

RECEIVED

JUL 06 2017

OPINION COMMITTEE

FILE # ML-48170-17
I.D. # 48170

July 6, 2017

Office of the Attorney General of Texas
Attn: Opinion Committee
P.O. Box 12548
Austin, Texas 78711
Via Email: Opinion.Committee@texasattorneygeneral.gov

RQ-0170-KP

Re: Whether a company can wholly own a motor vehicle manufacturer without being "affiliated with" the motor vehicle manufacturer for purposes of section 2301.476 of the Texas Occupations Code.

Dear Attorney General Paxton:

Pursuant to section 402.042 of the Texas Government Code, I write to request the written opinion of your office on the matter described below.

Background

Under Texas law, a motor vehicle manufacturer may not directly or indirectly: (1) own an interest in a motor vehicle dealer or dealership; (2) operate or control a motor vehicle dealer or dealership; or (3) act in the capacity of a motor vehicle dealer. TEX. OCC. CODE § 2301.476(c). For purposes of these prohibitions, a "manufacturer" includes a person who:

(A) is affiliated with a manufacturer; or

(B) directly or indirectly through an intermediary, is controlled by, or is under common control with, a manufacturer.

Id. § 2301.476(a)(2).

Forest River, Inc. ("Forest River") is a Texas-licensed motor vehicle manufacturer. Berkshire Hathaway Automotive ("BHA") operates various Texas-licensed automobile dealerships. Berkshire Hathaway, Inc. ("BH") owns and controls both Forest River and BHA.

There is no dispute that Forest River manufactures motor vehicles for purposes of these provisions. As the corporate relationship between these three entities stands today, both BHI and BHA are also "manufacturers" under the statute. BHA is a manufacturer because it is "under common control with" Forest River. *Id.* § 2301.476(a)(2)(B). BHI is a manufacturer because it is "affiliated with" Forest River, its subsidiary. Because BHI and BHA are "manufacturers" under the statute, their ongoing ownership and/or control of motor vehicle dealers violates section 2301.476(c).

It has been suggested that BHI and BHA could come into compliance with section 2301.476 if BHI relinquishes control of Forest River while maintaining ownership of Forest River. If BHI no longer controls Forest River, then BHA would no longer be "under common control with" Forest River despite their shared parent company.

Questions remain, however, as to whether the proposed relinquishment of control would bring BHI into compliance with the law. While any violations stemming from shared control of BHI and Forest River might be addressed if BHI relinquishes control of Forest River, section 2301.476 also prohibits BHI from being "affiliated with" Forest River. Under the wording of section 2301.476(a), subsection (a)(2)(A)'s "affiliated with" standard appears to be distinct from and independent of subsection (a)(2)(B)'s "under common control with" standard.

Question Presented

For purposes of section 2301.476 of the Occupations Code, can a company that wholly owns a motor vehicle manufacturer cease to be "affiliated with" the motor vehicle manufacturer by relinquishing control of the manufacturer while maintaining ownership of it?

Sincerely,

/s/

Raymond Palacios, Jr.
Chairman, Texas Department of Motor Vehicles Board