

1507 - 21st Street, Suite 330
Sacramento, California 95814
Telephone: (916) 445-1888

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

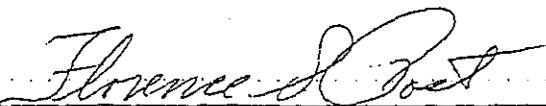
In the Matter of the Protest of)
STEVENS PONTIAC-GMC, INC.,) Protest No. PR-883-87
Protestant,)
vs.)
PONTIAC MOTOR DIVISION,)
GENERAL MOTORS CORPORATION,)
Respondent.)

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the New Motor Vehicle Board as its Decision in the above-entitled matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED this 29th day of September, 1987.


FLORENCE S. POST
President
New Motor Vehicle Board

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STEVENS PONTIAC-GMC, INC.,)	
Protestant,)	Protest No. PR-883-87
)	
vs.)	<u>PROPOSED DECISION</u>
)	[Vehicle Code section 3062]
)	
PONTIAC MOTOR DIVISION,)	
GENERAL MOTORS CORPORATION,)	
Respondent.)	

1. By letter dated March 18, 1987, Respondent Pontiac Motor Division, General Motors Corporation (Pontiac Motor Division), gave notice to Stevens Pontiac - GMC, Inc., (Stevens Pontiac), of Pontiac Motor Division's intention to establish an additional franchise at 750 West Capitol Expressway, San Jose, California. Steven's Pontiac is located at 620 Blossom Hill Road, Los Gatos, California.

2. On April 13, 1987, Stevens Pontiac filed a protest with the New Motor Vehicle Board (Board), pursuant to Vehicle Code section 3062.^{1/}

3. A hearing was held before Robert S. Kendall, Administrative Law Judge, commencing on July 7, 1987 and concluding on July 10, 1987.

4. Stevens Pontiac was represented by E. Day Carman of the law firm of Carman and Mansfield. Pontiac Motor Division was represented by Michael E. Rovinski, Office of General Counsel for General Motors Corporation, and Sharon K. Sandeen of the law firm of Downey, Brand, Seymour & Rohwer.

5. Pursuant to section 3066(b) the franchisee, Stevens Pontiac, has the burden of proof to establish that there is good cause not to enter into a franchise establishing the additional motor vehicle dealership.

Issues Presented

6. Stevens Pontiac contends that there is good cause for not establishing the additional franchise for the following reasons:

- a) The investment of Stevens Pontiac is permanent and will be adversely affected by the establishment of the additional dealership; [section 3063(a)]
- b) There will be an adverse effect on the retail motor vehicle business and the consuming public in the relevant market area; [section 3063(b)]

^{1/}All references are to the California Vehicle Code unless otherwise indicated.

- c) The establishment of the additional dealership will be injurious to the public welfare; [section 3063(c)]
- d) The current Pontiac Motor Division franchisees in the relevant market area are providing adequate competition and convenient consumer care for the owners of Pontiac vehicles in the market area, including adequate motor vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel; [section 3063(d)] and
- e) Establishment of the additional dealership would not increase competition and therefore would not be in the public interest. [section 3063(e)]

Findings of Fact

Facts Relating to the Permanency of the Investment [section 3063(a)]

Stevens Pontiac

7. Theodore J. Stevens is President of Stevens Pontiac and owner of 100 percent of the stock. Mr. Stevens has been a Pontiac dealer since he established Stevens Pontiac in Los Gatos in 1968.

8. Stevens Pontiac has been a dual line Pontiac-GMC truck dealer since 1968.

9. Stevens Pontiac is located at 620 Blossom Hill Road, Los Gatos, California, and is situated on a 2.9 acre lot. The structure thereon is 24 years old.

10. The estimated current net worth of Stevens Pontiac is \$600,000. No estimate of a fair market value was provided. No other evidence as to the amount or permanency of the investment in the dealership was presented.

Proposed Dealership

11. The proposed dealership is to be owned and operated by Cerritos Management Company. This company owns and operates seven other dealerships in the San Jose area. These dealerships include Nissan, Toyota, Hyundai, Chevrolet, Oldsmobile, Cadillac and Rolls-Royce.

12. The location of the proposed Pontiac dealership is at 750 West Capitol Expressway in San Jose. This location is zoned exclusively for use as an auto dealership. There are thirteen other new motor vehicle dealerships on the same street and within one-half mile of the proposed dealership. Additional dealerships are also under construction in this area.

13. No evidence was submitted as to the amount or permanency of investment to be made in the proposed dealership.

Facts Relating to the Effect on the Retail
Motor Vehicle Business and the Consuming
Public in the Relevant Market Area
[section 3063(b)]

14. There are presently two Pontiac dealers in the relevant market area.^{2/}

^{2/}Section 507 provides "the 'relevant market area' is any area within a radius of 10 miles from the site of the proposed dealership."

15. The site for the proposed dealership is at the Capitol Expressway auto row where thirteen other automobile makes are currently represented.

16. The location of the proposed dealership is approximately six (6) miles from Stevens Pontiac, and is approximately six (6) miles from Wes Behel Pontiac, in Sunnyvale.

17. Pontiac Motor Division has identified geographic areas surrounding a dealership as a dealership's Area of Geographic Sales and Service Advantage. ("AGSSA")

18. The following chart illustrates Pontiac penetrations as a percentage of total retail registrations.

Pontiac Penetration As A Percentage Of Total Retail Registrations

<u>Area</u>	<u>1986 Pontiac Penetration</u>	<u>1985 Pontiac Penetration</u>	<u>1984 Pontiac Penetration</u>
National	7.17%	6.99%	6.88%
San Francisco Zone	3.77%	4.30%	4.37%
Relevant Market Area	3.48%	3.51%	4.29%
Stevens Pontiac's AGSSA	3.10%		
Behel Pontiac's AGSSA	3.39%		
Hopkins Pontiac's AGSSA ^{3/}	3.65%		
Open Point AGSSA	3.42%		

^{3/}This dealership is approximately two miles outside the relevant market area.

19. Pontiac dealerships in the San Francisco Zone enjoyed a greater gross profit per retail unit sold in 1986 than the national average. Stevens Pontiac's gross profit per retail unit sold was greater than the Zone. The following is a chart showing the gross profit per unit sold by Pontiac Motor Division nationally, in the Zone, and by Stevens Pontiac:

Pontiac National	\$1058.00
San Francisco Zone	\$1400.00
Stevens Pontiac	\$1708.00

20. The average distance from the homes of customer's residing in the AGSSA of the proposed dealership to an existing Pontiac dealership is 6.9 miles. If the proposed dealership is established the average distance between the customers in the AGSSA and the dealerships will be 3.6 miles.

Facts Relating to Whether it is
Injurious to the Public Welfare for
an Additional Franchise to be Established
[section 3063(c)]

21. There has been no evidence presented that the establishment of the proposed dealership would be detrimental to the public welfare.

22. The establishment of the proposed dealership will give Pontiac representation at the Capitol Expressway Auto Row area where thirteen other dealerships presently exist.

23. Cerritos Management Company has been in the retail automobile business for many years and has been successful in these endeavors.

24. The site proposed for the new dealership is zoned for the exclusive use by a new motor vehicle retailer.

Facts Relating to Whether the Franchisees of the Same Line-Make in that Relevant Market Area Are Providing Adequate Competition and Convenient Consumer Care for the Motor Vehicles of the Line-Make in the Market Area Which Shall Include the Adequacy of Motor Vehicle Sales and Service Facilities, Equipment, Supply of Vehicle Parts, and Qualified Service Personnel.
[section 3063(d)]

25. There are presently two Pontiac dealerships in the relevant market area.

26. In 1984 and 1985, the sales performance of Stevens Pontiac was rated by Pontiac Motor Division as ineffective.

27. Pontiac Motor Division groups its franchisees in the San Francisco Zone into three groups for Customer Satisfaction Index ("CSI") ranking purposes. This grouping is made according to the size of the dealerships. Stevens Pontiac and Behel Pontiac are in the second group which has a total of twenty-five dealers in it.

28. Stevens Pontiac has performed poorly in the CSI evaluations. Out of the twenty-five dealers in its group of the San Francisco Zone, Stevens Pontiac was ranked twenty-first in "overall dealership satisfaction" based on a twelve month CSI through May of 1987. Behel Pontiac was ranked twenty-third.

29. Stevens Pontiac's twelve month CSI rating through May 1987 was at or below zone average with respect to the following: (1) warranty service; (2) delivery conditions; (3) percent of consumers who would recommend the dealer based upon experience with servicing and buying; and (4) satisfaction with the sales staff.

30. Behel Pontiac's CSI rating in the above described categories were also at or below zone average.

31. There was no further evidence presented as to facts relating to whether the franchisees of the same line-make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the line-make in the market area.

Facts Pertaining to Whether the Establishment
of an Additional Franchise Would Increase
Competition and Therefore be in the Public Interest
[section 3063(e)]

32. The following chart indicates approximate distances and driving times between the location of the proposed dealership and the Pontiac dealerships listed:

<u>From Proposed Dealer To:</u>	<u>Straight Line Distance</u>	<u>Driving* Distance</u>	<u>Driving* Time</u>
Behel	6 Miles	Between 8.3 & 10 Miles	Between 18 & 25 Minutes
Stevens	6 Miles	Between 7.4 & 9 Miles	Between 15 to 22 Minutes
Hopkins	8 Miles	Between 15.8 - 20 Miles	Between 30 - 37 Minutes

*Driving distances and driving times are dependent upon the time of day and route.

33. The following chart indicates the straight line distance between dealerships located in the AGSSA of the proposed dealer and the nearest dealer of the same line-make.

<u>Line-Make</u>	<u>Distance to Nearest Dealer of Same Line-Make</u>
Nissan	4.2 Miles
Linc/Merc	5.1 Miles
Oldsmobile	5.2 Miles
Chrys/Ply	5.2 Miles
Chevrolet	5.2 Miles
Dodge	5.5 Miles
Volkswagen	5.6 Miles
Ford	5.6 Miles
Pontiac (From Proposed Location)	6.0 Miles
Hyundai	6.0 Miles
Honda	6.2 Miles
AMC	6.2
Cadillac	6.9
Toyota	7.1

34. Within the relevant market area there are three distinct "auto rows" or concentrations of dealerships: (1) Los Gatos (2) Capitol Expressway, and (3) Stevens Creek. The following indicates the makes represented at each of the "auto rows."

LOS GATOS
(Location of
Stevens Pontiac)

CAPITOL EXPRESSWAY
(Proposed location)

STEVENS CREEK

	AMC	Acura
Buick		AMC
		Buick
		BMW
Cadillac		Cadillac
Chevrolet	Chevrolet	Chevrolet
Chrys/Ply	Chrys/Ply	Chrys/Ply
Dodge	Dodge	Dodge
Ford	Ford	Ford
GMC	GMC	
Honda		Honda
	Hyundai	Hyundai
Isuzu		Isuzu
Linc/Merc	Linc/Merc	Linc/Merc
	Mazda	Mazda
		Mercedes-Benz
Nissan		Mitsubishi
	Oldsmobile	Nissan
Pontiac (Stevens)		Pontiac (Behel)
		Porsche/Audi
		Subaru
	Suzuki	
	Toyota	Toyota
	Volkswagen	Volkswagen
Volvo		

35. The following chart indicates the number of dealerships located in the relevant market area by make:

<u>Make</u>	<u>Number of Dealerships in Relevant Market Area</u>
1. Volkswagen	4
2. Chevrolet	4
3. Honda	3
4. Nissan	3
5. Toyota	3
6. Ford	3
7. Lincoln/Mercury	3
8. Chrysler/Plymouth	3
9. Dodge	3
10. Pontiac	2
11. Mazda	2
12. Hyundai	2
13. AMC	2

(Chart Continued)

<u>Make</u>	<u>Number of Dealerships in Relevant Market Area</u>
14. Buick	2
15. Cadillac	2
16. GMC	2
17. Isuzu	2
18. Oldsmobile	2
19. Porsche-Audi	2
20. Subaru	2
21. Suzuki	2
22. BMW	2
23. Mitsubishi	2
24. Peugeot	1
25. Acura	1
26. Mercedes-Benz	1

36. The following chart represents the population trend in the relevant market area:

<u>Year</u>	<u>Population</u>
1970	758,731
1980	944,398
1986 (Estimated)	1,022,722
1991 (Projected)	1,086,765

The percentage of change in population from 1970 to 1980 is 24.47%.

37. The following chart represents the upward increase in the number of households in the relevant market area:

<u>Year</u>	<u>Households</u>
1970	223,749
1980	325,974
1986 (Estimated)	365,129
1991 (Projected)	399,716

The percentage of change in the number of households from 1970 to 1980 is 45.69%.

38. The average household income in the relevant market area in 1986 was \$40,723.00.

39. In 1986, Stevens Pontiac sold 44% of the Pontiacs registered within Stevens Pontiac's AGSSA.

40. Pontiac Motor Division has shown that in prior similar circumstances the addition of a new dealership in a relevant market area tends to increase sales for existing Pontiac dealerships by virtue of increased exposure of Pontiac products to the general public.

DETERMINATION OF ISSUES

Protestant has failed to prove that there is good cause for not establishing the additional franchise in that:

a) Protestant proved that its investment is permanent, but failed to prove that its investment will be adversely affected; [3063(a)];

b) Protestant failed to prove that the establishment will have an adverse effect on the retail motor vehicle business and consuming public in the relevant market area; [3063(b)];

c) Protestant failed to prove that the establishment will be injurious to the public welfare; [3063(c)];

d) Protestant failed to prove that there is adequate competition and convenient consumer care for the owners of Pontiac motor vehicles in the market area, including adequate vehicle sales and service facilities, equipment, supply of vehicle parts and qualified service personnel; [3963(d)]; and

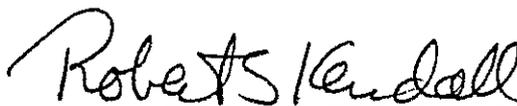
e) Protestant failed to prove that the establishment would not increase competition and failed to prove that the establishment would not be in the public interest; [3063(e)].

The following proposed decision is respectfully submitted:

The Protest is overruled. Pontiac Motor Division is permitted to establish the proposed franchise in San Jose.

I hereby submit the foregoing which constitutes my proposed decision in the above-entitled matter, as a result of a hearing held before me on the above dates and recommend adoption of this proposed decision as the decision of the New Motor Vehicle Board.

Dated: September 8, 1987



ROBERT S. KENDALL
Administrative Law Judge
New Motor Vehicle Board