



OFFICES OF THE

ATTORNEY GENERAL OF MISSOURI  
JEFFERSON CITY

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ATTORNEY GENERAL

December 5, 1974

OPINION LETTER NO. 348

Mr. James R. Spradling  
Director of Revenue  
Department of Revenue  
Room 401, Jefferson State Office Building  
Jefferson City, Missouri 65101

Dear Mr. Spradling:

This is in response to your request for an opinion as to whether or not the Motor Vehicle Division and the Driver's License Division of the Department of Revenue are subject to the requirements of the Federal Fair Credit Reporting Act.

As stated in your request, these divisions are responsible for enforcing Chapters 301, 302, and 303 of the Missouri Revised Statutes, said sections dealing with motor vehicle registration and licensing, drivers' licenses, and the Safety Responsibility Act. In accordance with these duties, complete records are maintained by the Department of Revenue on every licensee or motor vehicle owner. These records reveal each licensee's entire driving record, including any conviction for traffic offenses. Pursuant to statute, these records are available for public inspection by any person. See Sections 109.180, 301.350, and 303.300, RSMo 1969, and Section 610.025, RSMo Supp. 1973. However, the department does charge a fee of one dollar to all persons except an individual who is checking his own records to help defray the expense to the state of producing such records for inspection and reproducing them if such is desired.

The Federal Fair Credit Reporting Act, 15 U.S.C. 1681 et seq., requires that "consumer reporting agencies" furnish "consumer reports" only for specified purposes to specified persons. A "consumer reporting agency" is defined as:

". . . any person which, for monetary fees, dues, or on a cooperative nonprofit basis,

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regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports."

The term "person" is defined to include "government or governmental subdivision or agency, or other entity." The term "consumer report" is defined, with certain exceptions, to mean:

". . . any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living . . ."

Such a report must be used or expected to be used or collected to serve as a factor in establishing the consumer's eligibility for credit or insurance for personal or family purposes, employment purposes, or other authorized purposes. In addition, the act forbids the disclosure of certain information in "consumer reports" after the lapse of various periods of time, 15 U.S.C. 1681c; and the act requires prospective users of information to certify the purpose for which the information will be used, 15 U.S.C. 1681e.

The Federal Fair Credit Reporting Act is to be enforced by the Federal Trade Commission with respect to consumer reporting agencies and all other persons subject thereto. See 15 U.S.C. 1681s. In enforcing the act, the Federal Trade Commission has the authority to issue rules and interpretations, but such interpretations are not substantive in nature and do not have the force and effect of statutory provisions. See 16 C.F.R. §§ 1.71 through 1.73. The Federal Trade Commission has adopted an interpretation holding that motor vehicle reports as compiled by state departments of motor vehicles are "consumer reports" and that the departments are "consumer reporting agencies" with respect to driver's license information which is sold to insurance companies or other businesses and which has a bearing upon an individual's credit rating. See 16 C.F.R. §600.4.

If the Federal Trade Commission's interpretation were to be accorded the effect of law, the supremacy clause of the

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United States Constitution would prevent further inquiry; any state legislation conflicting with federal law must give way where the federal law regulates an area within the federal sphere of control. See article VI, clause 2, United States Constitution. However, since the Federal Trade Commission's interpretation does not have the effect of law, we are free to examine the Federal Fair Credit Reporting Act and to make a determination whether the activities of the Department of Revenue are such as to constitute them a "consumer reporting agency" within the terms of the act.

In our opinion, the Department of Revenue is not a "consumer reporting agency." The Federal Trade Commission's interpretation that a state department of motor vehicles is such an agency dwells heavily upon the fact that the information compiled by such agencies can have a direct effect upon a consumer's credit rating or eligibility for insurance. Although this may be true, this is not a proper criteria for determining whether or not a state agency is a "consumer reporting agency" within the meaning of the act. 15 U.S.C. 1681a(f) defines a "consumer reporting agency" as someone who regularly engages in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties. It seems obvious that the activities of the Department of Revenue do not fall within this purpose. Rather, complete records on drivers in this state are kept for the purpose of promoting highway safety and regulating the use of our highways, functions which lie within the general police power of any state.

Yours very truly,



JOHN C. DANFORTH  
Attorney General