



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

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Boston, Massachusetts 02110

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DIRECTOR
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AND BUSINESS REGULATION

March 5, 2004

Kimberly Hinden, Registrar
Registry of Motor Vehicles
P.O. Box 199100
Boston, Massachusetts 02119-9100

Dear Registrar Hinden:

This letter is in response to your correspondence dated February 2, 2004 to the Division of Banks (the "Division") relative to certain provisions of section 58 ("Section 58") of chapter 140 of the General Laws which was most recently amended by Chapter 422 of the Acts of 2002. Said Chapter 422 became effective on March 24, 2003. Section 58 as amended, is applicable to used motor vehicle dealers. Said dealers are required to be licensed to sell cars by the city or town in which they conduct business. According to your letter, as Registrar, you have certain responsibilities for the process and dealers licensed under Section 58 and also section 59 of chapter 140.

As described in your letter, the recent amendments to Section 58 now require a used car dealer to post a bond of \$25,000.00 with the municipality. The bond is intended to benefit six categories of potential claimants who may suffer loss from a transaction with a dealer. In lieu of the bond, a dealer may provide equivalent proof of financial responsibility. A municipality may not issue or renew a license unless it is satisfied that a bond or its equivalent under the law is in effect.

The amendment to Section 58 created an ambiguity as to the determination of equivalent proof of financial responsibility in lieu of the bond. Under the amended Section 58 a municipality may allow a dealer to deposit collateral in the form of a certificate of deposit or irrevocable letter of credit as authorized by the banking laws of the Commonwealth. More importantly, Section 58 now states that "The collateral may be deposited with or executed through any authorized state depository designated by the commissioner". However, the reference to "commissioner" is undefined. In your capacity as Registrar and consistent with your responsibilities for Section 58 and related statutes you have determined that, for the reasons cited in your letter, that the reference to commissioner means the Commissioner of Banks. Accordingly, you ask that the Division provide a definition of "authorized state depository" for purposes of implementing the amended Section 58.

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Although the law is permissive in that a municipality may allow specified collateral in lieu of a bond, your letter indicated that some municipalities may choose to allow this alternative. Therefore, a definition of authorized state depository is necessary. Please be advised that the Division has also been asked about the provisions of the amended Section 58 by a state-chartered credit union, a member of which seeks to use his existing certificate of deposit with the credit union as collateral in lieu of a bond in order to maintain his used car motor vehicle license. Based upon that inquiry, the Division has reviewed Section 58 and in conjunction with your letter and the analysis set out therein, the Division concurs that the references in Section 58 to the banking laws of the commonwealth and state depository would lead to the conclusion that "commissioner" means the Commissioner of Banks.

Based upon your analysis of the statute and request, the Division will provide a definition of "authorized state depository". The amended Section 58 provides two alternative equivalent proofs of financial responsibility in lieu of a bond. One is a certificate of deposit. The second is an irrevocable letter of credit. Under the statute, the collateral is to be deposited with or executed through any authorized state depository. For the purposes of certificates of deposit, the Division defines an "authorized state depository" to mean any Bank, Federal bank, Federal branch office, or Massachusetts branch office as those terms are defined in section one of chapter 167 of the General Laws or federal credit union with its main office or a branch office located in the Commonwealth, the deposits of such Bank, Federal bank, federal branch office, Massachusetts branch office or federal credit union are insured by either the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. Please note that the definition of Bank in section one of chapter 167 of the General Laws includes a Massachusetts chartered credit union and that is why such an institution is not listed separately. For the purposes of an irrevocable letter of credit, an "authorized state depository" shall have the same meaning as set out for certificates of deposit. In summary, the definition, covers any state or federally chartered bank or credit union with a banking office in the Commonwealth which has federal deposit insurance.

Your letter also asks that if this matter falls within the jurisdiction of the Division, I determine whether an authorized state depository is subject to the same requirement as a surety to provide notice of cancellation of the bond equivalent to the municipal licensing authority as set out in paragraph 6 ("paragraph 6") of subsection (c) of Section 58. Upon review, the Division has determined that an authorized state depository would not be subject to the same requirement as a "surety" under paragraph 6 of the statute to provide notice of cancellation of the bond equivalent to the municipal licensing authority. It would appear to the Division that notice would never be required as to a letter of credit since by definition the only type of such instrument that could be used is an irrevocable letter of credit. With respect to certificates of deposit, the Division would suggest that they be titled "Commonwealth of Massachusetts, name of municipality, In Trust for (dealer) under Massachusetts General Laws chapter 140, section 58. Additionally, an assignment should be executed. The process is used for certain licensees of the Division. If any municipality wishes this latter option, the Division would recommend that the State Treasurer's Office be contacted for specific mechanics since the State Treasurer holds certificates of deposit or other alternative collateral for the Division as to certain of its licensees within our jurisdiction.

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Please feel free to contact me at (617) 956-1510 if you or your staff have any questions on the provisions of this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steven L. Antonakes", written over a horizontal line.

Steven L. Antonakes
Commissioner of Banks

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