



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

February 16, 2021

William Jeffrey Jernigan, Esq.
Executive Director
Mississippi Motor Vehicle Commission
1755 Lelia Drive, Suite 200
Jackson, Mississippi 39216

Re: Motor Vehicle Dealer License for Subsidiary of Manufacturer

Dear Mr. Jernigan:

The Office of the Attorney General has received your request for an official opinion.

Questions Presented

1. Does a vehicle manufacturer's wholly owned subsidiary (i.e., an LLC) qualify for a motor vehicle dealer's license under Mississippi law?
2. If a vehicle manufacturer or distributor currently has franchised dealerships, may a subsidiary that is wholly owned by such manufacturer or distributor later obtain a vehicle dealer's license?

Brief Response

In response to your first question, as you note in your request, "it doesn't appear to be directly prohibited." We, too, find no statutory prohibition to a wholly owned subsidiary of a vehicle manufacturer obtaining a motor vehicle dealer's license in Mississippi, so long as the subsidiary meets all applicable statutory and/or regulatory requirements for obtaining such license.

In response to your second question, we know of no statutory provision explicitly preventing a manufacturer's or distributor's wholly owned subsidiary from obtaining a dealer's license at some point after the manufacturer or distributor has franchised dealerships within Mississippi, so long as such subsidiary meets all applicable statutory and/or regulatory requirements for obtaining such license. Determining whether this practice is impacted by existing or future franchise agreements entered into by the manufacturer requires us to interpret such agreements, which is beyond the authority of this office.

Applicable Law and Discussion

At the outset, we note that whether a particular applicant qualifies for a license from the Mississippi Motor Vehicle Commission (the “Commission”) is a question of fact to be addressed by the Commission. *See* MS AG Op., *Barefield* at *1 (Feb. 22, 1990) (“Whether a particular person or business is required to obtain a license under the Motor Vehicle Commission Law is a factual issue that cannot be determined by this office.”).

Addressing your first question, the Mississippi Code defines “Motor vehicle dealer” in the following manner:

any person, firm, partnership, copartnership, association, corporation, trust or legal entity, not excluded by paragraph (c) of this section, who holds a bona fide contract or franchise in effect with a manufacturer, distributor or wholesaler of new motor vehicles, and a license under the provisions of the Mississippi Motor Vehicle Commission Law

Miss. Code Ann. § 63-17-55(b) (emphasis added). Section 63-17-55(c), in turn, exempts the following from the definition of “motor vehicle dealer”:

(i) Receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court;

(ii) Public officers while performing their duties as such officers;

(iii) Employees of persons, corporations or associations enumerated in paragraph (c)(i) of this section when engaged in the specific performance of their duties as such employees; or

(iv) A motor vehicle manufacturer operating a project as defined in Section 57-75-5(f)(iv)1; and the provisions of the Mississippi Motor Vehicle Commission Law shall not apply to:

1. a. Any lease by such a motor vehicle manufacturer of three (3) or fewer motor vehicles at any one time and related vehicle maintenance, of any line of vehicle produced by the manufacturer or its subsidiaries, to any one (1) employee of the motor vehicle manufacturer on a direct basis; or

b. Any sale or other disposition of such motor vehicles by the motor vehicle manufacturer at the end of a lease through direct sales to employees of the manufacturer or through an open auction or auction limited to dealers of the manufacturer's vehicle line or its subsidiaries' vehicle lines; or

2. Any sale or other disposition by such a motor vehicle manufacturer of motor vehicles for which the manufacturer obtained distinguishing number tags under Section 27-19-309(8).

Miss. Code. Ann. § 63-17-55(c). Section 63-17-55(c) contains no exemption for an entity that is a wholly owned subsidiary of a motor vehicle manufacturer.¹

Pursuant to Section 63-17-55(b), a “motor vehicle dealer” is, in part, (1) “any . . . legal entity;” (2) not excluded by Section 63-17-55(c); and that (3) “holds a bona fide contract or franchise in effect with a manufacturer, distributor or wholesaler of new motor vehicles.” First, whether a particular entity seeking a license is a “legal entity” is a question of fact that this office cannot decide by official opinion. However, in your request, you reference the motor vehicle manufacturer’s wholly owned subsidiary being an LLC, which is a “legal entity.” Second, as set forth above, Section 63-17-55(c) contains no exemption for a manufacturer’s wholly owned subsidiary. Finally, whether the subsidiary “holds a bona fide contract or franchise in effect with a manufacturer, distributor or wholesaler of new motor vehicles” is a question of fact to be determined by the Commission.

“Where the language in a statute is plain and unambiguous,” there is no occasion for this office “to add to the law as the Legislature has written it.” *City of Tchula v. Mississippi Pub. Serv. Comm’n*, 187 So. 3d 597, 599 (Miss. 2016). This Office’s authority to respond to opinion requests is limited to the interpretation of state laws as written and passed by the Legislature. Based on a plain reading of the Mississippi Motor Vehicle Commission Law, codified at Section 63-17-51 *et seq.*, there is no express statutory prohibition on a motor vehicle dealer’s license being issued to an entity on the basis that such entity is a wholly owned subsidiary of a vehicle manufacturer. However, any applicant for a motor vehicle dealer’s license must meet all applicable statutory and regulatory requirements associated with obtaining such license.

In response to your second question, we know of no statutory provision preventing a manufacturer’s or distributor’s wholly owned subsidiary from obtaining a dealer’s license at some point after the manufacturer or distributor has franchised dealerships within Mississippi, so long as such subsidiary meets all applicable statutory and/or regulatory requirements for obtaining such license. Determining whether this practice is impacted by existing or future franchise agreements entered into by the manufacturer requires us to interpret such agreements, which is beyond the authority of this office.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Gregory Alston

Gregory Alston
Special Assistant Attorney General

¹ “Manufacturer” is defined as “any person, firm, association, corporation or trust, resident or nonresident, who manufactures or assembles new motor vehicles.” Miss. Code. Ann. § 63-17-55(i).