

VOLUME NO. 38

OPINION NO. 2

LICENSES - Dealers' licenses for motor vehicle leasing companies;  
MOTOR VEHICLES - Leasing companies, requirement of dealers' licenses for;  
REVISED CODES OF MONTANA 1947 - Sections 53-114(6)(b), 53-118, 53-122.

HELD: Automobile leasing companies which sell automobiles must either be licensed as motor vehicle dealers pursuant to section 53-118, R.C.M. 1947, or registered as branch establishments of licensed motor vehicle dealers pursuant to section 53-122, R.C.M. 1947.

5 January 1978

Larry G. Majerus, Administrator  
Motor Vehicle Division  
Department of Justice  
Scott Hart Building  
Helena, Montana 59601

Dear Mr. Majerus:

You have requested my opinion on the following question:

Are automobile leasing companies which sell automobiles required to obtain dealers' licenses as provided by section 53-118, R.C.M. 1947?

According to your inquiry, certain automobile leasing companies in Montana receive motor vehicles from licensed new motor vehicle dealers for subsequent sale. In some instances, the statements of origin for these vehicles are held in blank by the leasing operators, with no showing of transfer to the lessors by the licensed dealers. Upon sale the statements are completed by the leasing companies for new vehicle registration and licensing. In other instances, the leasing operators merely hold the vehicles for sale, the transfer documents are completed by the originating dealers upon completion of the sale, again with no indication on the documents of the intervening possession or action by the leasing operators.

Section 53-118(1), R.C.M. 1947, provides, in pertinent part:

Every person, firm, corporation, or association who, for commission or profit, engages in the business of buying, selling, exchanging or acting as a broker of new motor vehicles, used motor vehicles, trailers, ... shall cause to be filed, by mail or otherwise, in the office of the registrar of motor vehicles, a verified application for licensing as a dealer on a blank to be furnished by the registrar of motor vehicles for that purpose, and containing the information therein required.

The statute requires the posting of bonds and filing of fees by new and used vehicle dealers in Montana.

Though leasing companies which sell automobiles are not mentioned by name in section 53-118, it is clear that all persons and firms selling motor vehicles, under any arrangements, fall within the ambit of the statute. The manifest legislative intent is that the business of buying and selling new or used automobiles be engaged in only by those who are duly licensed and registered with the State.

The question remains, however, as to what licenses leasing companies must obtain. Under one of the above described practices, the leasing operator merely holds the vehicle for sale and the transfer papers are later completed by the licensed dealer. The leasing operator in these circumstances is actually serving as an agent of the dealer with whom the automobiles originate. Section 53-122, R.C.M. 1947, specifically states: "A dealer in motor vehicles or trailers who shall maintain more than one (1) place of business or who shall maintain any branch establishment or establishments, must register and pay a registration or license fee for each such place of business or establishment." Therefore, those dealers who make use of leasing companies for the sale of their new motor vehicles must register those leasing companies as branch establishments in order to bring their current practices into compliance with statutory requirements.

Under the other circumstances described above, the leasing companies hold both the vehicles and the blank transfer documents until sale. It is my opinion, under current Montana statutes, that the leasing operators must obtain licenses as used vehicle dealers, pursuant to section 53-118(1)(b), R.C.M. 1947. Section 53-114(6)(b) provides:

No [wholly new and unused] motor vehicle may be registered or licensed under the provisions of this subsection unless the application for registration is accompanied by a statement of origin to be furnished by the dealer selling the vehicle, showing that the vehicle has not previously been registered or owned, except as otherwise provided herein, by any person, firm, corporation, or association that is not a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

Leasing companies which are not licensed under section 53-118(1)(a) as new vehicle dealers cannot sell vehicles for registration as new vehicles under the above-quoted section if they have themselves exercised acts of ownership over those vehicles. When automobiles delivered to leasing companies by licensed dealers are held for sale and sold by the lease operators, the leasing companies have exercised direct control and ownership of the automobiles involved. The statements of origin of the sold vehicles cannot be completed for registration as new motor vehicles--without reference to the intervening ownership by the leasing companies. Because the motor vehicles cannot be sold as new automobiles, the leasing operators involved may be licensed under present statutes only as used vehicle dealers.

Under either of the practices described above, it is clear automobile leasing companies are at present engaged in the business of selling motor vehicles and they must be registered or licensed as motor vehicle dealers with the State. To bring their current practices into compliance with statutory requirements, they must either be registered as agents or branch establishments of the licensed new motor vehicle dealers from whom they obtain automobiles for subsequent sale or be licensed themselves as used motor vehicle dealers.

THEREFORE, IT IS MY OPINION:

Automobile leasing companies which sell automobiles must either be licensed as motor vehicle dealers pursuant to section 53-118, R.C.M. 1947, or registered as branch establishments of licensed motor vehicle dealers pursuant to section 53-122, R.C.M. 1947.

Very truly yours,

MIKE GREELY  
Attorney General