

CHATTEL MORTGAGES:
MOTOR VEHICLES:

The meaning of the term "their distributing dealers" as used in Section 3097A, Laws of Missouri 1939, page 278.

January 27, 1940

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Honorable Stanley Wallach
Prosecuting Attorney
St. Louis County
Clayton, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you request an opinion from this department based on the following statement of facts:

"This office would appreciate an opinion on certain points in respect to Section 3097A, page 278, Laws of 1939. The proviso of the section reads as follows:

"Provided, however, that the provision of this section shall not apply to chattel mortgages given to secure the purchase price of a motor vehicle sold by the manufacturer or their distributing dealers, or to a chattel mortgage given by dealers to secure loans on the floor plan stock of motor vehicles."

"It is not clear to us just what is intended by the words 'manufacturer or their distributing dealers'. 'Dealer' as defined by Webster is 'one who divides, distributes, or delivers.' The word 'distributing' as used in this proviso leaves some doubt as to what class of dealer it refers.

"We are unable to determine whether this clause applies solely to pur-

chase money chattel mortgages on cars sold by manufacturers or their franchised dealers or whether it applies to sales made by all licensed dealers. For illustration, a Ford dealer holding a franchise from the Ford Motor Car Company sells a used Ford automobile and accepts a chattel mortgage in part payment thereof. Should the mortgage in such a case be certified to on the certificate of title or is such a purchase money mortgage exempt from the provisions of the law? In another case, if the same Ford dealer should sell a used International truck and take a chattel mortgage in part payment of the purchase price, should this mortgage be certified to on the certificate of title or is such a purchase money mortgage exempt from the provisions of Section 3097A?

"Many automobile dealers buy and sell automobiles but do not hold a franchise from any automobile manufacturer. Such dealers handle used cars exclusively. If a dealer in this classification sells an automobile and accepts a chattel mortgage in part payment of the purchase price, should such a mortgage be certified to on the certificate of title or is the mortgage exempt from the provisions of this law?"

In our research on this question we find that this department, on September 1, 1939, by an opinion to Mr. Roy Coyne, Prosecuting Attorney of Jasper County, written by the undersigned, treated the subject on the foregoing proviso in Section 3097A, Laws of Missouri 1939, page 278. However, I note that that part of the

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proviso which referred to "their distributing dealers" was not passed upon in that opinion. I am enclosing a copy of that opinion with this opinion for your information.

Since the proviso is quoted in your request, I will not again include it in this opinion but will refer to it as in your request.

It is a general rule of construction of statutes that the words should be taken in their ordinary meaning unless there is some indication in the act that they should have a special meaning.

Under Section 7759, R. S. Missouri 1929, in the Motor Vehicle Act the term "dealer" is defined as "Any person, firm, corporation, association, agent or sub-agent engaged in the sale or exchange of new, used or reconstructed motor vehicles or trailers." As stated in your request, the term "distributing" when used in connection with the word "dealers" leaves some doubt as to what class of dealers is referred to in the foregoing act. It will also be noted that this proviso excludes from the provisions of the act the manufacturers or their distributing dealers. So, it would seem that in order for a distributing dealer to be exempt from the provisions of the act that he must be a dealer who is distributing motor vehicles for some manufacturer. However, we think the term is broad enough to authorize such distributing dealer who also sells and deals in used cars, to be within the exempted class insofar as the provisions of the foregoing Section 3097A apply.

Answering some of your questions directly in which you ask: "For illustration, a Ford dealer holding a franchise from the Ford Motor Car Company sells a used Ford automobile and accepts a chattel mortgage in part payment thereof. Should the mortgage in such a case be certified to on the certificate of title or is such a purchase money mortgage exempt from the provisions of the law?" In answer to this question and follow-

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ing the foregoing statement, we would say that such a transaction would be exempt from the provisions of the law. The same rule is applicable if such dealer is distributing for a manufacturer.

CONCLUSION.

From the foregoing it is the opinion of this department that the term "their distributing dealers" as used in Section 3097A, Laws of Missouri 1939, page 278, applies to all dealers who are authorized dealers of a manufacturer of automobiles.

We are further of the opinion that distributing dealers of manufacturers are not within the provisions of the foregoing law and are not required to have mortgages certified, as is required by the Act, on motor vehicles upon which such mortgage is given.

We are also of the opinion that a person who deals in automobiles, but is not a dealer for a manufacturer or is not an authorized dealer, is within the provisions of the act requiring mortgages given to him to be certified.

Respectfully submitted

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APPROVED:

W. J. BURKE
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