

**OPINION  
58-173**

November 6, 1958 (OPINION)

MOTOR VEHICLES

RE: Registration - Dealers' Licenses - Established Place of Business

Re: Motor Vehicle Dealers' Licenses

Section 39-0459 of the 1957 Supplement to the North Dakota Revised Code of 1943, governing issuance of motor vehicle dealers' licenses as presently constituted, provides in part that:

. . . . No application shall be granted nor a license issued to anyone until and unless the applicant shall furnish proof satisfactory to the registrar of the fact that the applicant has an established place of business, and has facilities and equipment for the maintenance, servicing and repair of motor vehicles. . . ."

Compare with the prior statute, Chapter 249, Section 1, 1945 Session Laws, providing in part:

No application shall be granted nor a license issued to anyone until and unless the applicant shall furnish proof satisfactory to the registrar of the fact that the applicant has an established place of business, and has, or has the use of facilities and equipment for the maintenance, servicing and repair of motor vehicles. . . ." (Underlining ours).

We have examined a file of documents variously entitled "Lease," "Contract," "Motor Vehicle Servicing Contract," "Affidavit," "Agreement," "House Lease," "Rent Agreement," etc., that have been submitted on past occasions as proof that the applicant has an established place of business and has facilities and equipment for the maintenance, servicing, and repair of motor vehicles. The terms of the various agreements are even more varied than the titled thereof. Some actually lease premises for a period of time at a fixed rental based on the time of occupation, others purport to lease premises and services of mechanics, etc., payments being made solely on the basis of standard service charges apparently equivalent to the same service charges as are charged to the general public, others merely authorize services to be rendered to the "dealer" and his "customers" apparently on the same basis as such services are rendered to the general public.

There are, of course, constitutional questions that arise in the application of statutory provisions requiring licenses for engaging in legitimate businesses such as dealing in automobiles. (See *Nelson v. Tilley* (Nebr.) 289 N.W., 388, 126 A.L.R., 729, and annotation following this case in A.L.R.). However, while the statute on this basis must be construed if possible so as to be constitutional in application, which will of course necessitate a liberal construction, we believe it necessary that same be construed at least within the

obvious meaning of its terms.

It is our opinion that the phrase "has facilities and equipment" implies and requires that the facilities and equipment are the facilities and equipment of the applicant for the dealer's license rather than the facilities and equipment of another person or that the applicant has such a property interest in and control over the facilities and equipment that he is prepared to maintain, service and repair motor vehicles under any and all circumstances. From this it is our conclusion that where premises and equipment are actually leased, i.e., where the lessee actually has the right and authority to occupy, manage, control, and operate repair facilities for a fixed term, that this does comply with the statute. Where, however, the applicant has only the right to have vehicles serviced, maintained, and repaired on the same basis as the general public, whether for a fixed term or not, that this is not compliance with the statute.

LESLIE R. BURGUM

Attorney General