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ATTORNEY GENERAL OPINION NO. 2025-7

Ted E. Smith  
Chief Counsel, Kansas Department of Revenue  
109 SW 9th St.  
PO Box 3506  
Topeka, Kansas 66601

Re:           Automobiles and Other Vehicles—Licensure of Vehicle Sales and  
              Manufacture—Licensure of Vehicle Sales and Manufacture;  
              Definitions

Automobiles and Other Vehicles—Licensure of Vehicle Sales and  
Manufacture—License Required

Automobiles and Other Vehicles—Licensure of Vehicle Sales and  
Manufacture—Ownership and Operation of New Vehicle Dealership by  
Certain Entities Prohibited; Exceptions

Automobiles and Other Vehicles—Licensure of Vehicle Sales and  
Manufacture—Delivery of Motor Vehicles to Persons in State; Who  
Authorized to Deliver

Synopsis:    The Kansas Vehicle Dealers and Manufacturers Licensing Act is an  
all-encompassing licensing regime for the sale of motor vehicles in  
Kansas. Because the Act permits only dealers that operate under an  
agreement with a manufacturer or distributor to obtain a license to sell  
new vehicles, a manufacturer may not engage in direct-to-consumer  
retail sales. Cited herein: K.S.A. 8-2401; K.S.A. 8-2404; K.S.A. 8-2438;  
K.S.A. 8-2439.

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Dear Mr. Smith:

As Chief Counsel for the Kansas Department of Revenue, you ask whether the Kansas Vehicle Dealers and Manufacturers Licensing Act<sup>1</sup> prohibits vehicle manufacturers that do not use franchise partners from selling their vehicles directly to retail consumers. As explained below, we believe the best interpretation of the Act is that it prohibits these direct sales.

The Act is a comprehensive scheme, through which the legislature sought “to provide for fair and impartial regulation of those persons engaged in manufacturing, distributing or selling of vehicles.”<sup>2</sup> The legislature specifically targeted the sale of vehicles “to insure protection against irresponsible vendors and dishonest or fraudulent sales practices and to assist, provide and secure a stable, efficient, enforceable and verifiable method for the distribution of vehicles to consumers in the state of Kansas[.]”<sup>3</sup> As the Kansas Supreme Court has recognized, the Act is “all-encompassing legislation on motor vehicle sales.”<sup>4</sup>

In determining whether the Act prohibits direct-to-consumer retail sales like the ones you mention, we are bound by the “plain and unambiguous” meaning of the relevant statutes.<sup>5</sup> We can neither “speculate” nor “read into the statute language not readily found there.”<sup>6</sup> And we must consider and give effect to “the entire [A]ct,” striving, “as far as practicable, to reconcile the different provisions so as to make them consistent, harmonious, and sensible.”<sup>7</sup> When the legislature has expressly defined a term, we employ its definition.<sup>8</sup>

The Act prohibits any person from “engag[ing] in the business of a vehicle dealer unless such person has complied with” the Act.<sup>9</sup> Because a “vehicle dealer,” outside

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<sup>1</sup> K.S.A. 8-2401 *et seq.*

<sup>2</sup> K.S.A. 8-2402.

<sup>3</sup> *Id.*

<sup>4</sup> *Blue v. McBride*, 252 Kan. 894, 919, 850 P.2d 852, *as modified on denial of reh’g* (1993). Although you reference decisions involving similar laws in other states, we confine our analysis to the plain meaning of the Kansas statutes because their language is determinative. Additionally, the regulation of vehicle sellers is a complex issue, meaning there may be slight—but material—variations in the various statutory schemes. *See State v. Bowie*, 268 Kan. 794, 800, 999 P.2d 947 (2000) (“We agree that the statutory scheme differs from state to state, and we need not look beyond the Kansas statutory scheme and Kansas cases for resolution of this issue.”).

<sup>5</sup> *In re Est. of Strader*, 301 Kan. 50, 55, 339 P.3d 769 (2014) (internal quotation marks omitted).

<sup>6</sup> *Id.* (internal quotation marks omitted).

<sup>7</sup> *In re Marriage of Ross*, 245 Kan. 591, 584, 783 P.2d 331 (1989).

<sup>8</sup> *Cf. State v. Dooley*, 308 Kan. 641, 656, 423 P.3d 469 (2018) (“When our Legislature does not define a term or phrase, we ascertain legislative intent by giving common words their ordinary meanings.”).

<sup>9</sup> K.S.A. 8-2403(a).

certain limited exceptions, is “any person who . . . is engaged in the business of buying, selling or offering or attempting to negotiate a sale of an interest in vehicles,”<sup>10</sup> the Act sweeps broadly.

The Act mandates that all vehicle dealers obtain a license from the Kansas Division of Vehicles.<sup>11</sup> And it specifies that, unless certain exceptions apply, “[n]o person may engage in the business of . . . selling . . . new motor vehicles, either directly or indirectly, unless such person holds a license . . . for the make or makes of new motor vehicles being . . . sold.”<sup>12</sup> The legislature has defined a “new motor vehicle” as “any motor vehicle that has never been titled or registered and has not been substantially driven or operated.”<sup>13</sup> And it has defined a “new vehicle dealer” as:

any vehicle dealer *who is a party to an agreement, with a first or second stage manufacturer or distributor*, which agreement authorizes the vehicle dealer to sell, exchange or transfer new motor vehicles . . . made or sold by such first or second stage manufacturer or distributor and obligates the vehicle dealer to fulfill the warranty commitments of such first or second stage manufacturer or distributor.<sup>14</sup>

A manufacturer that does not use franchise partners would not qualify as a new vehicle dealer because there is no agreement to which the manufacturer would be “a party.” In other words, the Act’s licensing requirement prohibits the same entity from both making and selling new vehicles in Kansas.<sup>15</sup> Accordingly, a manufacturer that uses only direct sales cannot obtain the necessary license to sell its new vehicles, and so it cannot sell its vehicles in Kansas.

Other sections within the Act bolster the conclusion that direct sales are prohibited. For example, K.S.A. 8-2404(q) mandates that any dealer selling “new vehicles in this state must satisfactorily demonstrate” that it “has a bona fide franchise agreement with the first or second stage manufacturer or distributor of the vehicle, to sell, exchange or transfer the same or to cause to be sold, exchanged or transferred.” This provision limits new vehicle sales to dealers who are franchise partners. And K.S.A. 8-2404(f)–(g) contemplate that new vehicle dealers have franchise agreements, indicating that new vehicles may only be sold by franchise partners, not manufacturers.

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<sup>10</sup> K.S.A. 8-2401(a).

<sup>11</sup> K.S.A. 8-2404(a).

<sup>12</sup> K.S.A. 8-2404(q). The Act provides the specific fee for new vehicle dealers. *See* K.S.A. 8-2404(e)(1).

<sup>13</sup> K.S.A. 8-2401(v).

<sup>14</sup> K.S.A. 8-2401(b) (emphasis added).

<sup>15</sup> In *Blue*, the trial court (which was reversed on other grounds) recognized the practical reality of the Act: “Every new car that enters Kansas must go from a manufacturer to a licensed dealer who enjoys a franchise from that manufacturer.” 252 Kan. at 927, 850 P.2d at 876 (Allegrucci, J., dissenting) (internal quotation marks omitted).

Importantly, K.S.A. 8-2439(a) requires that all new vehicles be delivered “by a new vehicle dealer who is a party to a franchise agreement for the same line-make vehicle as that to be delivered[.]” Under this statute, if a manufacturer could otherwise engage in direct sales, then that manufacturer could not deliver its vehicles to purchasers because it is not a party to any franchise agreement. Indeed, because there is no franchise agreement, the new vehicle could never be delivered. That would be an absurd result, which must be avoided to the extent possible.<sup>16</sup> K.S.A. 8-2439(a) is incompatible with direct sales by manufacturers, and it further establishes that these sales are prohibited.

Notably, K.S.A. 8-2438 expressly addresses direct-to-consumer sales, and it prohibits them by certain regulated entities (*e.g.*, first and second stage manufacturers, distributors), none of which include manufacturers that do not use franchise partners.<sup>17</sup> Arguably, this exclusion could indicate these manufacturers may engage in direct sales, *i.e.*, because these manufacturers are not captured by the express statutory prohibition, they are free to sell directly to consumers. But we believe this argument isolates and puts too much weight on this single section, which results in a strained interpretation.<sup>18</sup>

Other sections within the Act, as previously discussed, establish that manufacturers may not directly sell their new vehicles to consumers because they cannot obtain the requisite license. The more harmonious interpretation is that K.S.A. 8-2438 is an express delineation of the extremely limited circumstances (none of which appear relevant to your inquiry) in which the regulated entities may engage (or otherwise be involved) in direct sales. Indeed, K.S.A. 8-2438 begins by recognizing that it is an exception to the general rule, which it then lays out before proceeding to its strict exceptions.<sup>19</sup> K.S.A. 8-2438 does not upend the licensing regime. To the contrary, it complements the rest of the Act because it generally prohibits the regulated entities from owning an interest in, operating, or otherwise acting as a

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<sup>16</sup> See *State v. Arnett*, 307 Kan. 648, 654, 413 P.3d 787 (2018) (recognizing that statutes “must” be construed “to avoid unreasonable or absurd results”); *State v. Keel*, 302 Kan. 560, 574, 357 P.3d 251 (2015) (recognizing that courts “presume that the legislature does not intend to enact meaningless . . . legislation” (quoting *State v. Turner*, 293 Kan. 1085, 1088, 272 P.3d 19 (2012))).

<sup>17</sup> For example, a manufacturer that only engages in direct sales would not be a “first stage manufacturer” under the Act because it does not “manufacture[], assemble[] and sell[] new vehicles to new vehicle dealers for resale in this state.” K.S.A. 8-2401(k) (emphasis added).

<sup>18</sup> See *State v. Wilson*, 267 Kan. 550, 557, 987 P.2d 1060 (1999) (recognizing “that courts will not give strained meanings to legislative language through a process of imaginative hypothesizing; a common-sense interpretation of the statute is the guiding principle”).

<sup>19</sup> See K.S.A. 8-2438(a) (beginning with “[e]xcept as provided by this section, and notwithstanding any other provisions of the vehicle dealers and manufacturers licensing act”).

new vehicle dealer or dealership, thereby solidifying the need for separation between the vehicle maker and the vehicle seller.<sup>20</sup>

In sum, the Act prohibits manufacturers that do not use franchise partners from engaging in direct-to-consumer retail sales of new motor vehicles in Kansas.

Sincerely,

/s/ Kris W. Kobach

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Attorney General

/a/ Adam T. Steinhilber

Adam T. Steinhilber  
Assistant Solicitor General

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<sup>20</sup> This broad prohibition means that a first or second stage manufacturer (or other regulated entity) cannot circumvent the general prohibition on direct sales by having a subsidiary dealership.