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NEW CAR DEALERS POLICY AND APPEALS BOARD
STATE OF CALIFORNIA

In the Matter of)
)
ROBERT E. SYKES, dba)
FAMILY FUN-MOBILIVEN,)
)
Appellant,) Appeal No. A-21-72
)
v.) Filed: August 22, 1972
)
DEPARTMENT OF MOTOR VEHICLES,)
)
Respondent.)
_____)

Time and Place of Hearing: July 19, 1972, 10:45 a.m.
City Council Chambers
City Hall
625 E. Santa Clara Street
Ventura, California

For Appellant: Robert L. Mezzetti
Mezzetti & Testa
300 South First Street, Suite 210
San Jose, CA 95113

For Respondent: Honorable Evelle J. Younger
Attorney General
By: John E. Barsell
Deputy Attorney General

FINAL ORDER

Robert E. Sykes, dba Family Fun-Mobiliven, hereinafter referred to as "Sykes", filed an appeal with this board from a

decision of the Director of Motor Vehicles denying an application for a vehicle dealer's license. Because the administrative record raised a question concerning the board's jurisdiction to hear and decide the matter, the parties were given an opportunity to file with the board points and authorities on the jurisdictional question.

After reviewing such points and authorities and considering oral arguments of the parties, we conclude for the reasons discussed below that jurisdictional limitations imposed by the Legislature preclude us from hearing and deciding the merits of the Sykes' appeal.

FACTS

Sykes filed an Application for Occupational License with the Department of Motor Vehicles on July 30, 1970. Proceeding via the Administrative Procedure Act (Section 11500 et seq., Government Code), the director notified Sykes of the refusal to issue a vehicle dealers license. A hearing was conducted by an officer of the Office of Administrative Hearings on August 26, 1971. The Proposed Decision of the hearing officer recommended that the application filed by Sykes for a vehicle dealers license be denied, provided, however, that a probationary dealers license be issued for a period of two years subject to the condition that Sykes obey all of the laws of the State of California and all relevant rules and regulations of the

Department of Motor Vehicles. The proposed decision was not adopted by the department and a notice to this effect was filed by the department on November 24, 1971. On December 23, 1971, the Director of Motor Vehicles filed his decision which denied the application for a vehicle dealers license. Sykes timely filed an appeal to this board from such denial.

On or about June 23, 1972, which was four days prior to the date of his points and authorities filed with this board, Sykes filed another application with the Department of Motor Vehicles for an occupational license. In this instance, he indicated on the form that he was desirous of being licensed to sell "new Auto-Comm'l" and "new Trailer". He indicated that he was franchised by the International Recreational Corporation to sell Dreamliner Motor Homes. Further, Sykes submitted documentation that he did pay to the department the \$30 fee pursuant to Section 11723 Vehicle Code and 13 Cal. Adm. Code 533. There is, however, nothing in the administrative record to indicate that the Department of Motor Vehicles has acted upon this application and Sykes concedes that the department has not so acted.

The points and authorities submitted by Sykes makes reference to a letter dated February 15, 1972, purporting to authorize him to sell Jayco Tent Trailers. A copy of this letter is a part of the record before us.

RELEVANT STATUTES

The jurisdiction of this board is circumscribed by Sections 3051 and 426 Vehicle Code as follows:

"3051. The provisions of this chapter are not applicable to any person licensed as a manufacturer or transporter or salesman under Article 1 (commencing with Section 11700) of Chapter 4 of Division 5, or to any licensee thereunder who is not a new car dealer. The provisions of this chapter shall be applicable to a new car dealer or any person who applies for a license as, or becomes, a new car dealer as defined in Section 426."

"426. 'New car dealer' is a dealer, as defined in Section 285, who, in addition to the requirements of that section, acquires for resale new and unregistered motor vehicles (excluding motorcycles as defined in Section 400 of this code) and new and unregistered trucks from manufacturers or distributors of such motor vehicles and trucks. No distinction shall be made, nor any different construction be given to the definition of 'new car dealer' and 'dealer' except for the application of the provisions of Chapter 5 (commencing with Section 3000) of Division 2 of this code, which chapter shall apply only to new car dealers as defined in this section."

CONCLUSIONS

It is apparent that the appeal filed by Sykes from the director's denial of the application of July 30, 1970, for a vehicle dealers license does not fall within the board's jurisdictional boundaries fixed by the Legislature.

Adverting to that application, we take note of three significant facts: (1) Sykes indicated thereon that the type of vehicles for which he desired a license to sell were "used Auto-Comm'l" and "used Trailer"; (2) Sykes entered no information in the place on the form provided for new vehicle dealer applicants to identify the franchisor; and (3) he did not submit with the application the \$30 required of new car dealers

and applicants pursuant to Section 11723 Vehicle Code and 13 Cal.Adm. Code 533. Sykes did not file an application for a license to sell new and unregistered motor vehicles and the letter of February 15, 1972, purporting to authorize him to sell Jayco Tent Trailers did not place him in the new car dealer category. A trailer not being self-propelled (Section 630 Vehicle Code) is not a motor vehicle (Section 415).

Sykes informs us, however, that, "Under Section 3050(c)(3) Vehicle Code, there is no doubt that the board has jurisdiction over this question." He then proceeds to point out that he has filed another application with the Department of Motor Vehicles and that this is one for a license to conduct business as a new car dealer. Sykes has furnished us with a copy of this application and draws our attention to the fact that he has checked the appropriate box on the form and has paid the requisite fee. He argues "...there remains no doubt that [Sykes'] subsequent application for a New Car Dealers License now would enable the Board to exercise jurisdiction over the subsequent application." Appellant misconstrues the statutory scheme governing this board's functions.

Section 3050(b) Vehicle Code is the statute which confers upon this board the jurisdiction to hear and decide appeals

filed by new car dealers or applicants for a new car dealers license "from an action or decision of the Department of Motor Vehicles." Sections 3052 through 3058 Vehicle Code set forth procedural guides and other matters concerning appeals. We continue to construe, as we have during the past several years, Section 3050(c) as conferring jurisdiction upon this board to consider and resolve questions and complaints submitted to the board by citizens concerning activities of new car dealers or applicants for a new car dealers license; i. e. consumer complaints against new car dealer licensees. In our view, Section 3050(c) Vehicle Code has no relevancy to the board's appellate function and it does not confer upon the board "original" jurisdiction, concurrent with the jurisdiction of the department, to hear and decide accusations and statements of issues in proceedings conducted in accordance with the Administrative Procedure Act, Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code. Therefore, it follows that Section 3050(c) does not authorize us to take jurisdiction over the application filed June 23, 1972, not yet acted upon by the Director of Motor Vehicles. The "action" of the director from which the instant appeal is taken is the denial of a dealer's license following proceedings under the Administrative Procedure Act conducted with respect to appellant's application filed July 30, 1970. That appeal is all that is before the board at this time and it is beyond our jurisdiction.

The assertion of Sykes that we acquire jurisdiction of this matter on the grounds that the wrongful acts found by the department and forming the basis for denying a vehicle dealer's license occurred when Sykes was a new car dealer is hereby rejected as being totally without merit.

We now comment on the substantial length of time that has elapsed since Sykes filed his original application with the Department of Motor Vehicles. Approximately 13 months elapsed between the filing of the original application and the date of the hearing before the director's authorized representative. About four months elapsed between the date of such hearing and the date the director's decision was filed. Another five months passed between the filing of the appeal and the filing of the administrative record. One month elapsed between the last mentioned event and our hearing on the jurisdictional question. During these period of time, relevant circumstances may have changed. This board urges the Department of Motor Vehicles to conduct another investigation as expeditiously as possible so that the Director of Motor Vehicles may make a determination as to whether or not Sykes now has, in the director's judgment, the requisite qualifications for a license as a vehicle dealer. If the director should deny Sykes' second application of June 23, 1972, and assuming all other jurisdictional requisites are met, this board will have jurisdiction to hear and decide an appeal on its merits regarding that action of the director.

The appeal filed in the above-entitled case is hereby dismissed on the basis that jurisdiction is lacking. This dismissal shall become effective upon filing of this Final Order.

AUDREY B. JONES

PASCAL B. DILDAY

GILBERT D. ASHCOM

W. H. "Hal" McBRIDE

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A-21-72

I dissent:

The answer to the jurisdictional question presented by this appeal must be found in the language of Sections 285, 426 and 3050, Vehicle Code.^{1/}

Section 285, which defines "Dealer", is pertinent only in that appellant unquestionably has at all relevant times since filing his application of July 30, 1970, been an applicant for a license as a "dealer" as the latter term is therein defined.

Section 426, which defines "New car dealer", provides: "'New car dealer' is a dealer, as defined in Section 285, who, in addition to the requirements of that section, acquires for resale new and unregistered motor vehicles...and new an unregistered trucks from manufacturers or distributors of such motor vehicles and trucks." Section 426 further provides that no distinction is to be made, nor any different construction be given, to the definition of "New car dealer" and "dealer" except for the application of the provisions of Chapter 5 of Division 2, which govern this board and includes Section 3050. Finally, Section 426 provides that Chapter 5 "shall apply only to new car dealers as defined in this section".

Parenthetically, it should be noted that there is no reference whatsoever in either Section 285 or 426 to "an applicant for...a

^{1/} Unless otherwise stated, all references are to the Vehicle Code.

license as a new car dealer as defined in section 426", the last quoted language appearing only in subsection (b) of Section 3050, which provides for the board's appeal power. If the closing phrase of Section 426 were taken literally and by itself, the board would have no jurisdiction over applicants for dealer licenses of any kind, and its jurisdiction would be limited to only those new car dealers who held a dealer's license prior to the occurrence of the event over which the board's jurisdiction is sought to be invoked. However, no one has thus far contended for such a restrictive interpretation of the language of Section 426 (and 285), doubtless because such a strict construction would render meaningless the provisions of subsections (b) and (c) of Section 3050 and of Section 3051 which were enacted at the same time as Section 426. Therefore, it seems reasonable to read the last clause of Section 426 to mean "which chapter shall apply only to new car dealers, as defined in this section, and to applicants for licenses as new car dealers".

It should be emphasized that Section 426 clearly provides that there is only one distinguishing feature of a new car dealer, namely, that he is a dealer who "acquires for resale new and unregistered motor vehicles...from manufacturers or distributors", and that this distinction shall have significance only with respect to the application of Chapter 5 governing this

board. It follows that, without any action whatsoever on the part of the department, or on anyone else's part, except a manufacturer or distributor, a dealer licensee can at the outset conduct his licensed business enterprise so that he is subject to this board's jurisdiction or not, at his whim, and that a licensed dealer who is not a "new car dealer" and thus not subject to the board's jurisdiction can also, at his whim, at any time, become subject to the jurisdiction of this board, without notice to or obtaining the consent of the department, merely by buying a new, unregistered vehicle, for resale, from a manufacturer or distributor. Thus, a dealer's action, unilateral and uncontrolled so far as the department is concerned, invokes the jurisdiction of the board. For the reasons hereinafter stated, I believe that the same is true of an applicant for a license as a dealer, except in the case of an applicant, the distinction depends solely on the applicant's intent, because, not having a dealer's license, an applicant cannot legally acquire for resale a new and unregistered vehicle from a manufacturer or distributor. The most he can do is declare it his intent to do so.

So far as the department and this board are concerned, the first occasion to inquire as to the existence or nonexistence of such intent is at the time the jurisdiction of the board is first sought to be invoked. That point of time, in the case of an

appeal to the board under subsection (b), Section 3050, is when the board receives an appellant's "appeal", in this case, the document entitled "Appeal from Order Denying Application for Vehicle Dealer's License" filed by appellant with the board January 19, 1972.

In the opening paragraph of his appeal document, appellant clearly and concisely declared the requisite intent when he identified himself as "an applicant for a new car dealer's license". Appellant has consistently maintained that position in the proceedings before this board. It is immaterial to his status and to the board's jurisdiction, that appellant did not declare himself an applicant for a license as a new car dealer at some earlier date, during the proceedings upon his application before the department, not only because it was not relevant to those proceedings whether he intended to buy and sell new and used cars, or only used cars, but also because of the specific provisions of Section 426 that the only distinction to be made between "new car dealer" and "dealer" is the application of Chapter 5 of Division 2. These provisions had no application or pertinence until appellant filed his appeal.

It is true that prior to filing his appeal with the board appellant did not declare his intent to acquire new cars for resale. Therefore, prior to filing the appeal, the board would

not have had jurisdiction to act with respect to appellant under the provisions of subsection (c) of Section 3050. However, that circumstance does not seem to be a proper basis for the board to refuse to entertain jurisdiction of this appeal. As discussed above, a licensee may assume or shed the status of "new car dealer" at his whim, with no formal or other control or action of the department as to whom he at all times remains merely a "dealer", except only with respect to the board's jurisdiction.

I find no justification for reading into these statutes language which is not there in order to deprive appellant access to the board. The majority held that in order to qualify as an applicant for a license as a new car dealer, appellant had to (1) declare his intent to act as a new car dealer when he filed his application with the department, (2) pay the \$30.00 fee prescribed by Section 11723 and 13 Cal. Adm. Code §533, and (3) establish that he held a franchise from a manufacturer or distributor. It is extremely doubtful whether the third condition, if imposed by the state, would be constitutional; it has been held unconstitutional in other jurisdictions because if the state requires a franchise, it, in effect, delegates part of the state's licensing power to private enterprise.^{2/}

^{2/} Subsection (c) of Section 11704 does not require that an applicant for a dealer license prove that the applicant holds a franchise. It merely requires the applicant to give the names of new cars for which a franchise has been granted as well as the names and addresses of the manufacturers or distributors who granted them.

Be that as it may, the legislature did not include these three elements in Sections 285 and 426. The majority's view does not find support in the language of subsection (b) of Section 3050. This language is, unfortunately, somewhat overly brief as it pertains to applicants, as distinguished from licensees. Moreover, the phrasing of the subsection is incorrect. One phrase is misplaced.^{3/} The subsection, when reasonably interpreted, provides, in pertinent part, as follows: "The board shall: ... (b) Hear and consider ... an appeal presented by an applicant for ... a license as a new car dealer as defined in Section 426 ... when any such applicant submits such an appeal ... from an action or decision arising out of the department taken pursuant to Chapter 4 (commencing with Section 11700) of Division 5."

It was conceded by respondent, at oral argument upon the jurisdictional question, that had appellant indicated in his application of July 30, 1970, that he intended to acquire new cars from manufacturers or distributors for resale, paid the \$30.00 "new car dealer's fee" and done whatever else the majority would require of him to attain the status of an applicant for a license as a new car dealer, the proceedings before the

^{3/} An appeal is not presented pursuant to Chapter 4 of Division 5 as the phrasing of the subsection would indicate. Chapter 4 of Division 5 makes no provision for an appeal. The appeal is taken from an action or decision arising out of department action pursuant to Chapter 4 of Division 5. The proceedings before the department which lead to the actions appealed from are governed by Section 11708 which prescribes a hearing pursuant to Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code.

department which gave rise to this appeal would have been wholly unaffected. Specifically, respondent admitted that the procedure under the Government Code would have been identical. The same issues on the merits would have been presented. The same evidence would have been adduced at the hearing before the same referee. The same matters would have been considered by the referee in arriving at the proposed decision and by the director in arriving at his decision and his order denying petition for reconsideration. This, of course, is in keeping with the provision in Section 426 that, except as it affects the applicant's status with this board, there is no distinction to be drawn between applicants for dealer licenses and applicants for new car dealer licenses.

What then is gained by the position taken by the majority? Is the public interest served in some manner? Does common sense command the majority's conclusion, even though the statutory language doesn't support it? I submit that nothing has been gained. The public interest has been disregarded. Common sense is offended.

The majority properly recognizes that appellant has labored over-long before the department with his application. About thirteen months elapsed between filing the original application and the hearing and another four months elapsed awaiting the director's decision. Another five months went by after his

appeal was filed and before the administrative record was filed. Another month was spent preparing briefs and for hearing on the jurisdictional question. The board now has the administrative record, the parties are ready to proceed to hearing on the merits, appellant pleads, literally, that the board decide his appeal on the merits. Only the department objects, without presenting convincing reasons and certainly without showing how the public or even the department can be prejudiced.

In the face of these circumstances, the majority says that during the time that has passed, "relevant circumstances may have changed" (although there is no evidence to support this supposition) and that the department should "conduct another investigation as expeditiously as possible". I must ask, to what end? To enable the director to decide again what he has already decided unfavorably to appellant? The majority refers, presumably, to action by the department upon the second application of appellant filed June 23, 1972 -- one apparently meeting the majority's "new car dealer" test.

This case presents a sorry picture of a citizen's plight when involved in a bureaucratic jumble (or jungle) caused by statutes that are somewhat less than artfully drafted. The majority's decision places "form over substance" and the result is "justice delayed is justice denied". I realize that this board cannot "assume" jurisdiction, even if the

parties consent, unless the legislature has given the board power to do so. The statutes, reasonably interpreted, give the board jurisdiction.

ROBERT B. KUTZ

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The appeal filed in the above-entitled case is hereby dismissed on the basis that jurisdiction is lacking. This dismissal shall become effective upon filing of this Final Order.

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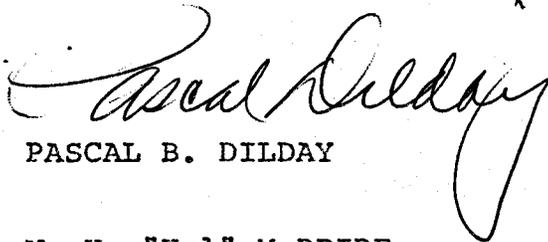
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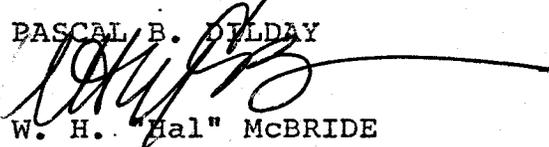
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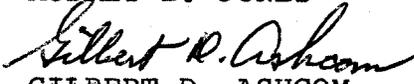
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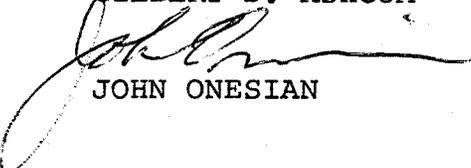
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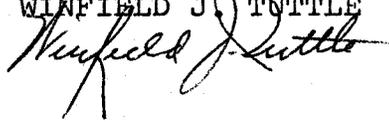

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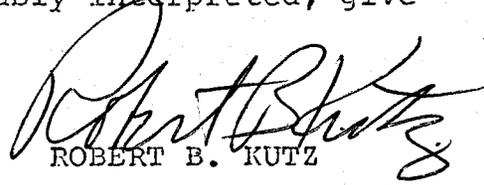
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