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Department of Justice

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Dear

Thank you for your letter of February 4, 1991. Unfortunately, our office is not authorized to interpret Chapters 320 and 322 for private parties. Therefore I cannot advise you as to whether your client's business is governed by these chapters. However, our office does interpret the Iowa Consumer Credit Code (see Iowa Code § 537.6104(1)(d)). As discussed below, I do not agree with your view that the ICCC supercedes Chapter 322.

The ICCC governs consumer credit transactions and thus relates to credit aspects of motor vehicle sales. Iowa Code § 322.33(3) states that the ICCC supersedes a conflicting provision of Chapter 322; the Credit Code does not affect, much less preempt, portions of Chapter 322 unrelated to consumer credit. Requirements as to licensing, fees, penalties and other provisions of Chapter 322 are not altered by the ICCC. Accordingly, the fact that your client may be engaging in consumer rental purchase agreements under Iowa Code §§ 537.3601 - 537.3624 does not relieve him or her from complying with all other relevant provisions of Iowa law, including Chapters 320 and 322.

Although not rendering an opinion on the applicability of Chapter 322, I note that the provisions of that chapter encompass a broad range of activities. For example, Iowa Code § 322.3 states:

No person shall engage in this state in the business of selling at retail new motor vehicles of any make . . . unless the department has licensed the person as a motor vehicle dealer . . .

"Selling" includes "bartering, exchanging or otherwise dealing in"; "at retail" is defined as "to dispose of a motor vehicle to a person who will devote it to a consumer use". Iowa Code §§ 322.2(3), 322.2(4). "Engage in this state in the business" is defined in the Iowa Administrative Code:

[M]eans doing any of the following acts for purposes of sale of motor vehicles at retail: to acquire, sell, exchange, hold, offer, display, broker, accept on consignment . . .

761 IAC 420.1

I recommend that you and your client carefully review these portions of Iowa law. If you have any questions you may want to address them to the Department of Transportation at the following address: Jody Johnson, Office of Vehicle Registration, Dealer License Section, Park Fair Mall, P.O. Box 9204, Des Moines, IA 50306-9204.

We have also discussed prohibitions on auto brokering, which is a criminal offense in Iowa. The lead case in this area is State v. Miner 331 N.W.2d 683 (Iowa 1983).

I hope this information is helpful. Please do not hesitate to contact me if you have any further questions on the applicability of the ICCC to your client's transactions.

Sincerely,



Peter Kochenburger
Assistant Attorney General