



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

May 30, 1990

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 90- 62

Mark A. Burghart
General Counsel
Kansas Department of Revenue
Docking State office Building
Topeka, Kansas 66612

Re: Automobiles and Other Vehicles--Licensure of
Vehicle Sales and Manufacture--Denial, Suspension
or Revocation of License; Grounds; Chain of Title

Synopsis: Vehicle brokers should not appear in the chain of
title of a vehicle unless the broker has or claims
a legal interest in the vehicle. Cited herein:
K.S.A. 1989 Supp. 8-135; 8-2401; 8-2408; 8-1410.

* * *

Dear Mr. Burghart:

You request our opinion regarding K.S.A. 1989 Supp.
8-2410(22). Specifically you inquire whether, pursuant to
this provision, vehicle brokers are required to appear in the
chain of title of vehicles they "cause to be sold."

K.S.A. 1989 Supp. 8-2410(22) provides as follows:

"A license may be denied, suspended or
revoked or a renewal may be refused by the
director on any of the following grounds:

. . . .

"(22) has cross-titled a title to any purchaser of any vehicle or mobile home. Cross-titling shall include, but not by way of limitation, a dealer or broker or the authorized agent of either selling or causing to be sold, exchanged or transferred any vehicle or mobile home and not showing a complete chain of title on the papers necessary for the issuance of title for the purchaser. The selling dealer's name must appear on the assigned first or second stage manufacturer's certificate of origin or reassigned certificate of title."

This statute requires two things: 1) the dealer or broker or their agent must give a "complete chain of title"; and 2) the "seller" of the vehicle must appear on the manufacturer's statement of origin or the reassigned certificate of title.

New vehicle dealers purchase new vehicles from first or second stage manufacturers for resale. K.S.A. 1989 Supp. 8-2401(b), (p), (q). Thus, the new vehicle dealer becomes the owner of such vehicles. The new vehicle dealer clearly must be in the chain of title because he or she has an ownership interest in the vehicle being sold. See, e.g., Reserve Petroleum Co. v. Hutcheson, 254 S.W.2d 802, 806 (Tex. Civ. App. 1952) (a "chain of title" shows successive conveyances of title to property). Further, when selling a vehicle to a consumer the new vehicle dealer must assign the manufacturer's statement of origin. K.S.A. 1989 Supp. 8-135(c)(3). See Farmers Ins. Co. v. Schiller, 226 Kan. 155, 159 (1979) (the purpose of K.S.A. 8-135 is to provide a means by which to determine ownership of a vehicle, thus protecting the public from unregulated use, transfer and sale of the vehicle); Home Finance Corp. v. Cox, 190 Kan. 553, 559 (1962) (legislation enacted to prove ownership of vehicles and to show liens and encumbrances thereon).

Used vehicles may be traded or sold to a dealer for resale. The vehicle title is assigned to the dealer who then assigns it to the ultimate purchaser. Again, the dealer must be in the chain of title due to his ownership interest in the vehicle and must assign the certificate of title to the purchaser to complete the sale. See Perry v. Goff Motors, Inc., 12 Kan.App.2d 139 (1987).

Brokers, however, do not necessarily take an ownership or other property interest in vehicles they broker. Broker is defined in K.S.A. 1989 Supp. 8-2401(ff) as

"any person who, for commission, money or other thing of value, is engaged in the business of: (1) Selling or buying vehicles or mobile homes for other persons as an agent, middleman or negotiator; or (2) bringing buyers and sellers of vehicles or mobile homes together, but such term shall not include any person engaged in a business in which the acts described in this subsection are only incidentally performed."

As this definition implies, a broker will often merely bring a buyer and seller together, and may negotiate the sale for either the buyer or the seller, but may not actually sell the vehicle. Often the vehicle is transferred, and the title or statement of origin is assigned, directly from the dealer or owner to the purchaser. The broker takes or claims no legal interest in the vehicle and thus should not appear in the chain of title. In such situations, it is not the broker who is the seller, but rather it is the dealer or owner who assigns the manufacturer's statement of origin or certificate of title. In our opinion, a broker should be in the chain of title only if the broker claims or holds an ownership or other legal interest in the vehicle being sold. If the broker has or claims no such interest, the chain of title is complete without him and he is not the actual seller.

This is not to say that a purchaser is without recourse against a broker. As discussed in Attorney General Opinion No. 86-25, a broker is subject to the provisions of the Kansas consumer protection act as the supplier of a service even if the broker is not actually selling the product (the vehicle). Therefore, any deceptive or unconscionable actions of a broker may be pursued under the consumer protection act. Further, the division of motor vehicles may trace brokered vehicles through the reporting requirements of K.S.A. 1989 Supp. 8-2408. Vehicle dealers must report fees or commissions paid to a broker, 8-2408(e), and brokers must report "the name of the seller, the transferor or dealer that owns the vehicle or mobile home and whether the seller or the purchaser paid the broker's fee or commission," 8-2408(f). A dealer's or broker's license may be suspended or revoked for failure to report. K.S.A. 1989 Supp. 8-2410(a)(4).

In conclusion, vehicle brokers should not appear in the chain of title of a vehicle unless the broker has or claims a legal interest in the vehicle.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm