

JEROME RICHARDSON	§	STATE OF ALABAMA
Richardson Body Shop		DEPARTMENT OF REVENUE
567 Lee Road 212	§	ADMINISTRATIVE LAW
DIVISION		
Phenix City, AL 36870,	§	
	§	DOCKET NOS. MV. 02-417
Petitioner,	§	MISC. 02-445
	§	
v.	§	
	§	
STATE OF ALABAMA		
DEPARTMENT OF REVENUE.	§	

FINAL ORDER

Jerome Richardson (“Petitioner”), d/b/a Richardson Body Shop, is a licensed motor vehicle rebuilder in Alabama. All vehicles rebuilt by the Petitioner must be inspected by the Department. Code of Ala. 1975, §32-8-87(k). The Petitioner appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-8(a) concerning the Department’s requirement that he must have his rebuilt vehicles inspected in Montgomery. He also appealed the payment of three \$10 license fees the Department required him to pay to renew his motor vehicle dealer, wholesaler, and rebuilder’s licenses. The appeals were consolidated, and a hearing was conducted on August 29, 2002. The Petitioner attended the hearing. Assistant Counsel John Breckenridge represented the Department.

(1) The Inspection Issue.

The Petitioner is a licensed motor vehicle rebuilder located in Phenix City, Alabama. As indicated, §32-8-87(k) requires that vehicles rebuilt in Alabama must be inspected by the Department. Before 1997, when a rebuilder applied to the Department for an inspection, a Department enforcement officer traveled to the rebuilder’s location to inspect the vehicle. In June 1997, the Department notified all rebuilders in Montgomery County and the 16 surrounding counties,

which included the Petitioner's home county, that in the future, their rebuilt vehicles would be inspected at the Department's central inspection station in downtown Montgomery.

The Department adopted the new policy because some of the enforcement officers that had previously inspected vehicles were assigned to other duties. The Department's personnel shortage thus made it necessary to establish a central inspection station in Montgomery. The Department intends to establish central inspection stations in other cities throughout Alabama, but cannot presently afford to do so due to budget constraints.

The Petitioner is a one-man operation. He claims that it is very inconvenient for him to bring his rebuilt vehicles to Montgomery for inspection. He also argues that the Department policy is unfair because the Department inspects rebuilt vehicles in the other 50 counties at the rebuilder's location. He also cited an example of a Department enforcement officer that lives in the 17 county area traveling outside of the area to inspect a vehicle. According to the Petitioner, the enforcement officer passed within a mile or two of his business in Phenix City, and could have easily stopped at his business to inspect vehicles. He also cited other examples of Department enforcement officers traveling long distances to inspect vehicles.

The Department first argues that the Administrative Law Division does not have jurisdiction to hear the Petitioner's appeal because it "has no jurisdiction over intra-agency manpower/reorganizational decisions." Department's Answer at 5. It also argues that the Department may legally require rebuilders in certain counties to have their vehicles inspected in Montgomery.

Concerning the Department's jurisdictional argument, Code of Ala. 1975, §40-2A-8(a) provides that any person aggrieved by an act or proposed act or

refusal to act by the Department may appeal to the Administrative Law Division. The Petitioner in this case is aggrieved by the Department's requirement that his rebuilt vehicles must be inspected in Montgomery. The Administrative Law Division thus has jurisdiction to hear his appeal.

Section 40-2A-8(a) also requires that anyone aggrieved by an act of the Department must appeal within 30 days of being notified of the act. As discussed, the Department first notified rebuilders in the 17 county area in June 1997 that their vehicles must be inspected in Montgomery. The Department argues that because the Petitioner failed to appeal within 30 days of that notice, his appeal is untimely. I disagree.

Each time the Petitioner applies to the Department to have a vehicle inspected, the Department notifies him of the date and time that he must bring the vehicle to Montgomery for inspection. Each separate notice is an act by the Department from which the Petitioner may appeal. The Petitioner's appeal was thus timely.

I agree with the Department, however, that it is authorized to require rebuilders to bring their vehicles to Montgomery for inspection. Alabama law does not specify where the inspection must take place. However, the Legislature certainly envisioned that the inspection may be held away from the rebuilder's location because §32-8-87(a) provides that a vehicle for which a salvage title has been issued may not be moved over the highways of Alabama, except "as permitted by the Department of Revenue for inspection. . . ."

It is certainly inconvenient for rebuilders in the 17 county area to bring their vehicles to Montgomery for inspection. However, the Department's Investigations Division has a manpower shortage due to budget constraints. It is attempting to use its limited manpower in the most efficient manner possible,

which includes the operation of a central inspection station in Montgomery. The Department intends to open other inspection stations throughout the State, but as indicated, is unable to do so for financial reasons. But even if the Department had other central inspection stations, rebuilders in the counties surrounding Montgomery County would still be required to bring their vehicles to Montgomery for inspection.

Concerning the examples of alleged Department inefficiency cited by the Petitioner, the Department explained that due to employee retirements and other valid reasons, it is sometimes necessary to assign an enforcement officer that lives in one part of the State to conduct inspections in another part of the State. Concerning the enforcement officer that occasionally travels outside of the 17 county area to conduct inspections, again that is sometimes necessary due to retirements, reassignments, etc. And having established a uniform policy of requiring all rebuilders in the 17 county area to have their vehicles inspected in Montgomery, it would be contrary to that policy if enforcement officers inspected some vehicles at rebuilders' facilities within the area. If that occurred, then the other rebuilders in the 17 county area could rightly complain of disparate treatment by the Department.

The Investigations Division is obviously aware that it is inconvenient for rebuilders to bring their vehicles to Montgomery for inspection. I am certain that if that Division receives additional employees in the future, it may revisit its position. However, that policy decision is up to the Department.

(2) The License Fee Issue.

Any person that conducts business as a motor vehicle dealer, reconditioner, or wholesaler must be licensed by the Department, Code of Ala. 1975, §40-12-392(a), and must pay a \$10 application fee for each business, §40-12-392(c). The license is good for one year.

Motor vehicle dealers, reconditioners, and wholesalers are also required to maintain blanket liability insurance. Code of Ala. 1975, §40-12-392(e).

The Petitioner was duly licensed as a motor vehicle dealer, reconditioner, and wholesaler for the fiscal year ending September 30, 2002. The Department notified the Petitioner on April 12, 2002 that his liability insurance policy was due to expire on May 22, 2002.¹ The notice specified that the Petitioner's license would be revoked on May 22, 2002 unless the Department received a current certificate of insurance on or before that date. Section 40-12-392(e) specifies that a license may be denied "if proof of liability insurance satisfactory to the commissioner (of Revenue) is not provided."

The Petitioner obtained a blanket liability policy on May 21, 2002. The insurance agent that issued the policy submitted a certificate of liability insurance in the Petitioner's name to the Department on that date. The Department rejected the certificate because (1) it did not show the name of the Petitioner's business, Richardson Body Shop, (2) the insurance agent failed to provide his State license number, and (3) the agent failed to certify that he would provide the Department with 30 days written notice if the policy is canceled. Dept. Reg. 810-8-5.06 requires that a valid certificate of liability insurance must include the above information.

The Petitioner subsequently resubmitted the completed certificate. The Department accepted the certificate, but required the Petitioner to pay the \$30 fee required by §40-12-392(a) for reissuance of the license.

The Petitioner objects that he should not be required to pay the \$30 application fee because his insurance agent provided the Department with proof

¹As a courtesy, the Department routinely notifies all licensees required to have blanket insurance that their policy must be renewed before the expiration date.

of insurance coverage before his old policy's expiration date. However, §40-12-392(e) specifies that the proof of insurance coverage must be satisfactory to the Department. Reg. 810-8-5-.06 requires that to be satisfactory to the Department, a certificate of coverage must include certain information. The certificate provided by the Petitioner's agent did not contain certain information required by the above regulation, and thus was not satisfactory. Consequently, because the Petitioner failed to provide satisfactory proof of insurance coverage before his old policy expired, the Department was correct in requiring him to reapply for a license and pay the \$30 fee.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered September 11, 2002.