



**THE ATTORNEY GENERAL
OF TEXAS**

January 23, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Honorable John Vance
District Attorney
Government Center
600 Commerce Street
Dallas, Texas 75202

LO-89-6

Dear Mr. Vance:

Article 6686-1, section 2(a), V.T.C.S., provides that "[n]o person may, on both the consecutive days of Saturday and Sunday, sell or offer for sale, or compel the person's employees to sell or offer for sale, a motor vehicle." Each day a motor vehicle is sold or offered for sale is a separate violation of the act. V.T.C.S. art. 6686-1, § 2(b). You ask several questions concerning the applicability of the statute to the operations of a particular business entity which proposes to assist private persons in the sale of their motor vehicles and boats.

Your letter describes the business as follows:

'Park and Sell,' an assumed name of Tri-State Theaters, a Texas limited partnership, has opened a parking lot at 11990 North Central Expressway, Dallas, Texas. Persons wishing to sell automobiles, trucks, boats, motor homes, motorcycles, etc. ('Sellers'), may rent a parking space for a fixed number of days at a fixed price and may place their vehicle in an assigned location on the 'Park and Sell' lot. 'Park and Sell' will only accept vehicles from Sellers who are not 'dealers' as defined in the statutes for the State of Texas. The Seller will place their phone number on the vehicle, lock the vehicle and leave the premises. 'Park and Sell' will have its parking lot open to the public each day and prospective buyers can walk through the lot and if they find a vehicle which interests them they may use one of the pay phones on site to call the Seller to arrange to test drive the vehicle, etc. 'Park and Sell' will not have salesmen on site, will not price vehicles nor will any of the 'Park

and Sell' employees quote prices. If a vehicle is sold, 'Park and Sell' will not receive any commission or other proceeds of the sales price. Sellers rent a parking space only and 'Park and Sell' receives no other compensation from Sellers or buyers. 'Park and Sell' will have a notary public on site who will notarize signatures on transfer documents but will not be involved in preparing or filling out the forms.

At the outset we caution that the opinion process of this office is designed to furnish legal opinions based upon concise questions of law or a stated set of facts. By its nature, this process cannot resolve factual disputes. Thus, a recitation of facts in an opinion of the Attorney General is not an affirmation of their accuracy, but merely a recital of the basis upon which the legal opinion is offered. This caveat is especially appropriate in this instance since, following your request for this opinion, we received a copy of a letter sent to your office by an attorney representing "Park and Sell" advising that the business would be reevaluated and perhaps restructured. Your office, nevertheless, has asked that we render an opinion based on the original statement of facts.

A.

Your first question is whether "Park and Sell" is a "person" within the meaning of article 6686-1, section 1(2). "Person" is defined in section 1(2) as "a natural person, firm, partnership, corporation, or other legal entity." The express mention of partnerships in the definition should not be taken as an exclusion of limited partnerships. See generally V.T.C.S. art. 6132b, § 6(2) (Texas Uniform Partnership Act applies to limited partnerships except where inconsistent with laws relating to limited partnerships); First Nat'l Bank of Brownwood v. Chambers, 398 S.W.2d 313 (Tex. Civ. App. - Eastland 1965, no writ) (a partnership may be general or limited). Thus, the limited partnership doing business as "Park and Sell" is a "person" for the purposes of article 6686-1.

B.

You next ask whether "Park and Sell" is an "employer" within the meaning of article 6686-1, section 1(3), which provides the following:

'Employer' means a person who owns a facility that sells or offers for sale motor vehicles or a person who has the authority to determine the hours of operation of such facility.

In connection with this question you ask whether, under the original description of the business, the "Park and Sell" lot is "a facility that sells or offers for sale motor vehicles" and whether "Park and Sell" is "a person who has the authority to determine the hours of operation" of such a facility.

The significance of finding that "Park and Sell" is an "employer" is to make it a necessary party to any action brought against an employee alleging a violation of the act and to make it strictly liable to pay all sums resulting from a violation of the act by its employee. V.T.C.S. art. 6686-1, § 4(d). It also permits the trier of fact to hold "Park and Sell" directly liable for a violation of the act if it finds that "Park and Sell" compelled its employees to sell motor vehicles or offer motor vehicles for sale on consecutive Saturdays and Sundays. *Id.* § 2(a).

We conclude that "Park and Sell," as described in your letter, is not an "employer" for the purposes of article 6686-1. Though the statute does not define the terms "sell" or "offer for sale," the prohibition contained in section 2(a) of article 6686-1 can only be directed at persons with the power to transfer title to a motor vehicle by sale. *Cf.* Bus. & Com. Code §§ 2.103(a)(4) ("seller" means a person who sells or contracts to sell goods); 2.106(a) ("sale" is the passing of title from the seller to the buyer for a price). Under your description, "Park and Sell" will not be authorized to conduct sales of motor vehicles parked on its premises. Its relationship with the renters of its parking spaces cannot be characterized as an employment relationship. "Park and Sell" will not participate in the offering of such vehicles for sale other than to provide a location where prospective buyers may view vehicles offered for sale by persons not subject to regulation as motor vehicle dealers under state law. Presumably, these sales will not be prohibited by article 6686-1, since they are likely to be conducted by persons not engaged in a business that includes the sale of motor vehicles. V.T.C.S. art. 6686-1, § 3. Because "Park and Sell" does not have the power to sell vehicles, its parking lot is not a "facility that sells or offers for sale motor vehicles." Since the "Park and Sell" lot is not a facility that sells motor vehicles or offers motor vehicles for sale, "Park and Sell" is not a "person who has the authority to determine the hours of operation"

of such a facility. Therefore, "Park and Sell" is not an "employer" for the purposes of article 6686-1.

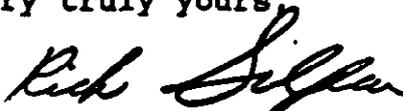
C.

You also ask whether the business activity of "Park and Sell," as originally described in your letter, constitutes a "sale" or an "offer for sale" of motor vehicles within the contemplation of article 6686-1. Your description makes it clear that "Park and Sell" does not sell the motor vehicles parked on its lot or offer such vehicles for sale. The relationship between "Park and Sell" and its clients is like that between the landlord of a shopping center and its tenants or, more appropriately, between the owner of a flea market and its vendors. The mere renting of space on which sales may be conducted does not make the owner of the rented space a salesman or establish privity between the owner and the buyer of merchandise sold at the rented space.

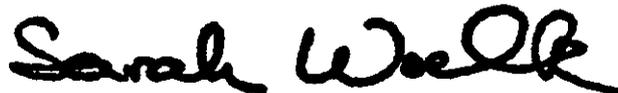
D.

Your final question is whether "Park and Sell" proposes to operate a business contrary to any of the prohibitions contained in article 6686-1. It is apparent from the foregoing discussion that the "Park and Sell" proposal does not violate the express provisions of article 6686-1. Your question, therefore, may be answered in the negative.

Very truly yours,



Rick Gilpin, Chairman
Opinion Committee



Sarah Woelk, Chief
Letter Opinion Section

Prepared by Steve Aragon
Approved: Opinion Committee

RG/SW/SA/er

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