

"4. Can the legislature interpret the phrase 'county organized for judicial purposes' (Art. VI, Sec. 15) so that we can legislate probate districts?"

As limited by Section 15, this can only be done "if approved in each affected county by a majority of the electors voting on the question." It follows in answer to your question that the legislature is not free to so construe Section 15 as to avoid the necessity for such approval.¹⁶

"5. What is the meaning of the phrase 'probate district' in Article VI, Section 16?"

Under Section 14, Article VII of the 1908 Constitution, each county was required to elect a probate judge to serve as the judge of the probate court of that county. As specified by Sections 15 and 16 of Article VI of the 1963 Constitution, the legislature may create with the approval of the voters of the respective counties a "probate court district" or "probate district" of more than one county. Each district, irrespective of the number of counties included therein, would have one probate court, the judge or judges of which would henceforth be elected by the voters of that district. In that respect the probate court districts would be comparable to those present judicial circuits which are composed of more than one county and in which the judge or judges of the circuit court of that circuit are elected. Inasmuch as the probate court of such a district will replace the probate court of each of the counties comprising the district, such district must, of course, take in the entire area of each of the counties.

FRANK J. KELLEY,
Attorney General.

671205.1

BROKERS: Motor Vehicles.
MOTOR VEHICLES: Brokering.

A person who conducts the business of brokering vehicles required by the Michigan vehicle code to be registered must be licensed by the Secretary of State who may designate such license as that of a broker.

A broker of new motor vehicles is not required to have a manufacturer's franchise.

A broker of motor vehicles must have an established place of business appropriate for the legitimate operation of a brokerage.

No. 4594

December 5, 1967.

Honorable James M. Hare
Secretary of State
The Capitol
Lansing, Michigan

In your letter of July 19, 1967, you review your present policy towards applications of brokers of motor vehicles for dealer licenses under the provisions of the Michigan vehicle code, Act 300, P.A. 1949 as amended,

¹⁶ *Beacon v. Kent-Ottawa Metropolitan Water Authority*, 354 Mich. 159, 171 (1958).

being C.L.S. 1961 § 257.1 et seq., M.S.A. 1960 Rev. Vol. § 9.1801 et seq.

It is your position that while the brokering of motor vehicles falls within the broad meaning of "dealer," as defined by Section 11 of the Michigan vehicle code, a broker cannot be licensed under the act because it is your interpretation that an established place of business necessary for the issuance of a license must include facilities for displaying and servicing of vehicles.

You recognize the inherent conflict in your position as while a broker does not need such an establishment for the carrying on of his business, Section 248 of the Michigan vehicle code, as amended, specifically requires that any person "buying, selling, brokering or dealing in vehicles, of a type required to be registered hereunder" must secure a license from the secretary of state.

With this as a background, you ask several questions which, for the purposes of this opinion, may be stated as follows:

1. Must the person in the business of brokering vehicles of a type required to be registered under the Michigan vehicle code be licensed by the secretary of state as a dealer?
2. Must a broker of new vehicles have a manufacturer's franchise in order to secure a dealer's license?
3. May the secretary of state, in issuing a dealer's license to a broker, designate it as that of a broker?
4. Must a broker have an established place of business for the purposes of showing and servicing vehicles in order to receive a dealer's license?

I will answer your questions seriatim.

A broker of motor vehicles, if he has an established place of business, would without question fall within the meaning of dealer as defined by Section 11 of the Michigan vehicle code; C.L.S. 1961 § 257.11; M.S.A. 1960 Rev. Vol. § 9.1811. However, that section is definitional and the Michigan vehicle code does not require dealers, as there defined, to be licensed but rather spells out specifically those persons who must be licensed and if they fail to qualify for a license for any reason, they are prohibited from continuing to do business under penalty of a misdemeanor as provided in Section 901; C.L.S. 1961 § 257.901; M.S.A. 1960 Rev. Vol. § 9.2601.

As to brokers, Section 248(a) of the Michigan vehicle code, as last amended by Act 281, P.A. 1957; C.L.S. 1961 § 257.248; M.S.A. 1960 Rev. Vol. § 9.1948, is unequivocal in stating that any person in the business "of buying, selling, *brokering*, or dealing in vehicles, of a type required to be registered hereunder" must be licensed by the secretary of state. (Emphasis supplied) Where a statute is unambiguous there is no need for interpretation, *City of Grand Rapids v. Crocker*, 219 Mich. 178 (1942), nor is there room for construction, *Wayne County Board of Road Commissioners v. Wayne County Clerk*, 293 Mich. 229 (1940); *Knapp v. Palmer*, 324 Mich. 694 (1949). Accordingly, the answer to your first question is in the affirmative.

As it relates to your second question, Section 248(b) sets out in part the information an applicant for a dealer's license must submit to the secretary of state:

" . . . if new vehicles are to be sold, the make or makes to be handled; and each new motor vehicle dealer shall accompany application for license with an affidavit swearing to the fact that he holds a bona fide contract to act as factory representative, factory distributor or distributor representative to sell at retail.
make of vehicle; . . ."

It is noted that the bona fide contract there referred to and commonly known as a manufacturer's franchise, authorizes a distributor to sell a certain manufacturer's make of vehicle.

Typically, a broker of automobiles operates by locating potential customers who, in consideration for service rendered by the broker which might include obtaining the best possible price advantage and the handling of title, licensing, insurance, finance and delivery details, agrees to pay a broker's fee. The broker, on finding such a customer, attempts to negotiate the desired transaction with a licensed dealer. If successful the transaction is consummated with the buyer paying the quoted price, which includes the broker's commission, directly to the selling dealer, who in turn remits the commission to the broker. The automobile as well as the warranty are then delivered directly to the buyer.

In summary, a broker does not sell vehicles but rather negotiates that sale as a special agent, a broker having been described by the Michigan Supreme Court as "an agent with special and limited authority, one who is employed by another to negotiate for specific property with the custody of which he has no concern." *Stephenson v. Golden*, 279 Mich. 710, 735 (1937). Or in a similar light, being characterized as an agent for both parties:

" . . . the broker, being employed by persons who have opposite interests to manage, he is, as it were, agent both for the one and the other, to negotiate the commerce and affair in which he concerns himself." *Porter v. Schroer*, (D.C. Ohio), 65 F Supp. 125, 127 (1946).

Further, as in every transaction of a new vehicle handled by a broker, there is a principal, sellor, who would be subject to the franchise requirement of the Michigan vehicle code; the safeguards which it intended to provide would be fulfilled. Accordingly, as a broker is not the principal in the sale of vehicles, it is my opinion, in answer to your second question, that as a requirement of being licensed as a broker of new vehicles he need not have a manufacturer's franchise.

In regard to your third question, I point out Section 248(f) which states:

"The secretary of state shall adopt some method to segregate new vehicle dealers, exclusive used vehicle dealers, junk dealers, etc., on his records."

This section clearly authorizes the secretary of state to distinguish between the various types of dealers required to be licensed by him and, accordingly, in licensing a broker, he may designate the license as that of a broker.

In answering your fourth question, I point out Section 249 of the Michigan vehicle code which sets up certain substantive standards which a dealer

must meet in order to be eligible for a license. Subsection (f) of that section, in conjunction with the opening paragraph, reads as follows:

"The secretary of state shall deny the application of any person for a license as a dealer and refuse to issue him a license as such, or, may suspend or revoke a license already issued, if the secretary finds such applicant;

* * *

"(f) Has no established place of business which is used or will be used for the purpose of selling, displaying and offering for sale or dealing in vehicles of a type required to be registered, and has not proper servicing facilities; or

* * *"

It has been your past interpretation of this subsection that a broker of vehicles must have such an established place of business and that interpretation seems to follow from a literal reading of it. However, as pointed out in your letter, this leads to an absurd result as such a place of business is not necessary for the legitimate operation of brokering vehicles. Prior to 1957 there was no requirement that brokers of vehicles be licensed. House Bill No. 139, introduced in the 1957 session of the legislature, purported to amend Section 248 of the Michigan vehicle code by extending it to all vehicles to be registered under it. The bill as introduced passed the House, *House Journal 1957*, Vol. 1, p. 501, but the Senate committee on highways proposed that the word "brokering" be inserted in subsection 248(a), *Senate Journal 1957*, Vol. 1, p. 924. The bill as amended was approved by the Senate, *Senate Journal 1957*, Vol. 2, p. 988. The House concurred on the amendment, *House Journal 1957*, Vol. 2, p. 1468, and the bill became law as part of Act 281, P.A. 1957. There is no record of any bill concerning Section 249 of the Michigan vehicle code as being introduced or discussed in the 1957 session.

A similar set of circumstances led to the case of *Williams v. Secretary of State*, 338 Mich. 202 (1953). A section of the election law relating to the filing of recount petitions had been amended to permit the filing of a counterpetition. However, a separate section providing for a refund of the deposit required in filing a petition under certain circumstances had not been amended to cover the refund of the deposit made in filing a counterpetition. In that case it was one of defendant's contentions that as there was no authorization for a refund in case of a counterpetition, none could be made. The court, in denying defendant's contentions, stated at page 207:

" . . . It is a fair conclusion, under established rules of statutory construction, that the legislature, in amending section 1, intended that in its amended form it should be construed in connection with other provisions of the law and in harmony therewith.

"The statutory language in controversy here must be read in the light of the purpose of the legislature in its enactment as indicated by provisions of the law relating to the subject matter"

The same rule applies here. The legislature, by amending Section 248, evinces an intent that the brokers of vehicles be licensed and did not intend to impose upon brokers the unreasonable requirement that they have an established place of business which included facilities which were not necessary to the legitimate operation of a brokerage. On the other hand, Sections 11 and 249(f), along with Section 14 which defines an established place of business, reveal the general policy of the Michigan vehicle code that dealers do have established places of business.

Accordingly, it is my opinion that a broker may be licensed as a dealer if he has an established place of business which is suitable for the legitimate operation of a brokerage, there being a reasonable amount of discretion vested in you as to what constitutes such an establishment.

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671219.3

FINES FOR EXCESS WEIGHT: Motor vehicles.

A justice of the peace does not have any discretion in determining the amount of fine for violating that portion of the Motor Vehicle Code limiting the weight of certain vehicles. These fines must be applied to the local library fund and distributed in accordance with law.

No. 4629

December 19, 1967.

Mr. Albert Lee
Auditor General
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You have posed two questions: (1) Whether a justice of the peace has discretion in imposing the amount of fines resulting from a misdemeanor conviction of violating that portion of the Motor Vehicle Code limiting the weight for certain motor vehicles; and, (2) What is the proper disposition of these fines?

Section 724(c) of Act 300, P.A. 1949, as last amended by Act 277, P.A. 1967, being M.S.A. Curr. Mat. § 9.2424, provides as follows:

“(c) Any owner of any vehicle as defined in this act, or any lessee of the vehicle of an owner-operator, who causes or allows a vehicle to be loaded and driven or moved on any highway, when the weight of that vehicle violates the provisions of section 722 is guilty of a misdemeanor and upon conviction thereof shall be assessed a fine in an amount equal to 2 cents per pound for each pound of excess load over 1,000 pounds when the excess is 2,000 pounds or less; 4 cents per pound of excess load when the excess is over 2,000 pounds but not over 3,000 pounds; 6 cents per pound for each pound of excess load when the excess is over 3,000 pounds but not over 4,000 pounds; 8 cents per pound for each pound of excess load when the excess is over 4,000 pounds but not over 5,000 pounds; 10 cents per pound for each pound of excess load when the excess is over 5,000 pounds.”