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INDIANA ATTORNEY GENERAL

March 22, 2017

**OFFICIAL OPINION 2017-3**

The Honorable Connie Lawson  
Secretary of State  
Indiana State House  
Room 201  
Indianapolis, IN 46204

**RE: Sunday Sales of Non-Motorized Trailers**

Dear Secretary Lawson:

As you are aware, in the State of Indiana, a person can go to jail for selling cars on Sunday.<sup>1</sup> This is admittedly a fairly severe application of criminal penalties to what is essentially a Sunday Law regulating the sale of a commercial product.

Over thirty years ago, the Indiana Attorney General issued and published his opinion<sup>2</sup> that it was lawful, despite the ban on Sunday motor vehicle sales under Ind. Code § 24-4-6-1, for a person to buy, sell, or trade non-motorized or non-self-propelled recreational vehicles (“RVs”)<sup>3</sup> on Sundays.

Considering amendments and recodifications of Ind. Code § 24-4-6-1 and other related statutes, you have requested us to revisit our previous opinion regarding the scope of the prohibition against Sunday motor vehicles sales contained in current Ind. Code § 24-4-6-1, and specifically whether the ban applies to non-motorized trailers.

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<sup>1</sup>An original 1977 enactment, still on the books today, provided that, “A person who engages in the business of buying, selling, or trading motor vehicles on Sunday commits a class B misdemeanor.” Ind. Code § 24-4-6-1. A class B misdemeanor is punishable by up to a \$1,000 fine and 180 days in jail. Ind. Code § 35-50-3-3.

<sup>2</sup> 1985-86 *Op. Ind. Att’y Gen.* No. 1 (February 28, 1986).

<sup>3</sup> “RV” is a generic term that includes subtypes generally described by their unique physical characteristics. Travel trailers, “5<sup>th</sup>-wheel” trailers, and tent campers are all subtypes of recreational vehicles. A travel trailer is an RV that is towed behind a road vehicle to provide a place to sleep. A 5<sup>th</sup>-wheel trailer is supported by a hitch in the center of the bed of a vehicle instead of a hitch at the back of a vehicle, which is used for a travel trailer. A tent camper may also be referred to as a “pop-up” camper that is towed behind a vehicle and collapsible for storage and transport.

## REQUESTOR STANDING

Ind. Code § 4-6-2-5 contemplates that a state officer may request an official advisory opinion from the Attorney General regarding matters touching upon any question or point of law concerning the duties of the officer. The question presented pertains to matters of regulation of automobile dealers that are clearly within the jurisdiction of the Auto Dealer Services Division of the Office of the Indiana Secretary of State, at whose request this opinion is rendered.

## QUESTION PRESENTED

Does the Indiana statute prohibiting the sale of motor vehicles on Sundays (Ind. Code § 24-4-6-1) also bar Sunday sales of non-motorized and non-self-propelled campers and trailers?

## BRIEF ANSWER

The correct definition of the term “motor vehicle” as it is used in Indiana’s statute criminalizing Sunday motor vehicle sales (Ind. Code § 24-4-6-1(b)) is located in the general definition chapter of the Indiana Criminal Code (Ind. Code § 35-31.5-2-207). That section makes specific reference to the phrase “motor vehicle” in the Indiana Motor Vehicle Code (Ind. Code § 9-13-2-105(a)), as any vehicle that is “self-propelled,” with exclusions for “farm tractor(s),” “implements of agriculture,” and “electric personal assistive mobility device(s).”

We therefore conclude that it is lawful to engage in the business of buying, selling, and trading of non-self-propelled or non-motorized campers or trailers on Sundays.

In addition to the exclusions noted above in the section defining “motor vehicle,” the Sunday prohibition law itself contains further exclusions for those having special event permits allowing certain sales, and for the sale of motorcycles. Ind. Code §§ 24-4-6-1(a)(1) and (a)(2). Other definitions of “motor vehicle” referenced in the Indiana Code<sup>4</sup> are intended only for specific purposes, such as traffic violations (Ind. Code Art. 9-21) and necessary title documents used by the Auto Dealer Services Division (Ind. Code Art. 9-32), and do not run contrary to our firm conclusion defining the scope of prohibited Sunday sales, as stated above.

## ANALYSIS

Ind. Code § 24-4-6-1 currently reads as follows:

- (a) This section does not apply to the following:
  - (1) A person that holds a special event permit issued under IC 9-32-11-18.
  - (2) The buying, selling, or trading of a motor vehicle that is a motorcycle (as defined in IC 9-13-2-108).
- (b) A person who engages in the business of buying, selling, or trading motor vehicles on Sunday commits a Class B misdemeanor.

Ind. Code § 24-4-6-1 is a penal statute that was added as a new chapter to Ind. Code § 24-4 governing trade regulation and regulated businesses in 1977. As originally enacted, it provided

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<sup>4</sup> See, e.g., Ind. Code § 9-13-2-105(b) and (c).

that a person who engaged in the business of buying, selling, or trading motor vehicles on Sunday commits a Class B misdemeanor.

Specific exceptions to the sales prohibition enumerated in current Ind. Code § 24-4-6-1(a) were added by subsequent amendments to the statute in 2006, 2012, and 2013. Sec. 24 of Pub. L. 156-2006 added language providing for the exclusion for a person who held a special event permit issued under Ind. Code § 9-23-2-16, which established criteria for a person licensed under Ind. Code Art. 9-23 to obtain a special event permit from the Secretary of State for a vehicle auction that met specified conditions. Sec. 1 of Pub. L. 89-2012 established the exemption for the buying, selling, or trading of a motorcycle, as defined in Ind. Code § 9-13-2-108. The statute was amended a third time by Sec. 81 of Pub. L. 92-2013 to substitute reference in subsection (a)(1) from repealed Ind. Code § 9-23-2-16<sup>5</sup> to Ind. Code § 9-32-11-18. The same subject matter included in former Ind. Code § 9-23-2-16 is now covered in new Ind. Code § 9-32-11-18 concerning regulation of dealer services and vehicle merchandising.

### ***The Meaning of “Motor Vehicles” in Ind. Code § 24-4-6-1(b)***

In our prior opinion published in 1986, we applied the definition of “motor vehicle” at former Ind. Code § 9-1-1-2(b) to interpret the scope of the motor vehicle sales prohibition. Former Ind. Code § 9-1-1-2(b) defined a “motor vehicle” as every vehicle that was self-propelled, except those vehicles which were included in the terms “farm tractor” or “implement of husbandry” as defined therein.<sup>6</sup> We therefore concluded that there was no prohibition on a person buying, selling, or trading non-motorized or non-self-propelled recreational vehicles on Sundays since they were not ultimately motor vehicles because they were not “self-propelled.”

The legislature enacted Pub. L. 2-1991 to amend the Indiana Code to codify, revise, and rearrange laws concerning motor vehicles. Ind. Code §§ 9-1-1-2(b) was thereby effectively repealed by Sec. 109 of Pub. L. 2-1991, and the definition of “motor vehicle” at new Ind. Code § 9-13-2-105 was added by Sec. 1. To determine whether the Sunday motor vehicles sales prohibition still excludes non-motorized campers and trailers, we must construe the meaning of the term “motor vehicles” in current Ind. Code §§ 9-13-2-105 and 24-4-6-1(b).

When construing a statute, we must first determine whether statutory language is clear and unambiguous.<sup>7</sup> In interpreting a statute, we will attempt to determine and give effect to the intent of the legislature.<sup>8</sup> The best evidence of legislative intent is the language of the statute itself,<sup>9</sup> and we must give all words their plain and ordinary meaning.<sup>10</sup> An unambiguous statute is interpreted to mean what it plainly states, and its plain and obvious meaning may not be enlarged or restricted.<sup>11</sup>

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<sup>5</sup> Repealed by Pub. L. 92-2013, Sec. 53, eff. July 1, 2013.

<sup>6</sup> 1985-86 *Op. Ind. Att’y Gen.* No. 1 (February 28, 1986).

<sup>7</sup> *Dykstra v. City of Hammond*, 985 N.E.2d 1105, 1107 (Ind. Ct. App. 2013), *trans. denied*.

<sup>8</sup> *Id.*

<sup>9</sup> *Prewitt v. State*, 878 N.E.2d 184, 186 (Ind. 2007).

<sup>10</sup> *Id.*

<sup>11</sup> *AlliedSignal, Inc. v. Ott*, 785 N.E.2d 1068, 1072 (Ind. 2003).

The most recent and inclusive definition of Ind. Code § 9-13-2-105<sup>12</sup> reads as follows:

(a) “Motor vehicle” means, except as otherwise provided in this section, a vehicle that is self-propelled. The term does not include a farm tractor, an implement of agriculture designed to be operated primarily in a farm field or on farm premises, or an electric personal assistive mobility device.

(b) “Motor vehicle”, for purposes of IC 9-21, means:

(1) a vehicle that is self-propelled; or

(2) a vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(c) “Motor vehicle”, for purposes of IC 9-32, includes a semitrailer, trailer, or recreational vehicle.

Ind. Code § 9-13-2-105(a) thus defines a “motor vehicle” as every vehicle that is “self-propelled,” except for a farm tractor, an implement of agriculture designed to be operated primarily in a farm field or on farm premises, or an electric personal assistive mobility device.

The plain language in subsections (b) and (c) further defines “motor vehicle” for the limited purposes of Ind. Code Art. 9-21 concerning traffic regulation and Ind. Code Art. 9-32 concerning regulation of motor vehicle dealers by the Indiana Secretary of State. We note regarding the regulation of motor vehicle dealers under Ind. Code Art. 9-32 that definitions made applicable throughout Ind. Code Art. 9-32 by Ind. Code § 9-32-2-1 do not include the term “motor vehicle.”

As we stated above, Ind. Code § 24-4-6-1 is a penal statute outside of Title 35 that criminalizes Sunday motor vehicle sales. In 2012, the legislature enacted Ind. Code § 35-31.5-1-1 concerning definitions that apply to penal statutes within Title 35 and elsewhere within the Indiana Code. This enactment included Ind. Code § 35-31.5-2-207, defining the term “motor vehicle.”

Thereafter, the legislature enacted Ind. Code § 35-52-24-15 to specifically recognize Ind. Code § 24-4-6-1 as a criminal statute codified outside of Title 35. This placement was no longer favored by codifiers, who preferred to group all the criminal statutes and definitions pertaining to them inside Chapter 35, the Criminal Code. It is a prestigious address for criminal statutes. They are easier to find there, avoiding the confusion of multiple definitions placed randomly throughout the chapters of the Indiana Code to cause the confusion that gave rise to our present question.

Ind. Code § 35-31.5-1-1 reads as follows:

“Except as otherwise provided, the definitions in [Ind. Code § 35-31.5] apply throughout this title and to all other statutes related to penal offenses.”

Ind. Code § 35-31.5-2-207 reads as follows:

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<sup>12</sup> As added by P.L.2-1991, Sec.1. Amended by P.L.94-1997, Sec.1; P.L.143-2002, Sec.2; P.L.248-2003, Sec.2 and P.L.265-2003, Sec.2; P.L.210-2005, Sec.9; P.L.191-2007, Sec.1; P.L.9-2010, Sec.8; P.L.92-2013, Sec. 25; P.L.221-2014, Sec.12; P.L.174-2016, Sec.8; P.L.198-2016, Sec.133.

“Motor vehicle” has the meaning set forth in IC 9-13-2-105(a).”

Ind. Code § 35-52-24-15 reads as follows:

“IC 24-4-6-1 defines a crime concerning regulated businesses.”

After reading the plain language of Ind. Code §§ 35-31.5-1-1, 35-31.5-2-207, and 35-52-24-15 together, we conclude that the legislature expressly intended that the term “motor vehicles” in Ind. Code § 24-4-6-1(b) have the same meaning as the term “motor vehicle” in Ind. Code § 9-13-2-105(a).

In *Armstead v. State*, 806 N.E. 2d 872, 873 (Ind. Ct. App. 2004), the Indiana Court of Appeals considered whether a motor scooter was a motor vehicle for purposes of upholding the appellant’s conviction for carjacking. In holding that a motor scooter was a “motor vehicle” for purposes of Indiana’s carjacking statute, Ind. Code § 35-42-5-2,<sup>13</sup> the court considered that Ind. Code § 35-41-1-18.5, by way of Ind. Code § 9-13-2-105(a), defined “motor vehicle” as a vehicle that is self-propelled, except for a farm tractor, an implement of husbandry, or an electric personal assistive mobility device.<sup>14</sup> The court found the term “motor vehicle” to be defined differently for purposes of Indiana’s traffic and criminal penal statutes and upheld the appellant’s conviction based upon the definition of “motor vehicle” in Ind. Code § 9-13-2-105(a).<sup>15</sup>

At the time the court rendered its opinion in *Armstead*, Ind. Code § 35-41-1-18.5 provided that the term “motor vehicle” had the same meaning as that set forth in Ind. Code § 9-13-2-105(a).<sup>16</sup> Ind. Code § 35-41-1-18.5 was subsequently repealed and its subject matter is now covered in new section Ind. Code § 35-31.5-2-207 stated above.<sup>17</sup> We conclude that the term “motor vehicle” in Ind. Code 9-13-2-105 (b) and (c), which applies specifically to Ind. Code Articles 9-21 and 9-32, have no application to Ind. Code § 24-4-6-1, as the legislature intended the term to be defined differently for purposes of the traffic and dealer services statutes.

### ***Ind. Code § 24-4-6-1 is a Penal Statute that Must Be Strictly Construed***

“It is a fundamental rule in the construction of statutes that penal statutes must be construed strictly, or, as is otherwise stated, strictly construed against the state.”<sup>18</sup> “The rule of strict construction means that such statutes will not be enlarged by implication or intendment beyond the fair meaning of the language used, and will not be held to include offenses and persons other than those which are clearly described and provided for although [a] court may think the legislature should have made them more comprehensive.”<sup>19</sup>

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<sup>13</sup> *Armstead v. State*, 806 N.E. 2d 872, 873 (Ind. Ct. App. 2004), *trans. denied*.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Ind. Code § 35-41-1-18.5, eff. to June 30, 2012.

<sup>17</sup> Ind. Code §§ 35-41-1-10.8 to 35-41-1-26.5, repealed by Pub. L. 114-2-12, Secs. 103 to 132, eff. July 1, 2012.

<sup>18</sup> *Kelley v. State*, 119 N.E.2d 322, 324 (Ind. 1954).

<sup>19</sup> *Id.* See also, 1985-86 *Op. Ind. Att’y Gen.* No. 1 (February 28, 1986)(citing *State v. McGraw*, 480 N.E.2d 552 (Ind. 1985)).

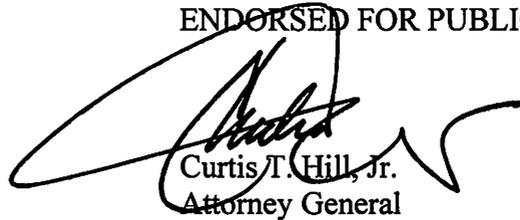
The only exceptions to the Sunday motor vehicles sales prohibition stated in Ind. Code § 24-4-6-1(a) are for a person that holds a special event permit under Ind. Code §9-32-11-18, and the buying, selling, or trading of a motorcycle as defined in Ind. Code § 9-13-2-108. If the legislature had intended to exclude any other conduct from its scope it could have so stated. We therefore decline to endorse any enlargement of the prohibition in Ind. Code § 24-4-6-1(b) beyond the fair meaning of the language used.

**CONCLUSION**

Ind. Code §§ 35-31.5-1-1, 35-31.5-2-207, and 35-52-24-15 provide that the term “motor vehicle” in Ind. Code § 24-4-6-1(b) has the meaning set forth Ind. Code § 9-13-2-105(a). Ind. Code § 9-13-2-105(a) defines a “motor vehicle” as every vehicle that is “self-propelled,” with certain exceptions stated therein that have no bearing on our analysis. We therefore conclude that it is lawful to engage in the business of buying, selling and trading of non-self-propelled or non-motorized campers or trailers on Sundays.

For those who may be concerned that our opinion here will disrupt a traditional day of rest, one can at least be assured that the sale of motorless vehicles will at least not contribute to the general noise level on that day.

SUBMITTED, and  
ENDORSED FOR PUBLICATION:



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