



STATE OF ARKANSAS

Department of Finance
and Administration

REVENUE LEGAL COUNSEL

Post Office Box 1272, Room 2380
Little Rock, Arkansas 72203-1272
Phone: (501) 682-7030
Fax: (501) 682-7599
<http://www.dfa.arkansas.gov>

SUPPLEMENTAL LEGAL OPINION

TO: Wayne Hamric, Administrator, Office of Motor Vehicle Administration
Walter Anger, Deputy Director and Commissioner of Revenue
FROM: Chris McNeal, Attorney Specialist, Revenue Legal Counsel
OPINION: 20160919-S
RE: Title to Humvees for Highway Use
Date: April 18, 2018

This is a supplemental legal opinion to the February 1, 2017 memorandum regarding issuing title to the High Mobility Multipurpose Wheeled Vehicle (“Humvee”) through the Office of Motor Vehicle Administration (OMV) of the Arkansas Department of Finance and Administration (DFA).

The Humvee is a four-wheel drive military light truck manufactured by AM General. Pursuant to the 2006 Future Tactical Truck System program, the United States Armed Forces has been in the process of replacing the Humvee.¹ For this reason, the Disposition Services component of the Defense Logistics Agency (DLA) has been facilitating the auction of these vehicles to the public and to domestic law enforcement agencies. The sales commonly take place through the third-party website, www.████████.com.

Congress passed the Highway Safety Act of 1970, which established the National Highway Traffic Safety Administration (NHTSA) as an agency of the United States Department of Transportation. Pub. L. No. 91–605 § 202, 84 Stat. 1713. The National Traffic and Motor Vehicle Safety Act of 1966 authorizes the Secretary of Transportation to prescribe motor vehicle safety standards, called Federal Motor Vehicle Safety Standards (FMVSS). 49 U.S.C. §§ 30101(1), 30111. The Secretary delegated this authority to the NHTSA. 49 C.F.R. §§ 1.95(a), 501.2(a)(1). The Federal Motor Vehicle Safety Standards set minimum requirements for motor vehicles and their components. 49 U.S.C. § 30111; 49 C.F.R. pt. 571. Federal law prohibits the sale of certain motor vehicles that do not comply with the FMVSS. 49 U.S.C. § 30112(a)(1). However, the FMVSS do not apply to vehicles for which their primary use is not driving on public streets, roads, and highways. 49 U.S.C. § 30102(a)(7).

Some of the vehicles for which DLA facilitates auctions, including Humvees, do not meet the Federal Motor Vehicle Safety Standards. For this reason, when the military sells such vehicles, it annotates the top of their SF-97 certificate (which is a United States Government certificate that functions like a bill of sale) with the words “OFF-ROAD USE ONLY.” Most of the Humvees

¹ <https://████████>

for which Arkansas title has been sought have been accompanied by an SF-97 with this language.

However, the FMVSS do not apply to motor vehicles that are at least twenty-five years old. *Id.* at (b)(9). For this reason, OMV may issue title to a Humvee that is older than twenty-five years. Further, OMV may issue title to a Humvee that, when purchased, was less than twenty-four years old, but has subsequently reached twenty-five years of age or older. Finally, because the SF-97 does not usually state the month of manufacture, OMV should treat a twenty-four-year-old Humvee as having satisfied the twenty-five-year requirement. As of the date of this supplemental legal opinion, a Humvee that was manufactured in 1994 will be treated as having satisfied the twenty-five-year requirement, and OMV may issue title to such a vehicle. The requisite year of manufacture for issuing titles to Humvees shall continue to roll forward with each year subsequent to the issuance of this supplemental legal opinion.²

² The foregoing analysis is the same regardless of whether the applicant applies to register the vehicle as a historical or special interest vehicle under Ark. Code Ann. § 27-15-2201 *et. seq.*. The foregoing analysis is also the same regardless of whether the applicant is required to file with OMV a bond pursuant to Ark. Code Ann. § 27-14-409(c). OMV should require such a bond if the applicant does not produce a title to the vehicle and does not produce an SF-97 certificate that (a) completely identifies the vehicle, VIN, transferor, transferee, purchase price, and odometer reading at the time of the transfer; (b) is signed by the transferor and transferee; (c) is machine prepared; and (d) is free of any alterations. If the certificate is a duplicate, that fact should be indicated at the top of the certificate in the box next to the words: “Duplicate If Checked.”