of collecting the loan is not a dealer as defined by the Motor Vehicle Act and need not have the license provided for in either Section 1760 or 1763.6, Revised Codes of Montana, 1935, in order to sell the said automobile.

September 13, 1941.

Mr. Dudley Jones
Registrar of Motor Vehicles
Deer Lodge, Montana

Dear Mr. Jones:

On August 18 you wrote to this office as follows:

"For some considerable time the more responsible automobile dealers of the City of Great Falls have been complaining to this department that some individuals and firms, mostly finance companies, have been engaged in the business of selling and dealing in used motor vehicles, notwithstanding the fact that they are not properly licensed by this department to engage in this business.

"We are enclosing herewith some copy which appeared in the Great Falls Tribune on August 10, 1941. This copy was sent us by a Great Falls dealer who now insists that some action be taken concerning these parties who are advertising used cars for sale. The smaller Finance Companies such as the Peoples' Finance Company and the Credit Service Company seem to be the chief offenders. At times they advertise a great number of used cars and we are at a loss just how to proceed in this matter. We have given rather diligent study to Section 1749.4, 1763 and 1863.6, Revised Codes of Montana, and it is our belief that all of these concerns should be required to make application for and be granted a dealer's license.

"Before taking any further action however, we would appreciate your written opinion."

I am now happy to give you my opinion of the question asked by you.

The only sections of the Revised Codes of Montana, 1935, in which I can find any mention of the word "dealer" are Section 1760, 1763, 1763.1 (i) and 1763.6.

Section 1760, Revised Codes of Montana, 1935, provides dealers shall pay an annual license fee of \$30 and if such dealer operates in more than one place, he must pay such a fee for each branch establishment.

Section 1763, Revised Codes of Montana, 1935, defines the term "dealer" as any person engaged in the business of buying, selling or exchanging motor vehicles.

Section 1763.1 (i) defines a "dealer" as any person engaged in the purchase and sale of motor vehicles, either new or second-hand.

Section 1763.6 provides second-hand dealers must have a license in addition to the one provided for in section 1760, and it entitles the holder thereof to engage in the business of buying, selling and dealing in used cars.

In the case of *Bond Lumber Co. vs. Timmons, et al.*, 82 Mont. 497, 267 Pac. 802, the Milk River Motor Company filed a complaint in intervention and the plaintiff in the case challenged the sufficiency of the complaint for failure to allege and show affirmatively that the Milk River Motor Company was licensed as a dealer as required by the Motor Vehicle Law. In its opinion, the Supreme Court said:

"This objection is wholly without merit. This statute is intended solely as a police regulation and was never intended to establish an exclusive method of transfer of title to an automobile."

From a reading of the statutes and the case above quoted, I believe the Motor Vehicle Act was primarily intended as a police regulation and the term "dealer"—as defined therein—applies only to persons who are primarily engaged in the business of buying and selling automobiles, either new or second-hand. I do not believe a person who acquires title to an automobile by legal process, such as the foreclosure of a mortgage or by writ of execution, is a buyer of the automobile as the term buyer is used in the Motor Vehicle Act. Neither do I believe a person or corporation who is engaged in the business of loaning money and who, in the collection of a loan, acquires title to an automobile can be said to be in the business of buying, selling or exchanging motor vehicles. However, if such loan company—in disposing of cars so acquired—takes in a car in trade, it would then be a dealer and would be required to have a license.

It is therefore my opinion any person or corporation whose primary purpose is the loaning of money and who secures title to an automobile in the process of collecting the loan is not a dealer as defined by the Motor Vehicle Act and need not have the license provided for in either Section 1760 or 1763.6, Revised Codes of Montana, 1935 in order to sell the said automobile.

Sincerely yours,

JOHN W. BONNER
Attorney General