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March 6, 1991

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ATTORNEY GENERAL OPINION NO. 91- 22

The Honorable Paul Feleciano, Jr.  
State Senator, Twenty-Eighth District  
State Capitol, Room 452-E  
Topeka, Kansas 66612

Re:           Automobiles and Other Vehicles--Licensure of  
              Vehicle Sales and Manufacture--Prohibition of  
              Sunday Sales

Synopsis:    1990 Senate Bill No. 65, prohibiting Sunday sales  
              of motor vehicles, is not violative of the equal  
              protection clause, section 1 of the Kansas bill of  
              rights or article 2, section 17 of the Kansas  
              constitution. Cited herein: K.S.A. 1990 Supp.  
              8-2401; 1991 Senate Bill No. 65; Kan. Const.,  
              art. 2, § 17; Kan. Bill of Rights, § 1; U.S.  
              Const., Amend. XIV.

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Dear Senator Feleciano:

You request our opinion regarding 1991 Senate Bill No. 65. This bill, if enacted, would prohibit vehicle dealers from selling or exchanging motor vehicles on Sunday. You question the constitutionality of such a measure.

Section 1(a) of 1991 Senate Bill No. 65 provides:

"(a) No vehicle dealer, as defined by K.S.A. 8-2401, and amendments thereto, may barter, exchange, buy, sell or negotiate the sale, barter, exchange or purchase of

any motor vehicle or keep open, operate or assist in keeping open or operating any established place of business for the purpose of buying, selling, bartering or exchanging, or offering for sale, barter or exchange, any motor vehicle on Sunday. However, this subsection does not apply to the sale of mobile homes or manufactured housing, the sale of recreational motor vehicles as defined by subsection (f) of K.S.A. 75-1212, and amendments thereto, washing, towing, wrecking, repairing operations, the sale of petroleum products, tires and repair parts and accessories, or motor vehicle shows or displays in which no offering to sell or buy, negotiation, buying, selling, bartering or exchanging of motor vehicles occurs."

K.S.A. 1990 Supp. 8-2401(a) defines vehicle dealer as:

"[A]ny person who: (1) For commission, money or other thing of value is engaged in the business of buying, selling or offering or attempting to negotiate a sale of an interest in vehicles; or (2) for commission, money or other thing of value is engaged in the business of buying, selling or offering or attempting to negotiate a sale of an interest in motor vehicles as an auction motor vehicle dealer as defined in (jj); but does not include: (A) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court, or any bank, trustee or lending company or institution which is subject to state or federal regulations as such, with regard to its disposition of repossessed vehicles; (B) public officers while performing their official duties; (C) employees of persons enumerated in provisions (A) and (B), when engaged in the specific performance of their duties as such employees; (D) auctioneers conducting auctions for persons enumerated

in provisions (A), (B) or (C); or (E) auctioneers who, while engaged in conducting an auction of tangible personal property for others, offer for sale: (i) Vehicles which have been used primarily in a farm or business operation by the owner offering the vehicle for sale, including all vehicles which qualified for a farm vehicle tag at the time of sale except vehicles owned by a business engaged primarily in the business of leasing or renting passenger cars; (ii) vehicles which meet the statutory definition of antique vehicles; or (iii) vehicles for no more than four principals or households per auction. All sales of vehicles exempted pursuant to provision (E), except truck, truck tractors, pole trailers, trailers and semitrailers as defined by K.S.A. 8-126, and amendments thereto, shall be registered in Kansas prior to the sale."

"Sunday closing laws" or "blue laws," have generally been upheld as a valid exercise of police power. 73 Am.Jur.2d Sundays and Holidays, § 5 (1974). These laws are viewed as providing a uniform day of rest rather than aiding any particular religion. Id. §§ 2, 4, 10.

The Kansas Supreme Court has struck down Sunday closing laws on two occasions. In State v. Hill, 189 Kan. 403 (1962), the court struck down a Sunday closing law with criminal penalties on the basis that it was "so vague, indefinite and uncertain that it fails to provide a reasonably definite standard of guilt to apprise the defendant of the nature and cause of the accusation against him. . . ." Id., syl. ¶ 9. 1991 Senate Bill No. 65 does not appear vague and in our opinion would survive such a constitutional challenge. "In determining constitutional challenges for vagueness, greater leeway is afforded statutes regulating business than those proscribing criminal conduct." In re Brooks, 228 Kan. 541, 544 (1980). The language of the bill conveys a sufficient definite warning as to the proscribed conduct when measured by common understanding and practice. See Morra v. State Board of Examiners of Psychologists, 212 Kan. 103, 111 (1973); State v. Turner, 217 Kan. 574, 584 (1975); Guardian Title Co. v. Bell, No. 64,936, slip op. 12, \_\_\_\_\_ Kan. \_\_\_\_\_ (Jan. 18, 1991).

In Boyer v. Ferguson, 192 Kan. 607 (1964) the court conceded that uniform Sunday closing laws are within the police power of the state.

"However, the concession goes only to a Sunday Closing Law of uniform application that has as its admitted or ostensible purpose the promotion of the general welfare by the prohibition of certain conduct on Sunday." Id. at 611.

The statute under scrutiny in that case was struck down as discriminatory because it treated similarly situated merchants differently.

"The effect of this act on the general public would be to force customers to cease doing their business at certain stores, and to shop at other places of business which are favored under the Act. Insofar as the appellees are concerned, the general public can buy anything that it could buy before the Act, except that the purchasers would have to look for one of the favored 'persons' under the statute to purchase such items as the appellees are prohibited from selling. Instead of eliminating any evil the statute will commit evil--that is, it will eliminate the competition presently afforded by the appellees and others similarly situated." Id. at 612.

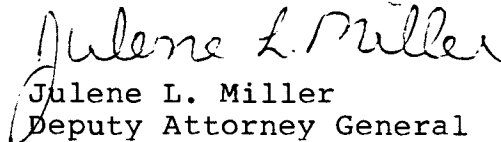
1991 Senate Bill No. 65 applies to all vehicle dealers, as that term is defined in K.S.A. 1990 Supp. 8-2401. Thus no one in the industry is given an unfair advantage over others. Courts in other jurisdictions have upheld laws similar to 1991 Senate Bill No. 65. Gundaker Central Motors v. Gassert, 127 A.2d 566 (N.J. 1956) (Sunday closing law is not unconstitutionally discriminatory even though it singles out automobile dealers); Mosko v. Dunbar, 309 P.2d 581 (Colo. 1957) (statute proscribing sale of new or used motor vehicles on Sunday is not violative of equal protection clause); Stewart Motor Co. v. City of Omaha, 235 N.W. 332 (Neb. 1931) (city ordinance prohibiting sale or exchange of motor vehicles on Sunday is a valid exercise of police power and is not void as discriminatory); Annot., 126 A.L.R. 740, 743, 744 (1940); Annot., 57 A.L.R.2d 1265, 1290, 1291,

1292. But see McKaig v. Kansas City, 256 S.W.2d 815 (Mo. 1953) (ordinance prohibiting automobile dealers from keeping their places of business open on Sundays and six national holidays held unconstitutional as a special law without a reasonable basis for distinction). We find the line of cases upholding such statutes to be convincing. Thus, in our opinion, since the bill treats all vehicle dealers alike, it does not violate the equal protection clause (U.S. Const., Amend. XIV), section 1 of the Kansas bill of rights, or article 2, section 17 of the Kansas constitution.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Julene L. Miller  
Deputy Attorney General

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