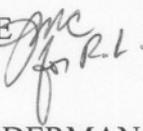
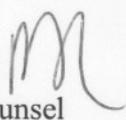


**DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES
OFFICE OF GENERAL COUNSEL**

February 17, 2010

TO: JULIE GENTRY
Chief, Bureau of Field Operations
Division of Motor Vehicles

VIA: ROBIN LOTANE 
General Counsel

FROM: MICHAEL J. ALDERMAN 
Senior Assistant General Counsel

SUBJECT: Sale of Recreational Vehicles by Motor Vehicle Dealers
DOCKET NO.: 2010-0001802

QUESTION PRESENTED:

The Bureau of Field Operations currently does not require a franchise or independent dealer to obtain a recreational vehicle (RV) dealer license to sell private motor coaches, motor homes or van conversions. This policy was based on section 320.771(2), Florida Statutes. There appears to be a conflict between sections 320.771(2) and 320.27(1)(c), Florida Statutes. What kind of recreational vehicles may licensed franchise and independent motor vehicle dealers sell without a recreational vehicle dealer license?

CONCLUSION:

Based on the legislative history of these two provisions and on the applicable provisions of statutory construction, in my opinion, the language of section 320.27(1)(c) prevails over that of section 320.771(2). Thus, motor vehicle dealers may sell motor homes, private motor coaches, van conversions, travel trailers, camping trailers, truck campers and fifth-wheel trailers, but only if they acquire these vehicles in trade for motor vehicles as defined in section 320.27(1)(b).

DISCUSSION:

THE STATUTORY LANGUAGE

Section 320.771(1)(a) defines a recreational vehicle dealer in relevant part as "...any person engaged in the business of buying, selling, or dealing in recreational vehicles or offering or displaying recreational vehicles for sale." Subsection (2) of section 320.771 provides,

LICENSE REQUIRED--No person shall engage in business as, or serve in the capacity of, a dealer in this state unless such person possesses a valid, current license as provided in this section. Motor vehicle dealers licensed under s. 320.27 shall not be required to obtain the license provided in this section to sell motor vehicles as defined in s. 320.01(1)(b)4., 5., and 6.

The relevant language of section 320.27(1)(c) states:

A motor vehicle dealer may, at retail or wholesale, sell a recreational vehicle as described in s. 320.01(1)(b)1.-6. and 8., acquired in exchange for the sale of a motor vehicle, provided such acquisition is incidental to the principal business of being a motor vehicle dealer. However, a motor vehicle dealer may not buy a recreational vehicle for the purpose of resale unless licensed as a recreational vehicle dealer pursuant to s. 320.771.

CONSTRUCTION OF STATUTES

Whenever possible, the statutes must be construed to avoid conflicts and to give effect to all statutes and parts of statutes enacted by the legislature. Only when statutes are irreconcilably in conflict are the various rules for resolving conflicts applied. See, 48A Fla. Jur.2d. Statutes, ss. 182 and 183. I think these statutes are irreconcilably in conflict. Section 320.771(2) allows motor vehicle dealers to sell RVs defined in 320.02(1)(b)4, 5, and 6 (motor homes, private motor coaches and van conversions, respectively). Section 320.27(1)(c) allows dealers to sell the same kinds of RVs as 320.771 and adds four more kinds of RVs that dealers may sell (travel trailers, camping trailers, truck campers and fifth-wheel trailers) but restricts their ability to sell RVs to those acquired in trade for motor vehicles. Thus, one is more permissive as to how the dealer acquires the vehicle, and one is more permissive as to which vehicles he/she may sell. Therefore there is no way to apply both of these provisions.

There are two canons of statutory construction which may be applied to determine which of two irreconcilable statutes prevail.

1. The specific statute prevails over the general. See 48A Fla. Jur.2d. Statutes, s. 185
2. The latest expression of the legislative will prevails over the earlier. See, 48A Fla. Jur.2d. Statutes, s. 184

I do not think that either of these statutes may be regarded as more specific because they deal with the same subject, i.e., under what circumstances may a motor vehicle dealer sell RVs. Where two provisions of the same statutory chapter are in conflict, we may "look behind" the compilation of the statutes to ascertain which act was the last expression of the legislature on this subject Lykes Bros. v. Bigby 155 Fla. 580, 584, 21 So.2d 37, 39 (Fla.1945). See also,

Hillsborough County Com'rs v. Jackson 58 Fla. 210, 213, 50 So. 423, 424, (Fla.1909), “[w]here there are two conflicting sections of a general compilation or code of statute laws, that section should prevail which is derived from a source that can be considered as the last expression of the lawmaking power in enacting separate statutes upon the same subject.” Therefore, we must determine which statute is the latest expression of the legislative will.

The language in section 320.27(1)(c) was first enacted in 1994, by s. 64, ch. 94-306, Laws of Florida. At that time it allowed motor vehicle dealers to sell all kinds of traded-in RVs at wholesale. The next year, the Legislature enacted chapter 95-333, Laws of Florida. Section 20 of that enactment created section 320.771(2), including the language now in question. However, the same enactment, in section 43, amended section 320.27(1)(c) to insert a cross reference to section 320.771 and delete one to section 320.77. In 1996, the legislature again amended the language at 320.27(1)(c) in s. 43 ch. 96-413. Section 320.771(2) has not been amended since it was first enacted in 1995. Because the language of section 320.27(1)(c) was amended twice after 320.771(2) was enacted, I think it must be regarded as the latest expression of the legislative will. Thus, motor vehicle dealers may sell motor homes, private motor coaches, van conversions, travel trailers, camping trailers and truck campers and fifth-wheel trailers, but only if they acquire these vehicles in trade for motor vehicles as defined in section 320.27(1)(b).

Please refer to Docket No. 2010-0001802 when submitting further inquiries regarding this matter.

MJA/al

cc: Carl Ford
DHSMV Attorneys