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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of)	
BINGHAM TOYOTA, INC.,)	
A Corporation; B. C. BINGHAM,)	
Individually,)	
)	
Protestors,)	Protest No. PR-22-75
)	
vs.)	N-6204
)	
TOYOTA MOTOR DISTRIBUTORS,)	FILED: July 21, 1975
INC., a Corporation,)	
)	
Respondent.)	

DECISION

The above-entitled matter came on regularly for hearing before Gilbert E. Elmore, Hearing Officer of the Office of Administrative Hearings, on June 11, 1975, in Fresno, California.

The protestants were represented by Sidney I. Pilot, attorney at law.

The respondent was represented by James H. Perkins and William L. Tallyn, attorneys at law.

Argument was had and the hearing was closed.

The board has adopted a number of the Findings of Fact contained in the Proposed Decision of the hearing officer. The Findings of Fact

adopted without modification by the board are set forth in full below:

"I

On December 27, 1974, Bingham Toyota, Inc., filed its protest with the New Motor Vehicle Board against the relocating of a Toyota Dealership by Respondent. The protest was amended on February 19, 1975, February 28, 1975 and May 21, 1975.

"II

Protestants contend that the Board is without jurisdiction to hear the matter on the merits in that the Respondent failed to notify the Board of intention to establish or relocate a dealership pursuant to the provisions of Section 3060 and 3062, California Vehicle Code.

"III

The Respondent does not contend that formal notice of its intention was made to the Board and raises the following contentions:

1. That the action of relocating the dealership does not constitute a modification of Protestant's franchise within the meaning of Section 3060, Vehicle Code.
2. That the dealership sought to be moved was already ~~within the 10-mile relevant market area in question and~~ the desired move is only a relocation within that market area; that Section 3062 is applicable only when an additional dealership is located within the market area

by creating a new dealership or by relocating an existing dealership from without the market area into the market area, thereby increasing the number of dealerships in the market area.

3. That assuming arguendo that Section 3062 is applicable, the Protestant has cured any failure of Respondent to notify the Board by filing a protest to Respondent's relocation of the dealership.

4. That the protest herein was filed more than 15 days from Respondent's notice to Protestant and therefore is not timely within the restrictions of Section 585(c) of Title 13, California Administrative Code.

"IV

No evidence was taken at the hearing and the matter was submitted on the legal issues as made by argument of the parties."

The board hereby modifies the hearing officer's findings as set forth in Paragraph V of the Proposed Decision in that Paragraph 1 of Finding V is deleted and the following sub-paragraphs thereunder are renumbered as follows:

V

1. "Respondent's contention that there is no prohibition or control with respect to moving an existing franchise within a market area is untenable. In making that argument Respondent is apparently

defining the relevant market area as a 10 mile radius from Protestant's location. Relevant market area is not so defined. Section 507, Vehicle Code, defines the relevant market area as 'any area within a radius of 10 miles from the site of a potential new dealership.' (Emphasis added.) Thus, the relevant market area must be measured not from Protestant's location or from the moving dealer's present location, but from the location to which Respondent intends to move the dealership. Because the center point of the 10 mile radius is established at the proposed new site, the relevant market area as used in the statute, is not an area measured by existing location but is one only ascertainable by a 10 mile radius from the new site. The 'relevant market area' is created and defined by reference to the new site and is not a market area determined by the old location. Rights of other franchisees are dependent upon distance from the new location not the old and franchisees not within the old market area may well be within the new relevant market area created by the move.

"Respondent's argument also fails in that to adopt it, would require a construction of Section 3062 contrary to its plain wording. The language of the statute clearly refers to 'relocating an existing motor vehicle dealership in a relevant market area.' Respondent would have the word 'in' read and interpreted as 'into'. There is no justification for such a construction in derogation of the wording and clear meaning of the statute as enacted, nor is it

tenable considering that 'relevant market area' is not a static area determined by an existing location but is only determinable by reference to the proposed new site. Respondent cannot be said to be moving a dealership 'within' an existing market area when the controlling market area is that bounded by a 10 mile radius from his new location. Respondent's argument that the dealership is moving from one location to another within the same market area is rejected. Section 3062 is applicable to the relocation of the dealership herein.

2. "Respondent is required to first notify the board when it intends relocating an existing motor vehicle dealership in a relevant market area where the same line-make is then represented. Again we deal with the plain wording of the statute to-wit: 'the franchisor shall in writing first notify the board'. When this section was first enacted (Ch 996 Stats. 1973) it did not require that a franchisor first notify the board. In 1974 the section was amended (Ch 384 Stats. 1974. Operative 7-1-74). Changes were made inter alia adding the words 'first notify the board'. The legislature thereby made its intention clear. It is basic statutory construction that a statute is to be constructed so as to give effect to all words used. ~~'First notify the board' means nothing more nor~~ nothing less than that the franchisor contemplating such action shall first notify the board before proceeding. The statute is mandatory and filing of notice with the board is required to invoke

the jurisdiction of the board. That requirement is not cured by the filing of a protest. A protestant's remedies before the board under Section 3062 are somewhat limited when a franchisor attempts to proceed without regard to that statutory requirement. In the protest filed by Protestant in compliance with Title 13, Chapter 1, Subchapter 2, California Administrative Code, and as amended, Protestant raised the defect of lack of notice filed with the Board by the Respondent and has subsequently maintained that objection."

VI

Finding V hereby being determinative of the issue of the jurisdiction of the Board to proceed, no findings are made with respect to any other contentions of the Respondent.

The board adopts in full the Determinations of Issues and Order as set forth in the hearing officer's Proposed Decision. Said Determination of Issues and Order are set forth below:

"DETERMINATION OF ISSUES

Respondent has failed to comply with the provisions of Section 3062, California Vehicle Code, as applicable to its contemplated action. ~~The Board is without jurisdiction to proceed to a hearing on the merits in this matter.~~

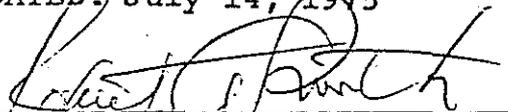
"ORDER

This matter is not properly before the Board. Respondent has not fulfilled the prerequisites of Section 3062, California

Vehicle Code and any notice heretofore served upon Protestant with respect to relocation of the dealership in question is of no legal effect under Section 3062, California Vehicle Code. "

The foregoing constitutes
the decision of the NEW
MOTOR VEHICLE BOARD

DATED: July 14, 1975


ROBERT A. SMITH, President