

NEW CAR DEALERS POLICY AND APPEALS BOARD

STATE OF CALIFORNIA

MILLER IMPORTS, INC.,)
A California Corporation,)
)
Appellant,) Case No. A-22-72
)
v.) Filed: May 4, 1972
)
DEPARTMENT OF MOTOR VEHICLES,)
)
Respondent.)
_____)

Time and Place of Hearing: April 12, 1972, 1:30 p.m.
Director's Conference Room
Department of Motor Vehicles
2415 First Avenue
Sacramento, California

For Appellant: Richard H. Cooper
Attorney at Law
Freshman, Marantz, Comsky &
Deutsch
9171 Wilshire Boulevard
Beverly Hills, CA 90210

For Respondent: Honorable Evelle J. Younger
Attorney General
By: Mark Levin
Deputy Attorney General

FINAL ORDER

The Director of Motor Vehicles, pursuant to Chapter 5, Part 1, Division 3, Title 2, of the Government Code issued a decision effective January 31, 1972, wherein it was found that appellant:
(1) failed in two instances to timely submit to respondent a written notice of transfer of interest in a motor vehicle;

(2) wrongfully and unlawfully failed in one instance to mail or deliver to respondent the report of sale of a used vehicle together with such other documents and fees required to transfer the registration of the vehicle within the 20-day period allowed by law; (3) filed with respondent in one instance a false certificate of non-operation of a certain motor vehicle; and (4) in five instances included as an added cost to the selling price of certain motor vehicles registration fees in excess of the fees due and paid to the State by appellant.

It was further found that the untimely filing of sale and titling documents arose from the failure of an employee of appellant's to report the sale of a certain motor vehicle to appellant's business office. As a result thereof, the documents were not prepared and submitted to respondent. Further, when the same vehicle was sold to another customer, appellant's business office failed to search all of appellant's records and mistakenly executed a certificate of non-operation of the vehicle.

With reference to adding to the selling price of motor vehicles unauthorized registration and vehicle license fees, the director in one case (Item 3)^{1/} found that appellant had included a \$5.00 added cost by inadvertent error but also found that appellant had reimbursed this amount to the buyer before any

1/ Item numbers referred to herein refer in every instance to the numbered items in Exhibit A attached to the Accusation.

representative of respondent's had contacted appellant following the sale. Also, appellant included an added cost of \$3.00 to the selling price of one vehicle (Item 1) by inadvertent error.^{2/}

Concerning the remaining findings involving the added cost for registration and vehicle license fees, respondent found that, at all times relevant, Miller Leasing, Inc., hereinafter referred to as "Leasing", was a California corporation engaged in the business of leasing automobiles at the same address as appellant. Leasing and appellant had the same shareholders and officers and both operations were small, closely-held family corporations. In 1970 appellant sold approximately 1,500 used cars and approximately 1,000 new cars.

All vehicles involved in the "added cost" findings, with the exception of the vehicle designated Item 1, were registered to Leasing and used by Leasing in the regular course of its business and, upon termination of the leases, were sold by Leasing to appellant who then sold them to retail buyers. Prior to selling these vehicles to appellant, Leasing, in the regular course of its business, paid to the Department of Motor Vehicles the 1970 registration and licensing fees for three of the vehicles and the 1971 registration fee for one of the vehicles. The fees were due to the department from Leasing. Appellant, upon purchasing these vehicles from Leasing, reimbursed Leasing for the

^{2/} Although respondent made no finding concerning reimbursement to the customer for this unauthorized added cost, respondent stipulated at the administrative hearing that the \$3.00 had been refunded. (R.T. 32:17.)

registration and vehicle license fees which Leasing had paid to the Department of Motor Vehicles. The amount added by appellant to the cost of the selling price charged to the retail buyers upon resale by appellant represented the amount paid by appellant to Leasing for reimbursement of the registration and vehicle license fees. Appellant has refused to repay to its customers the amounts it included in the selling price for these vehicles (except for the refunds it made of amounts charged in error, mentioned above, with respect to the vehicles designated Items 1 and 3). Appellant insists that it was entitled to include these amounts as an added cost to the selling prices and that to do so did not violate Section 11713(g) Vehicle Code. (All references are to the Vehicle Code unless otherwise indicated.)

The Director of Motor Vehicles ordered the suspension of appellant's license, certificate and special plates for a period of five days for failure to give written notice to the department of the transfer of an interest in a motor vehicle; for a period of five days for the unlawful use of a report of sale; for a period of ten days for filing a false certificate of non-operation; and for a period of 15 days for including as an added cost to the selling price of vehicles additional registration and vehicle license fees in excess of the fees due and paid to the State by appellant. The suspensions were ordered to run concurrently resulting in a total of 15 days, however, the 15-day

suspension was stayed and appellant placed on probation for a period of one year under the condition that it obey all laws and the regulations of the Department of Motor Vehicles.

An appeal was timely filed with this board pursuant to Article 2, Chapter 6, Division 2, of the Vehicle Code. On appeal, appellant urged that no disciplinary action should be imposed because, under the proper construction of the relevant statute (Section 11713(g)), appellant was not violating the law when it passed on to the buyer added costs resulting from appellant's having reimbursed Leasing for the cost of registration and vehicle license fees and because the remaining findings of respondent are not of sufficient magnitude to warrant disciplinary action. In the alternative, appellant contends that, should this board disagree with appellant's interpretation of Section 11713(g), the penalty imposed therefor should be reversed on the grounds that appellant was acting in good faith.

DOES SECTION 11713(g) PRECLUDE A VEHICLE DEALER FROM PASSING ON TO A PURCHASER REGISTRATION AND LICENSE FEES WHICH THE DEALER HAS PAID TO ONE OTHER THAN THE STATE?

The relevant facts are: (1) Leasing and appellant were corporations having identical ownership; (2) Leasing owned vehicles which it leased to customers; (3) Leasing paid to the State registration and license fees for such vehicles; (4) the vehicles were sold by Leasing to appellant subsequent to the

termination of the leases; (5) when so sold, appellant reimbursed Leasing for the registration and license fees that Leasing had paid the State; and (6) when appellant sold the vehicles to its retail buyers, appellant passed on to the buyers the amount that appellant had reimbursed Leasing for the fees.

Section 11713(g) provides that it is unlawful and a violation of the code for a vehicle dealer:

"To include as an added cost to the selling price of a vehicle, an amount for licensing or transfer of title of the vehicle, which amount is not due to the state unless such amount has in fact been paid by the dealer prior to such sale."

Respondent contends that the provision requires interpretation due to the absence of clear legislative intent, and that the Legislature intended that a dealer be allowed to pass on to the buyer only those registration and license fees that the dealer has paid directly to the State prior to the sale. Respondent argues that the statute is to be read as follows:

"To include as an added cost to the selling price of a vehicle, an amount for licensing or transfer of title of the vehicle, which amount is not due (...) unless such amount has in fact been paid [to the state] by the dealer prior to such sale."

Appellant contends that Section 11713(g) does not preclude appellant from including as an added cost to buyers registration and license fees which it paid to Leasing because there is no language contained therein which requires a dealer to have paid such fees directly to the State before the dealer can lawfully pass the costs thereof to purchasers. Appellant further urges

that the statute is clear on its face and, therefore, resort to statutory construction is not authorized.

We find no ambiguity in the statute under discussion. It clearly makes unlawful the passing on to buyers costs of registration and vehicle license fees that are not due the State but it also provides for an exception; i. e., the dealer may pass on such costs when he has paid the fees prior to the sale. The exception is equally clear and there is no room for transposing a phrase as respondent seeks to do.

The rules of construction of statutes are applicable only where statutory language is uncertain and ambiguous. In *Copeland v. Raub*, 36 Cal.App.2d 441, the court set forth the rule of construction applicable to the case before us and discussed the evils resulting from ignoring the rule.

"A multitude of authorities supports the emphatic declaration that the rules of construction of statutes, among which is a consideration of the benefits or evils which would result from the enforcement of the law, are applicable only when the statute is ambiguous and uncertain in its meaning. Sec. 1858, Code Civ.Proc.; *In re Mitchell*, 120 Cal.384, 52 P.799; 25 R.C.L. 957 §213.

"In the authority last cited it is said in that regard: 'A statute is not to be read as if open to construction as a matter of course. It is only in the case of ambiguous statutes of uncertain meaning that the rules of construction can have any application. Where the language of a statute is plain and unambiguous and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself. When the meaning of a law is evident, to go elsewhere in search of conjecture in order to restrict or extend the act would be an attempt to elude it, a method which, if once admitted, would be exceedingly dangerous,

for there would be no law, however definite and precise in its language, which might not by interpretation be rendered useless. In such a case, arguments from the reason, spirit, or purpose of the legislation, from the mischief it was intended to remedy, from history or analogy for the purpose of searching out and justifying the interpolation into the statute of new terms, and for the accomplishment of purposes which the law-making power did not express, are worse than futile. They serve only to raise doubt and uncertainty where none exist, to confuse and mislead the judgment, and to pervert the statute.'

"The intent of the Legislature must be ascertained from the language of the enactment and where, as here, the language is clear, there can be no room for interpretation." (Caminetti v. Pacific Mutual Life Insurance 22 Cal.2d 344.)

"In construing statutory provisions, a court is not authorized to insert qualifying provisions not included and may not rewrite the statute to conform to an assumed contention that does not appear from its language. The court is limited to the intention expressed." (Seaboard Acceptance Corporation v. Shay, 214 Cal. 361, People v. One 1940 V-8 Coupe, 36 Cal.2d 471.)

"Words may not be inserted in a statute under the guise of interpretation." (In re Miller, 31 Cal.2d 191; Kirkwood v. Bank of America, 43 Cal.2d 333.)

"A court is not justified in ignoring the plain language of a statute unless it clearly appears that the language used is contrary to what was, beyond question, the intent of the Legislature." (Twaits v. State Board of Equalization, 93 Cal.App.2d 796.)

We do not perceive that a literal construction of the statute results in an effect contrary to the intent of the Legislature and, in passing, we remark that the rules of statutory construction guiding the courts are equally binding upon respondent and this board. We view Section 11713(g) as a tool constructed by the Legislature to prohibit dealers from perpetrating a fraud upon

vehicle buyers through the artifice of collecting an amount for registration and licensing fees that the dealer did not pay. The fact that the dealer paid such fees is sufficient basis for passing the cost thereof on to the buyer; it matters not that they were paid by the dealer to one other than the State. If, as respondent suggests, evils may arise from this interpretation of the law, the remedy is with the Legislature. We perceive no evil in the case before us.

Although we agree with appellant's interpretation of the relevant law, we deem it appropriate to comment on another aspect of the matter. Respondent concedes that appellant was not acting in a nefarious manner when it passed on to its customers costs of registration and license fees which appellant had paid to Leasing. In oral argument at the administrative hearing, counsel for respondent stated that appellant's "...belief is sincere..." (R.T. 64:21.) This concession is supported by facts found in the administrative record. Respondent's investigator called at appellant's place of business during May 1970 (R.T. 15:8) and talked to Mr. Miller concerning the department's interpretation of Section 11713(g). The investigator advised Mr. Miller that his understanding of the law was contrary to that of appellant's and that the fees must be repaid to the purchasers. (R.T. 14:12-25.) On June 13, 1970, appellant's office manager directed a letter (Appellant's Exhibit A) to the

Director of Motor Vehicles. The letter presented appellant's point of view with reference to Section 11713(g) and concluded with a request for a hearing and a review of the terminology of the section. However, an answer was not forthcoming until the accusation was filed.

Because we find that respondent has misapplied the law to the facts before us, we do not discuss other points raised by appellant.

We hold that respondent proceeded in a manner contrary to law with reference to its finding that appellant violated Section 11713(g) as to the vehicles described as Items 2, 3, 4 and 9 of Exhibit A, attached to the Accusation, and, therefore, we reverse Findings VII, except as to Item 1 and the overcharge of \$5.00 in Item 3, and we reverse Determination of Issues IV of the Director's Decision.

In reversing Determination of Issues IV, we are mindful that any penalty imposed for the \$3.00 added cost with respect to Item 1 and the \$5.00 added cost with respect to Item 3 is also stricken. The director found these amounts to have been included by "inadvertent error". It was also found that the \$5.00 overcharge was refunded to the buyer before any departmental representative called upon appellant. Further, the record shows that appellant also refunded to the buyer the \$3.00 overcharge. These facts coupled with the minor nature of the violations,

when considered with appellant's volume of business, lead us to conclude that no penalty is warranted with respect to Item 1 and the \$5.00 overcharge with respect to Item 3.

IS THE PENALTY IMPOSED BY THE DIRECTOR OF MOTOR VEHICLES FOR THE REMAINING FINDINGS COMMENSURATE WITH THOSE FINDINGS?

We are called upon to determine whether the penalty imposed for two untimely notices of sale, one untimely report of sale and one false certificate of non-operation is appropriate. A stayed suspension of 10 days was imposed for these violations with a period of one-year's probation. The director found that they occurred through the negligence of appellant's employees.

In oral argument at the administrative hearing, counsel for respondent conceded that some action on respondent's part short of filing an accusation would have been sufficient for all the charges brought against appellant, except those concerning violations of Section 11713(g). Counsel stated, "I think you have seen enough of these to know were it not for Item 6^{3/} [violations of Section 11713(g)], the director's warning letter, perhaps merely a discussion with the licensee would have taken care of the other charges." (R.T. 64:13-16.)

We are in complete agreement that a letter or other communication from respondent would have satisfactorily resolved the

^{3/} Counsel was referring to Paragraph 6 of the Accusation. This is made clear by his discussion of "6" at R.T. 64:17-23.

charges of the untimely filing of documents with respondent and the filing with respondent of false information, all concerning the sale of one vehicle. The administrative record shows that appellant desired to be cooperative with the department to the extent of sending a letter to the department for clarification of a statute as previously discussed. Certainly the time, money and effort expended by appellant to defend himself against these charges has a remedial effect as great as a warning letter or discussion.

Pursuant to the authority vested in us by Sections 3054(f) and 3055 and for the reasons heretofore discussed, [we reverse in their entirety the penalties imposed under 1(a), (b), (c) and (d) of the Director's Decision.] *deleted*

This Final Order shall become effective when served upon the parties.

AUDREY B. JONES

WINFIELD J. TUTTLE

CONCURRING OPINION

We are in complete accord with the foregoing order but believe we should comment upon the department's treatment of appellant under the circumstances shown by the record.

We do not believe that the department acted with fairness and common sense in this case. When a licensee, in good faith,

formally requests a hearing before the department to resolve a question of statutory construction, or application, as appellant did here, the department should either grant the request, or respond to the request in some manner other than by bringing an accusation against the licensee.

Under circumstances such as those reflected by this record, it appears that it was reasonable for the licensee to seek a decision from authority within the department other than the special investigator who called at the dealer's place of business in the course of an investigation. Appellant fully and fairly stated the problem in the letter. The letter was sent shortly after the issue was raised by the special investigator. The conduct in question was not immoral, did not pose a threat to appellant's customers, and did not involve any burden for the department in its day-to-day operations, other than to hear appellant's contentions and resolve them. It should be noted here that if the department felt otherwise about the appellant's conduct, it should have acted with dispatch after receiving appellant's letter. Instead it waited for over a year to respond. The letter was dated June 13, 1970. The accusation was not filed until June 30, 1971.

We do not view an administrative proceeding, the purpose of which is to impose license discipline for unlawful conduct, as an appropriate forum for resolution of questions such as this.

In an appropriate case, e.g., where the statute in question is ambiguous or overly general, and where the question involves a practice followed by many licensees (as appellant's letter indicated was the case here), the department should exercise its power to adopt regulations to guide the licensees and the public. Of course, since we have concluded that Section 11713(g) is not ambiguous, the department could not properly have asserted its position by adopting a regulation. If proceedings to adopt a regulation had been instituted, however, perhaps the hearings thereon would have persuaded the department that its views were in error. On the other hand, if the department had adopted such a regulation in this case, appellant and other interested licensees could have challenged the validity thereof without being subjected to disciplinary action against their licenses to engage in business pursuant to Section 11440 Government Code.

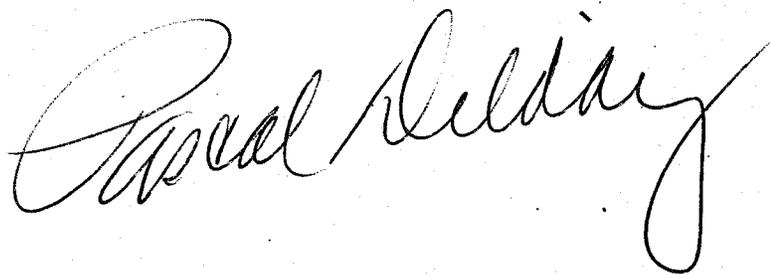
ROBERT B. KUTZ

PASCAL B. DILDAY

ROBERT A. SMITH

A-22-72

n an appropriate case, e.g., where the statute in question is ambiguous or overly general, and where the question involves a practice followed by many licensees (as appellant's letter indicated was the case here), the department should exercise its power to adopt regulations to guide the licensees and the public. Of course, since we have concluded that Section 11713(g) is not ambiguous, the department could not properly have asserted its position by adopting a regulation. If proceedings to adopt a regulation had been instituted, however, perhaps the hearings thereon would have persuaded the department that its views were in error. On the other hand, if the department had adopted such a regulation in this case, appellant and other interested licensees could have challenged the validity thereof without being subjected to disciplinary action against their licenses to engage in business pursuant to Section 11440 Government Code.



A-22-72

charges of the untimely filing of documents with respondent and the filing with respondent of false information, all concerning the sale of one vehicle. The administrative record shows that appellant desired to be cooperative with the department to the extent of sending a letter to the department for clarification of a statute as previously discussed. Certainly the time, money and effort expended by appellant to defend himself against these charges has a remedial effect as great as a warning letter or discussion.

Pursuant to the authority vested in us by Sections 3054(f) and 3055 and for the reasons heretofore discussed, we reverse in their entirety the penalties imposed under 1(a), (b), (c) and (d) of the Director's Decision.

This Final Order shall become effective _____.

CONCURRING OPINION

I am in complete accord with the foregoing order but believe we should comment upon the department's treatment of appellant under the circumstances shown by the record.

I do not believe that the department acted with fairness and common sense in this case. When a licensee, in good faith,

Winfield J. Little

1. 90-70

charges of the untimely filing of documents with respondent and the filing with respondent of false information, all concerning the sale of one vehicle. The administrative record shows that appellant desired to be cooperative with the department to the extent of sending a letter to the department for clarification of a statute as previously discussed. Certainly the time, money and effort expended by appellant to defend himself against these charges has a remedial effect as great as a warning letter or discussion.

Pursuant to the authority vested in us by Sections 3054(f) and 3055 and for the reasons heretofore discussed, we reverse in their entirety the penalties imposed under 1(a), (b), (c) and (d) of the Director's Decision.

This Final Order shall become effective _____.

Audrey B Jones

CONCURRING OPINION

I am in complete accord with the foregoing order but believe we should comment upon the department's treatment of appellant under the circumstances shown by the record.

I do not believe that the department acted with fairness and common sense in this case. When a licensee, in good faith,

In an appropriate case, e.g., where the statute in question is ambiguous or overly general, and where the question involves a practice followed by many licensees (as appellant's letter indicated was the case here), the department should exercise its power to adopt regulations to guide the licensees and the public. Of course, since we have concluded that Section 11713(g) is not ambiguous, the department could not properly have asserted its position by adopting a regulation. If proceedings to adopt a regulation had been instituted, however, perhaps the hearings thereon would have persuaded the department that its views were in error. On the other hand, if the department had adopted such a regulation in this case, appellant and other interested licensees could have challenged the validity thereof without being subjected to disciplinary action against their licenses to engage in business pursuant to Section 11440 Government Code.



A-22-72

charges of the untimely filing of documents with respondent and the filing with respondent of false information, all concerning the sale of one vehicle. The administrative record shows that appellant desired to be cooperative with the department to the extent of sending a letter to the department for clarification of a statute as previously discussed. Certainly the time, money and effort expended by appellant to defend himself against these charges has a remedial effect as great as a warning letter or discussion.

Pursuant to the authority vested in us by Sections 3054(f) and 3055 and for the reasons heretofore discussed, we reverse in their entirety the penalties imposed under 1(a), (b), (c) and (d) of the Director's Decision.

This Final Order shall become effective _____.

CONCURRING OPINION

I am in complete accord with the foregoing order but believe we should comment upon the department's treatment of appellant under the circumstances shown by the record.

I do not believe that the department acted with fairness and common sense in this case. When a licensee, in good faith,

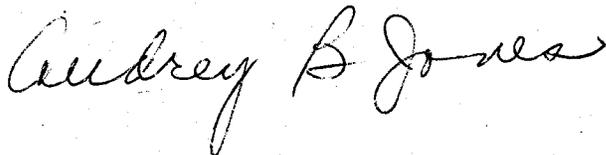
Winfield J. Little

9-22-72

charges of the untimely filing of documents with respondent and the filing with respondent of false information, all concerning the sale of one vehicle. The administrative record shows that appellant desired to be cooperative with the department to the extent of sending a letter to the department for clarification of a statute as previously discussed. Certainly the time, money and effort expended by appellant to defend himself against these charges has a remedial effect as great as a warning letter or discussion.

Pursuant to the authority vested in us by Sections 3054(f) and 3055 and for the reasons heretofore discussed, we reverse in their entirety the penalties imposed under 1(a), (b), (c) and (d) of the Director's Decision.

This Final Order shall become effective _____.



CONCURRING OPINION

I am in complete accord with the foregoing order but believe we should comment upon the department's treatment of appellant under the circumstances shown by the record.

I do not believe that the department acted with fairness and common sense in this case. When a licensee, in good faith,

In an appropriate case, e.g., where the statute in question is ambiguous or overly general, and where the question involves a practice followed by many licensees (as appellant's letter indicated was the case here), the department should exercise its power to adopt regulations to guide the licensees and the public. Of course, since we have concluded that Section 11713(g) is not ambiguous, the department could not properly have asserted its position by adopting a regulation. If proceedings to adopt a regulation had been instituted, however, perhaps the hearings thereon would have persuaded the department that its views were in error. On the other hand, if the department had adopted such a regulation in this case, appellant and other interested licensees could have challenged the validity thereof without being subjected to disciplinary action against their licenses to engage in business pursuant to Section 11440 Government Code.

A handwritten signature in black ink, appearing to read "Robert J. [unclear]". The signature is written in a cursive style with a large, stylized initial "R".

A-22-72