

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. MISC. 89-150

JOHN SIMS, JR.
d/b/a Jefferson County Auto Parts
6340 Mulga Loop Road
Birmingham, AL 35224,

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§

Taxpayer.

FINAL ORDER OF COMMISSIONER OF REVENUE

Pursuant to §41-22-16(a)(2), Code of Alabama 1975, a Recommended Order has been submitted to the Commissioner of Revenue by the Administrative Law Division of the Department of Revenue concerning a petition for revocation of an Automotive Dismantler and Parts Recycler License previously issued by the Department to John Sims, Jr., d/b/a Jefferson County Auto Parts. The Petitioner opposed the proposed revocation and appealed to the Administrative Law Division, which has previously issued its Recommended Order.

Having reviewed the record, consisting of the testimony recorded by a Certified Court Reporter, as well as the exhibits submitted into evidence, and the Recommended Order of the Administrative Law Division, it is the opinion of the Commissioner of Revenue that the Recommended Order of the Administrative Law Division is correct and is due to be upheld and otherwise affirmed as follows:

FINDINGS OF FACT

The Petitioner applied with the Department for an automotive dismantler and parts recycler license on September 27, 1988. The application indicated that "applicant, applicant's partner,

corporate director or manager" had not been convicted of a state or federal law involving theft or a violation of the Alabama Certificate of Title and Antitheft Act. The application was signed by the Petitioner. The Department accepted the application and a license was issued on Department accepted the application and a license was issued on October 7, 1988.

The Department subsequently discovered that the Petitioner had been indicted and plead guilty to buying, receiving and concealing stolen property in Jefferson County Circuit Court on October 7, 1969. Based thereon the Department issued a letter to the Petitioner stating that it intended to revoke the subject license under the authority of Code of Ala. 1975, §40-12-416. The Petitioner appealed to the Administrative Law Division.

The Petitioner concedes that he pled guilty to buying, receiving and concealing stolen property in 1969, but argues that he should not be denied a license now because of something that occurred over 20 years ago. No evidence was presented that the Petitioner had violated any other law involving theft or the motor vehicle title laws since 1969, or had otherwise comply with his statutory duty as a dismantler recycler.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-12-416 provides that the Department may refuse or revoke an automotive dismantler and parts recycler license as follows:

The commissioner of revenue is authorized to refuse a license to any person, firm or corporation who does not meet the requirements of this article; to cancel the license of any licensee for wilful failure to continue to meet the requirements of this article; and to refuse, cancel or revoke a license for the felony conviction of a state or federal law involving theft or for violation of chapter 8 of Title 32 of this Code or similar laws of other states by an applicant, a licensee, a partner of an applicant or licensee or a director or manager in the case of a corporate applicant or licensee.

The Department is thus authorized to revoke a license under certain circumstances. However, §40-12-416 does not impose a mandatory duty on the Department. Rather, the Department's authority is discretionary and should be exercised only after a full review of all relevant facts. The determining question should be whether there is evidence to show the continued operation by applicant jeopardizes the public's right to be protected from theft.

In Benton v. Ala. Bd. of Medical Examiners, 467 So.2d 234 (1985), a physician applied for an unrestricted controlled substance license in 1983, twenty-five years after her license had been restricted for a violation in 1958. The Board of Medical Examiners and the circuit court denied the application. However, the Supreme Court reversed, holding that the physician should not be punished for one mistake twenty five years earlier where the complete record indicates that she is otherwise fit to be fully licensed. The Court reasoned as follows:

We note on this point that the Board has never offered proof, at any time, that Dr. Benton actually dispensed

narcotics to her patients other than her abnormally large orders of schedule II drugs some twenty-five years ago.

Furthermore, the evidence is unrefuted that Dr. Benton has had no personal troubles with narcotics in twenty-five years, and has not misprescribed any drugs, schedule II or otherwise, in twenty-five years. We must conclude that in light of such evidence, twenty-five years is more than a sufficient penalty for her past offense. Any further restriction of Dr. Benton's prescription rights would be unduly harsh and oppressive.

Thus, in the present case the Department should not revoke the Petitioner's license based only on his guilty plea in 1969. Although the gravamen of the offense here is not just the 1969 plea, but also the much more recent misrepresentation of the fact, the Commissioner is unwilling to revoke the license solely on those grounds.

It should be pointed out that the Petitioner was required to file a \$5,000.00 cash deposit or bond payable to the State and conditioned upon compliance with the statutory duties imposed on a dismantler and parts recycler, see §40-12-414. Further, the license must be renewed yearly, at which time the Department can review the Petitioner's activities to reassess his fitness as a dismantler and parts recycler, see §40-12-415.

Based upon the above and foregoing Findings of Fact and Conclusions of Law, IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

That the proposal of the Department of Revenue to revoke the privilege license previously issued by the Department to John Sims, Jr., as an Automotive Dismantler and Parts Recycler, pursuant to

the provisions of §40-12-416, Code of Alabama 1975, is denied.

That John Sims, Jr. is entitled to be licensed by the Department of Revenue as an Automotive Dismantler and Parts Recycler.

That this Order is to be considered the Final Order of the Department of Revenue pursuant to the provisions Administrative Procedure Act. Pursuant to the Alabama Administrative Procedure Act, said subject to appeal pursuant to the provisions Code of Alabama 1975.

DONE AND ORDERED on this the 3rd day of January, 1990.

JAMES M. SIZEMORE, JR., Commissioner