

BEFORE THE NEW CAR DEALERS POLICY AND APPEALS BOARD
OF THE STATE OF CALIFORNIA

In the Matter of)
)
MISSION PONTIAC CO.,)
a California corporation,) Case No. A-6-70
)
Appellant,) Filed and Served:
)
v.) 21 August 1970
)
DEPARTMENT OF MOTOR VEHICLES,)
)
Respondent.)
)
_____)

Time and Place of Hearing: July 29, 1970, 11:00 A.M.
State Building
303 West Third Street
San Bernardino, California

For Appellant: John Fisher
Attorney at Law
Swing, Swing & Fisher
419 North "E" Street
San Bernardino, CA 92401

For Respondent: Honorable Thomas Lynch
Attorney General
By: Robert J. Polis
Deputy Attorney General

FINAL ORDER

In the decision ordered December 3, 1969, by the Director of Motor Vehicles pursuant to Chapter 5, Part 1, Division 3, Title 2 of the Government Code, it was found that appellant:

(1) Failed in 11 instances to timely submit to respondent a written notice of the transfer of interest in certain motor vehicles; (2) wrongfully and unlawfully failed in 32 instances to mail or deliver to respondent the report of sale of used vehicles together with such other documents and fees required to transfer registration of the vehicles within the 20-day period allowed by law; (3) wrongfully and unlawfully failed in 72 instances to mail or deliver to respondent the report of sale of new vehicles together with such other documents and fees required to transfer registration of vehicles within the 10-day period allowed by law; and (4) filed in one instance with respondent a certificate of non-operation for a vehicle when, in fact, the vehicle was in operation during a portion of the period covered by the certificate.

The Director found that the appellant offered evidence to establish: (1) In the majority of incidences, the delay in reporting was caused by financial institutions with whom the buyers of the automobiles were arranging loans and by incompetent clerical help of appellant; (2) appellant had, subsequent to the above listed violations, revised its office procedures to avoid repetition of such violations; and (3) appellant's general manager has been in the automobile business 43 years and has been appellant's general manager for the past 14½ years.

The original penalty imposed by respondent called for a suspension of appellant's license, certificate and special

plates for a period of one year; provided, however, execution of the order of suspension was stayed and appellant was placed on probation for a period of two years with the provision that appellant strictly comply with all laws of the United States and the State of California, and the rules and regulations of the Department of Motor Vehicles. The penalty vested the Director of Motor Vehicles with the power to vacate the stay order and impose the suspension or otherwise modify the order if, after giving appellant notice and opportunity to be heard, the Director should determine during the two-year probationary period that a violation of probation had occurred. Should respondent faithfully abide by the probationary terms for the two-year period, the stay shall become permanent and respondent restored to all license privileges.

Appellant petitioned respondent for reconsideration and, upon reconsidering the matter, respondent reduced the period of suspension from one year to thirty days. The provisions for stay of the penalty, and for probation were not changed.

An appeal was filed with this Board pursuant to Chapter 5, Division 2 of the Vehicle Code.

I. HAS THE DEPARTMENT OF MOTOR VEHICLES PROCEEDED WITHOUT OR IN EXCESS OF ITS JURISDICTION AND IN A MANNER CONTRARY TO THE LAW?

Appellant contends that Section 11705 Vehicle Code, used in conjunction with Section 4456 and 5901 Vehicle Code, is unconstitutional as applied to the circumstances of this case.

It concedes that the regulation of commerce in motor vehicles is a valid exercise of the police power. It cites authority for the proposition that substantive due process is a limitation on the police power and that such power encompasses reasonable regulation of individual rights for the general welfare. Appellant further contends that these statutes need not be unconstitutional but that it is the application of them to the circumstances involved in this case that raises a constitutional question.

Appellant's theory is that it is being denied substantive due process of law in that, according to appellant, the only party that could be injured by the failure of a dealer to comply with the statutory requirements regarding transfer of title of vehicles would be the dealer himself. This theory is based upon an erroneous premise. We do not deem it necessary to discuss the multiple purposes of Sections 4456 and 5901 Vehicle Code; they were enacted for several reasons unrelated to insulating an automobile dealer from liability to the public as owner of a vehicle following the transfer of his interest of a motor vehicle to another. Indeed, *Somerville v. Washington Indemnity Company*, 218 Cal. App. 2d 237, a case cited by appellant, discusses at p. 246-247 the multiple purposes for Section 177 V.C. (now Section 5900 and 5901 V.C.). See also *Gorman v. Taylor*, 176 Cal. App. 2d, 600 and *Evilsizor v. Department of Motor Vehicles*, 251 Cal. App. 2d 216.

We find no denial of substantive due process in the application of the relevant statutes to the facts found in the record before us. Certain statutory obligations attach to the right of a licensed dealer to buy and sell automobiles including the timely and accurate reporting of certain data to respondent. These obligations seek to accomplish a legitimate purpose as determined by the Legislature; i. e., the orderly management of documents related to the ownership of motor vehicles. Meeting these statutory obligations may prove to be inconvenient and sometimes difficult, but we are far from being persuaded that the application of such obligations to the facts in this case constitute in any manner an unreasonable exertion of the police power or arbitrary governmental regulation.

During oral argument and in its briefs, appellant contended that Section 11705 Vehicle Code, as used in conjunction with Sections 4456 and 5901 Vehicle Code, was not meant to be construed, or shouldn't be construed, in such a way that untimely compliance therewith could result in a dealer's license being suspended or revoked. Appellant calls to our attention provisions in Section 11705 Vehicle Code which require a showing of fraudulent practices on the part of a dealer before disciplinary action can be taken against his license for violating those provisions. Appellant further notes that the provision "...used

duplicate dealer's reports of sale or copies contrary to the provisions of 4456..." is inserted among the provisions requiring a showing of fraudulent practices. From this, appellant reasons that it was intended that the use of duplicate dealer's reports of sale or copies thereof contrary to Section 4456 Vehicle Code must also be fraudulent or involve moral turpitude before such use should form a basis for license discipline. We reject this theory because it requires reading into the statute language that isn't there. "There can be no intent in a statute not expressed in its words and there can be no intent upon the part of the framers of such statute which does not find expression in their words." (Ex parte Goodrich 160 Cal. 410.) Had the Legislature intended a construction of the relevant portion of Section 11705 Vehicle Code urged by appellant, it would have provided the qualifying language as it did in the other provisions of this statute.

The language of Section 11705 Vehicle Code, as used in conjunction with Section 4456 and 5901 Vehicle Code, clearly vests in the Director of Motor Vehicles the authority to take disciplinary action against a dealer's license, without a showing of intentional wrongdoing, when a dealer fails to abide by the statutes and implementing regulations. Such a construction has been affirmed in Evilsizor vs. Department of Motor Vehicles, 251 Cal. App. 2d, 216, and by this Board

in several cases.

In *Bill Ellis, Inc., vs. Department of Motor Vehicles*, A-2-69, we said: "The Legislature saw the necessity of compelling dealers to timely file with the respondent accurate data concerning the sale of motor vehicles and transfer of title to such vehicles as evidenced by Section 11705 V.C. This statute empowers respondent to suspend or revoke the license, certificate and special plates issued to a dealer for failing to file or improperly filing the required data. We cannot believe that the Legislature would vest in respondent the power to close the doors of a dealership, with all its economic ramifications, unless the Legislature was firmly of the opinion that compelling dealers to meet the reporting requirements is indispensable to the orderly management of documents related to the ownership of motor vehicles and that such management is a matter of importance to the public welfare."

In *Ralph's Chrysler-Plymouth vs. Department of Motor Vehicles*, A-3-69, we said, "Appellant's argument that a dealer should be immune from administrative disciplinary action for violation of Section 4456 V.C. and implementing regulations, absent neglect or willful non-compliance, does violence to the legislative scheme created for the express purpose of assuring that documents of title to motor vehicles are handled in an orderly manner to the end that transfers

of ownership of motor vehicles become a matter of public record in a reasonable time."

II. IS THE PENALTY IMPOSED BY THE DIRECTOR OF MOTOR VEHICLES COMMENSURATE WITH HIS FINDINGS?

We reviewed the penalty-determining powers of this Board in *Bill Ellis, Inc., vs. Department of Motor Vehicles*, supra, and concluded that we may, without finding an abuse of discretion on the part of the respondent, find that the penalty imposed by the respondent is excessive, exercise our independent judgment and amend the penalty accordingly. For the reasons discussed above, we recognize the importance to the public of requiring dealers to make timely and accurate reports to the Department of Motor Vehicles. However, we are of the opinion that the penalty imposed by the Director of Motor Vehicles in the case before us is not commensurate with the findings in that the provision for a thirty-day suspension is too severe.

The evidence showed that appellant's business routine was interrupted during the period in which the violations occurred by illness of personnel and the removal of its place of business to a new location.

Moreover, it appears that appellant revised its office procedures, made personnel changes to avoid repetition of past delinquencies, and that appellant's management is genuinely impressed with the need to closely supervise office procedures

to effectuate timely and accurate reporting and to meet its statutory obligations.

We have also concluded that two years is an excessive length of time for appellant to be under the probationary terms of the stay order. The Director of Motor Vehicles found that appellant has taken substantial steps to correct its reporting deficiencies and we concur with this finding. It should not require a period of two years to determine whether or not such steps will be remedial. If appellant does not correct its procedural deficiencies within a one-year period, appropriate action should be taken by the Department to compel compliance. On the other hand, if the new procedures or modifications thereof do correct the deficiencies, appellant should not be required to operate for longer than one year in jeopardy of license suspension under the Director's order herein.

Accordingly, pursuant to Section 3054 Vehicle Code, the New Car Dealers Policy and Appeals Board amends the decision of the Director of Motor Vehicles to provide as follows:

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The dealer's license, certificate and special plates issued to the dealer, Mission Pontiac Co., a California corporation, are hereby suspended for a period of ten (10) days; provided, however, execution of said order of suspension is hereby stayed and the dealer is placed on probation for a

period of one (1) year under the following terms and conditions:

1. The dealer shall strictly comply with all of the provisions of the Vehicle Code and the regulations of the Department of Motor Vehicles governing dealers in motor vehicles in the State of California.

2. The dealer shall obey all laws of the United States and of the State of California and the political subdivisions thereof and the rules and regulations of the Department of Motor Vehicles.

If and in the event the Director of Motor Vehicles should determine, after giving the dealer notice and opportunity to be heard, that a violation of probation has occurred, the Director may terminate the stay and impose suspension or otherwise modify the order. In the event the dealer shall faithfully keep the terms of the conditions imposed for the period of one (1) year, the stay shall become permanent and the dealer shall be restored to all of its license privileges.

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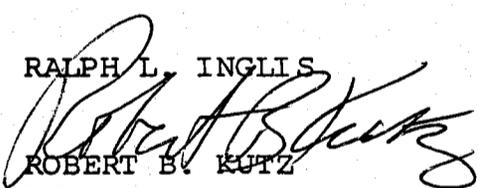
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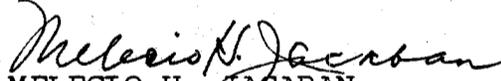
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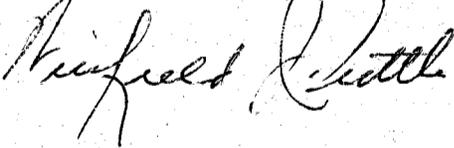
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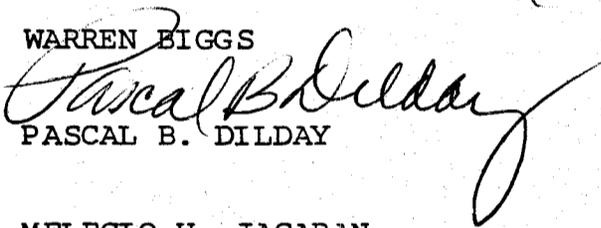
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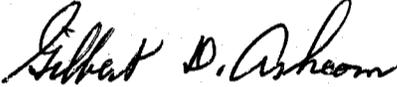
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