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ATTORNEY GENERAL OPINION NO. 89- 140

The Honorable James L. Francisco
State Senator, Twenty-Sixth District
217 E. English
Mulvane, Kansas 67110-1462

Re: Automobiles and Other Vehicles--Licensure of
Vehicle Sales and Manufacture--License Required;
Issuance of "Combination" Licenses

Synopsis: The Department of Revenue, Division of Motor
Vehicles, has authority to issue "combination"
vehicle dealers and manufacturers licenses as long
as the statutory requirements for licensure in each
category are maintained. Cited herein: K.S.A.
8-2403; K.S.A. 1988 Supp. 8-2404, as amended by L.
1989, ch. 46, §1.

* * *

Dear Senator Francisco:

You request our opinion regarding the authority of the
Department of Revenue, Division of Motor Vehicles, to issue
"combination" dealer licenses. You advise that "by
administrative edict, the Division issues combination licenses
[such as] New/Used; Used/Salvage." You question whether there
is any authority for this in that the statutes do not
specifically authorize issuance of such combination licenses.

K.S.A. 1988 Supp. 8-2404, as amended by L. 1989, ch. 36, §1,
provides that "[n]o vehicle dealer or mobile home dealer shall
engage in business in this state without obtaining a license
as required by [the vehicle dealers and manufacturers

licensing act, K.S.A. 8-2401 et seq.]" Subsection (e) of K.S.A. 1988 Supp. 8-2404, as amended, sets forth the license fees for various types of dealers. As noted in your request letter, this subsection contemplates certain dealers holding more than one license.

K.S.A. 8-2403 authorizes the director of the division of vehicles to issue licenses provided for by the vehicle dealers and manufacturers licensing act, and to supervise licensees. Thus, the director is to administer the provisions of the act. "The Kansas cases have consistently held, whether in the case of administrative acts or in the case of adoption of rules and regulations, that administrative agencies must act within the ambit of their specific statutory authority and not beyond." Cray v. Kennedy, 230 Kan. 663, 675 (1982). See also Pork Motel, Corp. v. Kansas Dept. of Health and Environment, 234 Kan. 374, 378 (1983). As illustrated in Cray v. Kennedy, this generally means that agencies cannot impose substantive requirements on third parties which are beyond the contemplation of the authorizing statutes. 230 Kan. at 676. However, agencies, in carrying out statutorily prescribed duties, have not only the powers specifically granted, but also those necessarily implied for the effective and efficient exercise of their duties. State, ex rel., v. Younklin, 108 Kan. 634, 638 (1921); Jones v. Board of Medical Examination, 111 Kan. 813, 815 (1922). See also State, ex rel., v. Mermis, 187 Kan. 611, 615 (1961).
Further,

"The doctrine of separation of powers and of deference to agency expertise requires that administrative agencies be given a great deal of discretion in carrying out their duties. [Cite omitted]. Courts may not substitute their judgment for that of an administrative agency. [cite omitted]. Courts cannot inquire into the wisdom of an administrative decision or policy." Cain v. Kansas Corporation Commission, 9 Kan.App.2d 100, 104 (1983).

Unless the director's issuance of combination licenses somehow effects the licensees' substantive rights, it is within the director's authority to issue such licenses. In other words, if the licensees are required to meet the statutory conditions of licensure, no more and no less, and all other statutory requirements are met, the decision to issue the licenses in

combination form is a permissible administrative decision. It is not the piece of paper that is important, but rather the rights and responsibilities the license symbolizes.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm