STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHRYSLER CORPORATION,	)	
	)	
Petitioner,	)	
	)	
v.	)	CASE NO. 92-6605RP
	)	
DEPARTMENT OF LEGAL AFFAIRS,	)	
	)	
Respondent.	)	
_____	)	

FINAL ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, William J. Kendrick, held a formal hearing in the above-styled case on December 7, 1992, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Dean Bunch, Esquire
Cabaniss, Burke & Wagner, P.A.
851 East Park Avenue
Tallahassee, Florida 32301

For Respondent: Janet L. Smith
Michael C. Godwin, Esquire
Department of Legal Affairs
Lemon Law Arbitration Program
The Capitol
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

At issue in this proceeding is whether respondent's proposed rule 2-30.001(3)(e), constitutes an invalid exercise of delegated legislative authority.

PRELIMINARY STATEMENT

This is a rule challenge brought under the provisions of Section 120.54(4), Florida Statutes, to challenge the propriety of respondent's proposed rule 2-30.001(3)(e), which would define "24,000 miles of operation," for purposes of calculating the running of the Lemon Law rights period, as "miles of operation by the consumer."

At hearing, petitioner called Philip Nowicki, PhD, Executive Director, Lemon Law Program, Department of Legal Affairs, and Gary Disney, a warranty cost analysis and control manager for Chrysler Corporation, as witnesses, and its exhibits 1, 3 and 4 were received into evidence. Respondent called Philip Nowicki, PhD, accepted as an expert in the implementation, development and

administration of the Florida Lemon Law Program, as a witness, and its exhibits 1-11, 15, and 16, were received into evidence.

The transcript of hearing was filed December 29, 1992, and the parties were granted leave until January 8, 1993, to file proposed findings of fact. The parties' proposals have been addressed in the appendix to this final order.

FINDINGS OF FACT

Background

1. Petitioner, Chrysler Corporation (Chrysler), is a "manufacturer" of motor vehicles as that term is defined by Section 681.102(10), Florida Statutes (1992 Supp.), 1/ and, as such, is subject to the provisions of Chapter 681, Florida Statutes, the "Motor Vehicle Warranty Enforcement Act." Consequently, Chrysler is substantially affected by the rules promulgated by respondent, Department of Legal Affairs (Department) to implement Chapter 681, and the parties have stipulated that it has standing to maintain this rule challenge proceeding.

2. The Motor Vehicle Warranty Enforcement Act (the "Lemon Law") imposes upon manufacturers, as defined by Section 681.102(10), a duty to repair nonconformities which are first reported by consumers during the "Lemon Law rights period," and liability for the refund of the purchase price or replacement of those motor vehicles if their nonconformities are not corrected within a reasonable number of repair attempts. A consumer's right to exercise the remedies provided by the Lemon Law accrue from the date the consumer takes delivery of the motor vehicle.

3. The "Lemon Law rights period" is defined by Section 681.102(9), Florida Statutes, as follows:

> "Lemon Law rights period" means the period ending 18 months after the date of the original delivery of a motor vehicle to a consumer or the first 24,000 miles of operation, whichever occurs first.

4. On October 9, 1992, the Department published notice, inter alia, of proposed rule 2-30.001(3)(e), in volume 18, number 41, of the Florida Administrative Weekly. Such rule would define "24,000 miles of operation," for purposes of calculating the running of the Lemon Law rights period established by Section 681.102(9), Florida Statutes, as "miles of operation by the consumer."

5. By petition filed with the Division of Administrative Hearings on October 30, 1992, Chrysler timely challenged the validity of such proposed rule as an invalid exercise of delegated legislative authority. The predicate for Chrysler's challenge was its contention that the proposed rule enlarges, modifies or contravenes Section 618.102(9), Florida Statutes, the provision of law sought to be implemented. 2/

The proposed rule

6. Proposed rule 2-30.001(3)(e) provides:

When calculating the running of the Lemon Law rights period as defined by s. 681.102(9), FS., "24,000 miles of operation" means miles of operation by the consumer. If the consumer is a subsequent transferee as defined in s. 681.102(4), FS., "24,000 miles of operation" means miles of operation by both the original consumer and the subsequent transferee.

7. The gravamen of the dispute between the parties concerning the propriety of the proposed rule is a disagreement regarding the interpretation to be accorded Section 681.102(9), Florida Statutes, which defines the "Lemon Law rights period" as:

> . . . the period ending 18 months after the date of the original delivery of a motor vehicle to a consumer or the first 24,000 miles of operation, whichever occurs first.

8. Chrysler contends that the "Lemon Law rights period," as defined by Section 681.102(9), is clear and unambiguous, and that the "first 24,000 miles of operation" refers to the actual mileage shown on the odometer of the motor vehicle, without regard to when or by whom the mileage was accrued. So read, proposed rule 2-30.001(3)(e) conflicts with the law sought to be implemented.

9. The position advanced by Chrysler is of import to it since Chrysler impresses new motor vehicles into use as company cars and permits its dealers to purchase and use new vehicles for demonstration purposes for customers or personal use, prior to their retail sale. During this period, the motor vehicle accumulates mileage on its odometer as a result of such "demonstrator" use. Excluding the mileage so accrued from the running of the "Lemon Law rights period," as contemplated by the proposed rule, could extend Chrysler's liability under the Lemon Law beyond the first 24,000 miles of operation registered on the vehicle, if it issued a warranty as a condition of sale to the consumer. See Section 681.102(14), definition of "motor vehicle," discussed infra.

10. Contrasted with Chrysler's position, the Department interprets the "first 24,000 miles of operation" provision of Section 681.102(9), to relate to operation by a consumer, and would exclude any mileage accrued on the vehicle prior to its delivery to the consumer when calculating the "Lemon Law rights period." So interpreted, the proposed rule is consistent with the law sought to be implemented.

11. The Department's interpretation is premised on its reading of Section 681.102(9) in pari materia with Section 681.102(14) which defines a "motor vehicle" as:

> . . . a new vehicle, . . . and includes a vehicle used as a demonstrator or leased vehicle if a manufacturer's warranty was issued as a condition of sale, or the lessee is responsible for repairs. . . .

So read, a demonstrator is considered a new vehicle, and no distinction is made in applying the Lemon Law rights period between consumers who purchase a motor vehicle with no or minimal mileage on its odometer at delivery and those who purchase a demonstrator.

The proposed rule's predecessor

12. Pursuant to the provisions of Chapter 88-95, Laws of Florida, Chapter 681, Florida Statutes, was amended effective January 1, 1989, to establish what has been referred to as the Lemon Law. At that time, the "Lemon Law rights period" was defined as:

> . . . the period ending 1 year after the date of the original delivery of a motor vehicle to a consumer or the first 12,000 miles of operation, whichever occurs first.

Section 681.102(7), Florida Statutes (1988 Supp.).

13. To implement the provisions of the Lemon Law, the Department adopted Rule 2-30.001, Florida Administrative Code, in or about January 1989. At that time, the rule included the following definition of the "Lemon Law rights period":

> The "Lemon Law Rights period" is the period ending one year after the date of the original delivery of the motor vehicle to the consumer, or the first 12,000 miles of operation, whichever occurs first. This period may be extended if a substantial defect or condition is reported to the manufacturer or its authorized dealer during the Lemon Law Rights period, but has not been cured by the expiration of the period. If you put 12,000 miles on your vehicle (miles driven minus miles on the vehicle on the date of delivery) before the end of the first year of operation, you should note that date in your personal records. If a warranty problem is examined or repaired during the Lemon Law Rights period, be sure you get and keep a copy of the work order which contains the date, odometer reading, and a description of that problem. Your work order copy provides the best proof as to when the problem was first reported.

[Respondent's exhibits 3 and 15].

14. Consistent with the foregoing rule, the Florida New Motor Vehicle Arbitration Board, which is charged with the responsibility of arbitrating disputes under the Lemon Law, has consistently construed the provisions of the "Lemon Law rights period" concerning "miles of operation" to relate to operation by the consumer, and has excluded any mileage accrued on the vehicle prior to its delivery to the consumer when calculating the "Lemon Law rights period." [See e.g., Respondent's exhibits 5, 8 and 9].

15. Since the Lemon Law was enacted, there has been no change in the definition of "Lemon Law rights period," or the Department's rule, until the passage of Chapter 92-88, Laws of Florida, effective July 1, 1992. Under such law, the "Lemon Law rights period" was amended to read as follows:

> (9)(7) "Lemon Law rights period" means the period ending 18 months 1 year after the date of the original delivery of a motor vehicle to a consumer or the first 24,000 12,000 miles of operation, whichever occurs first.

Section 681.102(9), Florida Statutes.

16. Here, the proposed rule is designed to reflect the change in the "Lemon Law rights period" from one year or 12,000 miles to 18 months or 24,000 miles, occasioned by the aforesaid amendment to Chapter 681. The Department's interpretation of the "Lemon Law rights period" concerning "miles of operation" to relate to operation by the consumer remains, however, consistent with its prior rule and interpretation.

CONCLUSIONS OF LAW

17. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings. Section 120.54(4), Florida Statutes.

18. To prevail in this case, the burden is upon the petitioner to demonstrate, by a preponderance of the evidence, that the proposed rule is an invalid exercise of delegated legislative authority. Humana, Inc. v. Department of Health and Rehabilitative Services, 469 So.2d 889 (Fla. 1st DCA 1985), and Agrico Chemical Co. v. Department of Environmental Regulation, 365 So.2d 759 (Fla. 1st DCA 1978).

19. Pertinent to this case, an invalid exercise of delegated legislative authority is defined by Section 120.52(8), Florida Statutes, as follows:

> "Invalid exercise of delegated legislative authority" means action which goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one or more of the following apply.
>
> * * *
>
> (c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(7). . . .

20. Whether the proposed rule enlarges, modifies, or contravenes the provisions of law implemented is, as heretofore noted in the findings of fact, dependent upon whether the "first 24,000 miles of operation" provision of Section 681.102(9), Florida Statutes, may appropriately be interpreted to mean miles of operation by the consumer.

21. Generally, an administrative construction of a statute by an agency responsible for its administration is entitled to great deference and should not be overturned unless clearly erroneous. Department of Environmental Regulation v. Goldring, 477 So.2d 532 (Fla. 1985), All Seasons Resorts, Inc. v. Division of Land Sales, Condominiums and Mobile Homes, 455 So.2d 544 (Fla. 1st DCA 1984), and Sans Souci v. Division of Land Sales and Condominiums, 421 So.2d 623 (Fla. 1st DCA 1982). Moreover, the agency's interpretation does not have to be the

only one or the most desirable one; it is enough if it is permissible. Florida Power Corp. v. Department of Environmental Regulation, 431 So.2d 684 (Fla. 1st DCA 1983). However, where the legislative intent as evidenced by a statute is clear and unambiguous, there is no need for any construction or interpretation, and the forum need only give effect to the plain meaning of its terms. Van Pelt v. Hilliard, 75 Fla. 792, 78 So. 693 (1918).

22. The fundamental rules governing construction applicable to the instant case were aptly set forth in Florida State Racing Commission v. McLaughlin, 102 So.2d 574, 575 (Fla. 1958), as follows:

> "It is elementary that the function of the Court is to ascertain and give effect to the legislative intent in enacting a statute.
> "In applying this principle certain rules have been adopted to guide the process of judicial thinking. The first of these is that the Legislature is conclusively presumed to have a working knowledge of the English language and when a statute has been drafted in such a manner as to clearly convey a specific meaning the only proper function of the Court is to effectuate this legislative intent.
> "This rule is subject to the qualification that if a part of a statute appears to have a clear meaning if considered alone but when given that meaning is inconsistent with other parts of the same statute or others in pari materia, the Court will examine the entire act and those in para materia in order to ascertain the overall legislative intent.
> "When construing a particular part of a statute it is only when the language being construed in and of itself is of doubtful meaning or doubt as to its meaning is engendered by apparent inconsistency with other parts of the same or closely related statute that any matter extrinsic the statute may be considered by the Court in arriving at the meaning of the language employed by the Legislature.

Accord, State v. State Racing Commission, 112 So.2d 825 (Fla. 1959), and Van Pelt v. Hilliard, 75 Fla. 792, 78 So. 693 (Fla. 1918). See also, State v. Webb, 398 So.2d 820, 824 (Fla. 1981), ("It is a fundamental rule of statutory construction that legislative intent is the polestar by which the court must be guided and this intent must be given effect even though it may contradict the strict letter of the statute."), and Department of Professional Regulation v. Florida Dental Hygienist Association, Inc., 18 FLW D326 (Fla. 1st DCA 1993).

23. Here, while the provisions of Section 681.102(9), Florida Statutes, if read in isolation, could be ascribed the import advanced by Chrysler, a reading of such subsection with the remaining provisions of Chapter 681 evidences a different legislative intent or, at a minimum, raises sufficient ambiguity as to accord deference to the Department's interpretation. Supportive of such conclusion is the expression of legislative intent at Section 681.101 as follows:

> The Legislature recognizes that a motor vehicle is a major consumer purchase and that a defective motor vehicle undoubtedly creates a hardship for the consumer . . . It is . . . the intent of the Legislature to provide the statutory procedures whereby a consumer may receive a replacement motor vehicle, or a full refund, for a motor vehicle which cannot be brought into conformity with the warranty provided for in this chapter . . . ,

and the definition at Section 681.102(14), which defines a "motor vehicle" for purposes of the Lemon Law, as follows:

> "Motor vehicle" means a new vehicle, . . . and includes a vehicle used as a demonstrator or leased vehicle if a manufacturer's warranty was issued as a condition of sale, or the lessee is responsible for repairs . . . .

This definition makes clear that a demonstrator is considered a new motor vehicle as long as a manufacturer's warranty was issued as a condition of sale. Accord, Chrysler Motors Corp. v. Flowers, 803 P.2d 314 (Wash. 1991). Moreover, the definition at Section 681.102(18) of "reasonable offset for use," which provides the method for calculating a credit to the manufacturer for the consumer's use when it is required to refund the purchase price, implicitly recognizes that, when acquired by the consumer, the motor vehicle may have mileage on it not attributable to the consumer.

24. Accordingly, the Department's conclusion that when applying the "Lemon Law rights period" no distinction should be made between previously unused vehicles and demonstrator vehicles is consistent with the provisions of Chapter 681, and its interpretation of Section 681.102(9), as evidenced by the proposed rule, is reasonable and not clearly erroneous.

CONCLUSION

Based on the foregoing findings of fact and conclusions of law, it is

ORDERED that Chrysler has failed to demonstrate that proposed rule 2-30.001(3)(e) is an invalid exercise of delegated legislative authority, and its petition is denied.

DONE AND ORDERED in Tallahassee, Leon County, Florida, this 9th day of February 1993.

WILLIAM J. KENDRICK
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of February 1993.

ENDNOTES

1/ All references are to Florida Statutes (1992 Supp.) unless otherwise indicated.

2/ The petition also challenged the validity of proposed rule 2-32.035; however, the parties resolved their dispute regarding such rule and petitioner withdrew its challenge at hearing. Accordingly, such challenge is dismissed as moot.

APPENDIX

Petitioner's proposed findings of fact are addressed as follows:

1.	Addressed in paragraphs 4 and 6.
2-4.	Addressed in paragraphs 5 and 7.
5-7.	Addressed in paragraphs 8 and 10.
8-13.	Addressed in paragraphs 1 and 9, otherwise unnecessary detail.
14 & 15.	Addressed in paragraphs 1 and 9, otherwise a conclusion of law.
16-18.	Unnecessary detail.
19, 26 & 27.	Not shown to be pertinent since Dr. Norwicki has been of the opinion that, as drafted, the Lemon Law rights period with regard to mileage starts upon delivery to the consumer.
20 & 21.	Addressed in paragraph 23.
22-25.	Not shown to be relevant.
28 & 29.	Addressed in paragraph 13, otherwise rejected as argument.
30.	Addressed in paragraph 14.
31.	To the extent pertinent, or necessary to the result reached, addressed in the response to paragraphs 19, 26 and 27.

Respondent's proposed findings of fact are addressed as follows:

1.	Addressed in paragraphs 1 and 4, otherwise unnecessary detail.
2.	Addressed in paragraph 1.
3.	Addressed in paragraphs 15 and 16.
4 & 5.	Addressed in paragraph 2.
6 & 7.	Addressed in paragraphs 15 and 16.
8-11.	Addressed in paragraphs 12 and 13.
12.	Addressed in paragraph 14.
13.	Addressed in paragraph 16.
14-17.	Addressed in paragraph 9.
18.	Addressed in paragraph 9.
19-21.	Addressed in paragraph 2, otherwise a legal conclusion.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this final order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida rules of appellate procedure. Such proceedings are commenced by filing one copy of a notice of appeal with the Agency Clerk of the Division of Administrative Hearings and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the appellate district where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.

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DISTRICT COURT OPINION

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IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

CHRYSLER CORPORATION,

Appellant,

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED.

v. CASE NO. 93-729
DOAH CASE NO. 92-6605RP

THE FLORIDA DEPARTMENT OF
LEGAL AFFAIRS,

Appellee.
_____/

Opinion filed April 26, 1994.

Appeal from an order of the Division of Administrative Hearings. Dean Bunch of Cabaniss, Burke & Wagner, P.A., Tallahassee, for appellant. Robert A. Butterworth, Attorney General; Janet L. Smith, Assistant Attorney General, Tallahassee, for appellee.

PER CURIAM.

AFFIRMED.

BOOTH, WEBSTER and BENTON, JJ., concur.

M A N D A T E
From
DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT

To the Honorable, William J. Kendrick, Hearing Officer
Division of Administrative Hearings

WHEREAS, in that certain cause filed in this Court styled:

CHRYSLER CORPORATION

vs. Case No. 93-729
Your Case No. 92-6605RP

DEPARTMENT OF LEGAL AFFAIRS

The attached opinion was rendered on April 26, 1994,

YOU ARE HEREBY COMMANDED that further proceedings be had in accordance with said opinion, the rules of this Court and the laws of the State of Florida.

WITNESS the Honorable E. Earle Zehmer

Chief Judge of the District Court of Appeal of Florida, First District and the Seal of said court at Tallahassee, the Capitol, on this 12th day of May, 1994

_____

Clerk, District Court of Appeal of Florida,
First District