

8-30-02

STATE OF FLORIDA  
DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

DOAH CASE NO.: 01-4495 and 01-4650

AP

FINAL ORDER #: HSMV-03-33-FOF-DMV

REGAL LAKELAND,

Petitioner,

vs.

GENERAL MOTORS CORPORATION AND  
BIG OAKS BUICK PONTIAC GMC, INC.,

Respondents.

\_\_\_\_\_  
CANNON AUTOMOTIVE GROUP, INC.

Petitioner,

Vs.

GENERAL MOTORS CORPORATION AND  
BIG OAKS BUICK PONTIAC GMC, INC.,

Respondents.

01-4495

FLB-CLOS

DIVISION OF  
ADMINISTRATIVE  
HEARINGS

03 FEB 13 PM 12:00

FILED

01-4650

FINAL ORDER

This matter came before the Department for entry of a Final Order upon submission of a Recommended Order of Dismissal by Fred Buckine, an Administrative Law Judge of the Division of Administrative Hearings. The Department hereby adopts the Recommended Order as its Final Order in this matter except as noted below, and said Recommended Order, a copy of

which is attached hereto, is incorporated by reference in this order except for the conclusions of law rejected herein, and except for the recommendations.<sup>1</sup>

1. The Department rejects the statement in Conclusion of Law 14 that the statutory process for establishment of and/or relocation of a franchised dealership must be strictly construed in that there is no authority for this statement, and in addition, it contradicts Conclusion of Law 13. The Department rejects everything after the first sentence of Conclusion of Law 21, and the entirety of Conclusions of Law 22-28, and 30-35. The Department finds that the method adopted by in these Conclusions (described in Finding of Fact 10) is contrary to the plain meaning of section 320.642(5)(a), Florida Statutes. Moreover, the Department finds that this method restricts competition by making relocation more difficult and, as stated by Conclusion of Law 13, “maintaining competition” among franchised motor vehicle dealers and manufacturers” is of primary concern, and is the “pole star” of the relocation process. Further, the Department finds that the “encirclement method” recommended by the Recommended Order is not the “objective and all inclusive method of measurement” commended by Finding of Fact 9, rather, it is almost incomprehensible, and is convoluted and unworkable in practice. Accordingly, the Department substitutes the following conclusion of law for those rejected herein, and finds that this conclusion is more reasonable than those rejected.

2. The facts in this matter are not in dispute. The only issue is the proper construction of section 320.642(5)(a), Florida Statutes, which reads:

(5) The opening or reopening of the same or a successor motor vehicle dealer within 12 months shall not be considered an additional motor vehicle dealer subject to protest within the meaning of this section, if:

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<sup>1</sup> Respondents filed exceptions to the Recommended Order. These exceptions are ruled on in the appendix to this Order.

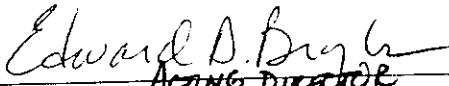
(a) The opening or reopening is within the same or an adjacent county, is within 2 miles of the former motor vehicle dealer location,

More specifically, the dispute is over how to measure the two miles referred to in this statute. As the Florida Supreme Court recognized in State ex rel. Fronton Exhibition Co. v. Stein, 144 Fla. 387, 198 So. 82, 85, (1940), "The number of methods of measuring distances is practically co-extensive with the ability of the mind of man to hypothesize upon the subject." This is shown by the fact that the Recommended Order lists four possible methods of measurement in addition to the one it recommends: furthest point to furthest point, nearest point to nearest point, center point of existing main building to center point of proposed showroom building, and center of drive of existing location to center of drive of drive of new location. To these one could add nearest point to furthest point, distance between the front doors of the showrooms, and probably many others. The Department believes the method of measurement should be the simplest possible that also comports with the legislative intent of maintaining completion. Therefore, the Department construes section 320.642(5)(a), Florida Statutes, to mean that if any part of the new location is within two miles of any part of the former location, the exemption applies. Put another way, if the distance between the nearest points of the boundary of the existing dealership's property and boundary of the proposed relocated dealership's property is two miles or less, the exemption applies. As Finding of Fact 6 shows, using the nearest-point-to-nearest-point measurement, the distance between the existing and proposed dealerships is 1.89 miles. Therefore the exemption provided for in section 320.642(5)(a), Florida Statutes, applies to the subject location.

Accordingly, it is

ORDERED and ADJUDGED that the protests filed in this cause by Regal Lakeland and Cannon Automotive Group, Inc. are hereby dismissed.

DONE AND ORDERED this 17th day of January, 2003, in Tallahassee, Leon County, Florida.

  
CARL A. FORD, Director  
Division of Motor Vehicles  
Department of Highway Safety  
and Motor Vehicles  
Neil Kirkman building  
Tallahassee, Florida 32399

Filed with the Clerk of the  
Division of Motor Vehicles  
this 17th day of January, 2003.

#### NOTICE OF APPEAL RIGHTS

Judicial review of this order may be had pursuant to section 120.68, Florida Statutes, in the District Court of Appeal for the First District, State of Florida, or in any other district court of appeal of this state in an appellate district where a party resides. In order to initiate such review, one copy of the notice of appeal must be filed with the Department and the other copy of the notice of appeal, together with the filing fee, must be filed with the court within thirty days of the filing date of this order as set out above, pursuant to Rules of Appellate Procedure.

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APPENDIX TO FINAL ORDER STATE OF FLORIDA  
DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

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RULING ON EXCEPTION TO RECOMMENDED ORDER

1. Exception to Findings of Fact 10 and 11. Rejected. Finding of Fact 10 merely sets forth a method for measuring the distance between the two dealerships. Although the Department has found that this is not the proper method, is it not factually incorrect. Finding of Fact 11 correctly finds that if one uses the measurement method set forth in Finding 10, the relocation is not within two miles. Again, while the Department disagrees that this method is the proper one, it is not factually incorrect.

2. Exception to Conclusion of Law 13. Rejected. While it may be somewhat hyperbolic to state that maintaining competition is the "pole star" of the relocation process, it is clearly an important element to be considered in construing sections 320.60-70, Florida Statutes.

3. Exception to Conclusion of Law 14. Granted in substance.

4. Exceptions to Conclusion of Law 21, 26-28 and 30-35. Granted in substance.