

OPINION
59-175

January 20, 1959 (OPINION)

MOTOR VEHICLES

RE: Registration - Used Car Lots; Location

This is in reply to your letter of January 12, 1959, in which you state that an automobile salesman living in a small town some sixty miles from Bismarck sells cars for a Bismarck firm. On occasion he has several cars parked in his yard for sale to the public. You further state that your department has taken the position that a salesman may have in his possession one vehicle for demonstrating purposes but may not have an accumulation of vehicles. You then ask for an opinion whether or not it is proper for a salesman to operate in this manner.

Section 39-04595 of the 1957 Supplement to the North Dakota Revised Code of 1943 is controlling and is as follows:

USED CAR LOTS; LOCATION. A registered dealer as described in section 39-0459 may establish open used car lots as may be necessary in the conduct of his business in an area not further removed than three miles for the city limits of the town in which he operates a licensed place of business."

The term "dealer" is defined in section 39-0459 and from the facts submitted the salesman cannot qualify under this section as a dealer. The section cited above does not define what constitutes an open used car lot but the term is a self-descriptive phrase in common usage, and well understood by the public in general. Consequently, the ordinary meaning must be ascribed to such term.

The court in 124 A.2d. 48 said, "A used care lot is a lot where secondhand automobiles are purchased, displayed, exchanged and sold." Under this definition it is quite obvious that the salesman is operating a used car lot. Being that he is not a dealer, he is not authorized to operated a used car lot. It is our opinion that the salesman is not operating within the provisions of law.

As to the (firm) dealer for whom the salesman works, it is limited by statute to confine its used car lots within three miles of the city limits in which it operates. The location of the used car lot some sixty miles from Bismarck is well beyond the statutory limits.

It is therefore our opinion that the operation as set out in your letter is not in accordance with the statutory provisions.

LESLIE R. BURGUM

Attorney General