

Opinion No. 97

**New Motor Vehicle — New Motor
Vehicle Dealer — Used Motor Ve-
hicle — Used Motor Vehicle Dealer—
Automobile License Plates Statutes—
Statutory Construction**

HELD: 1. New Motor Vehicles are all vehicles, unimpaired by use, which are self-propelled, except road rollers, traction engines and railroad cars, farm tractors, and motor cars run upon stationary rails or tracks.

2. New Motor Vehicle Dealer is any person, firm, association, or corporation engaged in the business of buying, selling, repairing, and reconditioning new motor vehicles and who maintains a place of business with adequate facilities and equipment for the servicing, repair, maintenance, and reconditioning of new

motor vehicles and also adequate display facilities for at least one motor vehicle.

3. Used Motor Vehicles shall include any motor vehicle which has been sold, bargained, exchanged, given away or title transferred from the person who first took title to it from the manufacturer or importer, dealer or agent of the manufacturer or importer, and so used as to have become what is commonly known as "second-hand" within the ordinary meaning thereof.

4. Used Motor Vehicle Dealer includes any person, firm, association or corporation engaged in whole or in part in the business of buying, and selling motor vehicles which have been sold, bargained, exchanged, given away or title transferred from the person who first took title to it from the manufacturer or importer, dealer or agent of the manufacturer or importer, and so used as to have become what is commonly known as "second-hand" within the ordinary meaning thereof.

5. A dealer is not required to have a new car franchise from a manufacturer in order to be entitled to "D" license plates.

December 5, 1956

Mr. F. O. Burrell
Warden and Registrar of
Motor Vehicles
Deer Lodge, Montana

Dear Mr. Burrell:

You have requested my opinion on the meaning of the words New Motor Vehicle, New Motor Vehicle Dealer, Used Motor Vehicle and Used Motor Vehicle Dealer, as they are used in Section 53-118, R.C.M., 1947, as amended by Section 2, Chapter 245, Laws of 1955. You raised a second question of whether a dealer must have a new car franchise from the manufacturer to be entitled to "D" license plates.

Section 53-118, R.C.M., 1947, as amended by Section 2, Chapter 245, Laws of 1955, reads as follows:

"Application For Dealer's License. Every dealer in new motor vehicles, used motor vehicles, trailers, semi-trailers, or automobile accessories shall cause to be filed, by mail or otherwise, in the office of the registrar of motor vehicles, a verified application for registration as a dealer on a blank to be furnished by the registrar for that purpose, and containing the information therein required. Each application must be accompanied by the registration fee hereinafter named. Dealers registration must be renewed and paid for annually, and an application for re-registration must be filed not later than January first of each year. Upon the registration of a dealer as a new motor vehicle dealer, used motor vehicle dealer, or trailer or semi-trailer dealer, the registrar of motor vehicles shall assign to such dealer a distinctive serial registration number as a dealer and furnish every dealer in motor vehicles with not less than two (2) sets of number plates, and as many more as the fee the dealer pays entitles the dealer to, which number plates shall be similar to number plates furnished to owners of motor vehicles but shall bear thereon, in addition to the serial number assigned such dealer, the letter 'D' if the dealer sells new motor vehicles (including trucks and trailers) or new and used motor vehicles (including trucks and trailers), the letters 'UD' if the dealer sells used motor vehicles (including trucks and trailers) only; and the letters 'DTR' if the dealer sells trailers and/or semi-trailers (new or used) only. Only new motor vehicle dealers' license plates bearing the letter 'D' shall be assigned if both new and used motor vehicles (including trucks and trailers) are sold, and only one registration fee shall be required of any one dealer. Dealers of all classes are hereby prohibited from using or displaying dealer's license plates on any motor vehicle except those held for sale or used principally in the conduct of the dealer's business in selling, demonstrating or servicing. No dealer's license plates shall be used or displayed on ve-

hicles normally used exclusively for hire or for purposes not incident to the business of a motor vehicle dealer. If it shall appear to the satisfaction of the registrar of motor vehicles that any such dealer has used the dealer's license in a manner other than the one permitted above the registrar of motor vehicles may revoke such dealer's license. Any dealer violating the provisions of this section shall be guilty of a misdemeanor and subject to a fine of not less than twenty-five (\$25.00) dollars and not more than one hundred (\$100.00) dollars."

The term "new" is not defined in our codes; however, Words and Phrases, permanent edition, Volume 28A, page 73, defines the word as follows:

"The word 'new' means having existed, or having been made, but a short time; having originated or occurred lately; not early or long in being, recent; fresh; modern; opposed to old; a relative term meaning not yet used or worn; now first used for some purpose; recently made, still unimpaired by use. *Baum v. Segal*, D.C.N.J., 89 F. Supp. 716, 717."

With the above definition of the word "new" and with reference to the Revised Codes of Montana the terms of which you request definition may be defined as follows:

1. "New Motor Vehicle" means any vehicle, unimpaired by use, which is self-propelled, except road rollers, traction engines and railroad cars, farm tractors, and motor cars run upon stationary rails or tracks. (Section 53-133(a), R.C.M., 1947).

2. "New Motor Vehicle Dealer" means any person, firm, association, or corporation engaged in the business of buying, selling, repairing, and reconditioning new motor vehicles and who maintains a place of business with adequate facilities and equipment for the servicing, repair, maintenance, and reconditioning of new motor vehicles and also adequate display facilities for at least one motor vehicle. (Section 53-133(a), (g), R.C.M., 1947).

3. "Used Motor Vehicle" means and shall include any motor vehicle which has been sold, bargained, exchanged, given away or title transferred from the person who first took title to it from the manufacturer or importer, dealer or agent of the manufacturer or importer, and so used as to have become what is commonly known as "second-hand" within the ordinary meaning thereof. (Section 53-133(j), R.C.M., 1947; *Salway v. Alger* (Mich. 1948), 32 N.W. (2d) 505, 508).

4. "Used Motor Vehicle Dealer" means and includes any person, firm, association or corporation engaged in whole or in part in the business of buying, and selling motor vehicles which have been sold, bargained, exchanged, given away or title transferred from the person who first took title to it from the manufacturer or importer, dealer, or agent of the manufacturer or importer, and so used as to have become what is commonly known as "second-hand" within the ordinary meaning thereof. (Section 53-133(g), (j), R.C.M., 1947).

Your second inquiry, viz: Whether a dealer must have a new car franchise from the manufacturer to be entitled to a "D" license plate, must be answered in the negative. Section 53-133, R.C.M., 1947, as amended by Section 2, Chapter 245, Laws of 1955, does not require such a qualification, and to insert such a qualification into the statute would be contrary to the expressed legislative intent. This conclusion logically follows since the statute is clear and free of ambiguity. Our Supreme Court has stated in *Siuru v. Sell*, 108 Mont. 438, 444, 91 Pac. (2d) 411, 123 A.L.R. 423, the following guide to statutory construction:

"... We have neither the power nor the right to read the word 'originally' or language of similar import into the statute. Our office is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted." (Secs. 10519 and 10520, Rev. Codes, see, also, *In re Wilson's Estate*, 102 Mont. 178, 193, 56 Pac. (2d) 733, 105 A.L.R. 367)."

It is therefore my opinion that the terms "New Motor Vehicles", "New Motor Vehicle Dealer", "Used Motor Vehicle", and "Used Motor Vehicle Dealer", mean respectively as follows:

1. New Motor Vehicles are all vehicles, unimpaired by use, which are self-propelled, except road rollers, traction engines and railroad cars, farm tractors, and motor cars run upon stationary rails or tracks.

2. New Motor Vehicle Dealer is any person, firm, association, or corporation engaged in the business of buying, selling, repairing, and reconditioning new motor vehicles and who maintains a place of business with adequate facilities and equipment for the servicing, repair, maintenance, and reconditioning of new motor vehicles and also adequate display facilities for at least one motor vehicle.

3. Used Motor Vehicles shall include any motor vehicle which has been sold, bargained, exchanged, given away or title transferred from the person who first took title to it from the manufacturer or importer, dealer or agent of the manufacturer or importer, **and so used as to have become what is commonly known as "second-hand" within the ordinary meaning thereof.**

4. Used Motor Vehicle Dealer includes any person, firm, association or corporation engaged in whole or in part in the business of buying, and selling motor vehicles which have been sold, bargained, exchanged, given away or title transferred from the person who first took title to it from the manufacturer or importer, dealer or agent of the manufacturer or importer, and so used as to have become what is commonly known as "second-hand" within the ordinary meaning thereof.

It is also my opinion that a dealer is not required to have a new car franchise from a manufacturer in order to be entitled to "D" license plates.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.