

BEFORE THE NEW MOTOR VEHICLE BOARD  
OF THE STATE OF CALIFORNIA

In the Matter of the Protest of: ) NO. PR-88-76  
BELL CHEVROLET, INC. ) L-11069  
Against the Relocation of a  
Motor Vehicle Dealership by:  
CHEVROLET MOTOR DIVISION,  
GENERAL MOTORS CORPORATION,  
Respondent.

FILED	
New Motor Vehicle Board	
Date	August 16, 1978
By	Jacqueline P. Powell

PROPOSED DECISION

This matter came on regularly for hearing before Helen L. Gallagher, an Administrative Law Judge with the Office of Administrative Hearings, at Los Angeles, California, on August 2, 3, 4 and 5, 1976 at the hour of 9:00 a.m. The protestant was represented by Thomas R. Suttner and Charles L. Duffy of the Law Offices of Boller, Suttner and Gekas, its attorneys. The respondent was represented by Girard E. Boudreau and John G. Niles of the Law Offices of O-Melveny and Myers and Robert W. Culver, Attorney, Office of General Counsel, General Motors Corporation.

A motion of respondent that the proceedings be dismissed on the ground that Section 3062, 3063 and 3066 of the Vehicle Code are unconstitutional was denied.

Pursuant to Order of the Superior Court of the State of California for the County of Los Angeles, Case No. MEC19414, Exhibit "4" in evidence is confidential matter and privileged pursuant to Section 1060 of the Evidence Code and has been placed in a sealed envelope. This matter was consolidated with Case No. PR-87-76 (L-11071) entitled "In the Matter of the Protest of Jack Wall Chevrolet, Inc. against General Motor Division, General Motors Corporation, Respondent" for the purpose of taking evidence.

Evidence both oral and documentary having been received the matter was submitted and the Administrative Law Judge finds the

following facts:

I

Respondent Chevrolet Motor Division, General Motors Corporation (hereinafter referred to as Respondent) gave notice pursuant to Section 3062 of the Vehicle Code of its intention to relocate an existing vehicle dealership, Muller Chevrolet, presently located at 3701 Oceanview Boulevard, Montrose, California to 475 Foothill Boulevard, La Canada, California, a distance of 2.2 miles.

A timely protest was filed by Bell Chevrolet, Inc., a California corporation (hereinafter referred to as Bell).

II

In its protest Bell raises the following issues:

1. Bell has been located in the relevant market area for many years and has a substantial permanent investment.
2. The proposed relocation of Muller Chevrolet in the relevant market area would have a substantial detrimental effect upon the business of Bell and for that reason Bell would not be as well able to serve and service the consuming public in the relevant market area resulting in a detriment to the consuming public in the relevant market area.
3. Franchisees of the same line make as Bell in the relevant market area are already more than adequately providing competition for the benefit of the consuming public and convenient consumer care for the motor vehicles of the line make in the market area is already being provided the consuming public in the relevant market area.

III

Respondent intends to permit Muller Chevrolet to relocate its dealership by reason of inadequacy of the Muller Chevrolet's present facility.

Respondent's facility's requirements are based upon the planning potential assigned a particular dealer and as a reference point utilizes a facility's guide in order to secure substantial

compliance and uniformity among its franchise dealers.

Muller Chevrolet (formerly Priester Chevrolet) was established approximately forty-five years ago and respondent has been attempting to secure an upgrading of the facilities of this dealership since 1965. Muller Chevrolet acquired the dealership in 1973 at a selling price of \$550,000.00. The present facilities of Muller Chevrolet are as follows:

- A. New car sales and service, 3701 Oceanview Boulevard, Montrose, California.
- B. Service and parts sales and customer parking, 3601 Oceanview Boulevard, Montrose, California.
- C. New car display and employee parking, 3600 Oceanview Boulevard, Montrose, California.
- D. New car storage, service and customer parking, 2200-2300 Garfield, Montrose, California.
- E. Used car lot, 2383 Foothill Boulevard, La Canada, California.
- F. Parts storage, 3523½ Oceanview Boulevard, Montrose, California.

The annual planning potential of Muller Chevrolet is 625 new passenger cars and 150 new trucks. In order to substantially comply with respondent's facility's requirements based upon this planning potential, Muller Chevrolet requires additional space for customer reception, service stalls, parts department, offices and new car display.

Muller Chevrolet is presently unable to meet the service requirements of its customers and does not believe it to be economically feasible to upgrade its present facilities due to the antiquity and disrepair of the existing structures.

#### IV

Muller Chevrolet proposes to lease facilities at 475 Foothill Boulevard, La Canada and has obtained an option to

purchase said facilities. The proposed facilities are modern and aesthetically attractive and will provide Muller Chevrolet approximately 95,000 square feet for its operations. Muller Chevrolet will retain its body shop at its present location, store sheet metal parts at this locale and retain a lot directly across from its present location for new car storage.

The planned relocation plus the retention of a portion of its present facilities will enable Muller Chevrolet to substantially comply with respondent's facility's requirements and enable it to render better service to its customers.

#### V

The franchise agreement of respondent sets forth the primary area of sales and service to designate to its franchisees the area which can most conveniently be served by them and requires an agreement by the franchisee to fulfill the transportation needs of the people in this described area. The franchise does not restrict the franchisee to any particular area of sale.

Bell and Muller Chevrolet are both located in the same area of primary responsibility which is referred to as "San Fernando Valley Multiple-Dealer Primary Area" and is described as:

In Los Angeles County, California, the area included within the following boundary: Beginning at the confluence of Mulholland Drive, Interstate Highway 101 and the Los Angeles City Limits proceed north and east along the city limits of Los Angeles to its intersection with Big Tujunga Canyon Road; continue east on Big Tujunga Canyon Road to its intersection with the Angeles Forest Highway; southwest on Angeles Forest Highway and then Angeles Crest Highway to the city limits of Pasadena; thence west and south along the city limits of Pasadena to the Los Angeles city limits; west along the city limits of Los Angeles to the Hollywood Freeway; southeast on the Hollywood Freeway to Mulholland Drive; thence west on Mulholland Drive to the point of origin.

#### VI

Protector Bell is located at 6467 Tujunga Boulevard, Tujunga, California. The proposed relocation of Muller Chevrolet

will place its dealership approximately two miles farther away from Bell.

Bell purchased the dealership of Robert Hall in September 1973 and has an investment of \$460,000.00 in said facility.

Foothill Boulevard is a main vehicular artery carrying traffic through the area which is accessible to both Bell and Muller Chevrolet. Bell is concerned that Muller Chevrolet will gain an economic advantage by locating on this main artery thereby creating a stopping point causing Bell to lose sales and service business.

#### VII

Respondent is encouraging the relocation of Muller Chevrolet in order that service to the consumer will be improved and that respondent will be in a better position to meet its competition from other line makes of vehicles, especially Ford with whom it has been ranking second in the Los Angeles area.

Studies made by respondent indicate that the sales potential of the primary area of sales and service involved herein will support both Muller Chevrolet and Bell and the relocation of Muller Chevrolet will have little impact on Bell.

#### VIII

Protestant contends that the notice sent by respondent was defective in that it did not set forth that the facilities of Muller Chevrolet would be bifurcated thus resulting in a split dealership. This is deemed to be without merit.

\* \* \* \* \*

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

#### I

Good cause exists to relocate the franchise dealership of Muller Chevrolet pursuant to Section 3063 of the Vehicle Code in that:

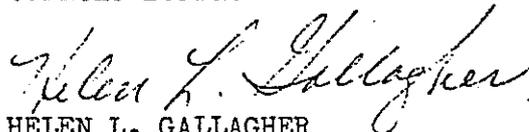
- A. There will be a permanency of investment.
- B. It was not established that there would be any substantial detrimental effect on the retail motor vehicle business and the consuming public in the relevant marketing area.
- C. Muller Chevrolet is not providing adequate competition and convenient consumer care for the motor vehicles of the line make in the market area presently and the relocation of Muller Chevrolet will substantially remedy these defects.

\* \* \* \* \*

WHEREFORE, THE FOLLOWING ORDER is hereby made:

- 1. The protest of Bell Chevrolet, Inc., is overruled.
- 2. The respondent Chevrolet Motor Division, General Motors Corporation is entitled to relocate the franchise of Muller Chevrolet.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter, as a result of the hearing had before me on the above dates at Los Angeles, California, and recommend its adoption as the decision of the New Motor Vehicle Board.

  
HELEN L. GALLAGHER  
Administrative Law Judge  
Office of Administrative Hearings

DATED: August 9, 1976  
HLG: mh