



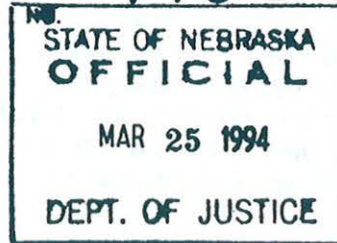
STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
1235 K ST. FAX (402) 471-4725

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

#94022



DATE: March 25, 1994

SUBJECT: Whether a representative of a motor vehicle dealer, resident or nonresident, at a mandatory pre-bid meeting is within the parameters of selling as defined in Neb. Rev. Stat. § 60-1401.02(25) (1993 Supp.).

REQUESTED BY: Gordon J. Smith, Executive Director

WRITTEN BY: Don Stenberg, Attorney General
Paul N. Potadle, Assistant Attorney General

ANSWER: No. A representative of a motor vehicle dealer, resident or nonresident, and attending a mandatory pre-bid meeting is not within the parameters of selling as defined in Neb. Rev. Stat. § 60-1401.02(25) (1993 Supp.).

Discussion

Neb. Rev. Stat. § 60-1401.02(25) provides that:

Sale, selling, and equivalent expressions shall mean the attempted act or acts either of principal, agent, sales person, or in any capacity whatsoever of selling, bartering, exchanging, or otherwise disposing of or negotiating or offering or attempting to negotiate the sale, purchase, or exchange of or interest in any motor vehicle, trailer, or motorcycle, including the leasing thereof with a right or option to purchase under the terms of the lease; (emphasis added).

David K. Arterburn
L. Jay Bartel
J. Kirk Brown
David T. Bydalek
Laurie Smith Camp
Delores N. Coe-Barbee
Dale A. Comer

James A. Elworth
Lynne R. Fritz
Royce N. Harper
Mary L. Hewitt
Lauren Lee Hill
Amy Hollenbeck
William L. Howland

Marilyn B. Hutchinson
Kimberly A. Klein
Donald A. Kohtz
Joseph P. Loudon
Charles E. Lowe
Lisa D. Martin-Price
Lynn A. Melson

Harold I. Mosher
Fredrick F. Neid
Marie C. Pawol
Kenneth W. Payne
Paul N. Potadle
Jan E. Rempe
James H. Spears

Mark D. Starr
John R. Thompson
Barry Waid
Terri M. Weeks
Alfonza Whitaker
Melanie J. Whittamore-Mantzios
Linda L. Willard

Gordon J. Smith
March 25, 1994
Page -2-

The question you present appears to address the "attempting to negotiate the sale" language in § 60-1401.02(25). In order to answer this question, contract law is most decisive in finding a resolution. "An invitation to enter into negotiations is not an offer which may be accepted and thereby create a contract . . . In the law of contracts, the intent of the parties must be looked to and a contract is not made so long as both parties anticipate that something remains to be done to establish contractual relations." *NEFF v. World Publishing Company*, 249 F.2d 235 (1965). The nature of a "pre-bid" meeting asserts that no offers or attempt to negotiate will take place in such a meeting. The intent of a mandatory pre-bid meeting is to ensure that all vendors receive the same information for fairness in bidding.

Therefore, a mandatory "pre-bid" meeting does not fall within the parameters of Neb. Rev. Stat. § 60-1402(25) (1993 Supp.).

Sincerely yours,

DON STENBERG
Attorney General


Paul N. Potadle
Assistant Attorney General

Approved By:


Attorney General

46-1283-3