

bonds issued under these proceedings constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1617.

PUBLIC RECORDS—CERTIFICATES OF TITLE COVERING
MOTOR VEHICLES—MEMBER OF PUBLIC MAY INSPECT
AND MAKE LISTS—LIMITATION—SAFETY OF RECORD
—INTERFERENCE WITH DISCHARGE OF DUTIES OF
CUSTODIAN.

SYLLABUS:

A member of the public may inspect and make lists of certificates of titles covering motor vehicles for commercial purposes subject only to the limitations that such inspection and copying does not endanger the safety of the record or unreasonably interfere with the discharge of the duties of the custodian of such records.

COLUMBUS, OHIO, December 28, 1939.

HON. JOHN B. MEISTER, *Prosecuting Attorney, Wauseon, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion as follows:

“Our county Clerk of Court would like your opinion as to whether people may come into his office and make lists of certificates of automobile titles for commercial purposes. He is questioning new section 6290-7a, Ohio General Code.”

It is unnecessary to consider all of the statutory provisions relating to the filing and issuance of certificates of title. However, certain sections must be examined in order that a clear picture may be had of the records which are here concerned.

Section 6290-6, General Code, provides:

“The clerk of courts shall issue the certificate of title in triplicate. One copy shall be retained and filed by him in his office and the other copy shall be transmitted on that day to the registrar of motor vehicles at Columbus. The clerk of courts shall sign and affix his seal to the original certificate of title and, if there are no liens on said motor vehicle, shall deliver said certificate to the

applicant. If there are one or more liens on said motor vehicle said certificate of title shall be delivered to the holder of the first lien.

The registrar shall prescribe a uniform method of numbering certificates of title and such numbering shall be in such manner that the county of issuance shall be indicated. The clerk of courts shall assign numbers to certificates of title in the manner prescribed by the registrar. The clerk of courts shall file all certificates of title according to regulations to be prescribed by the registrar and shall maintain in his office indexes for such certificates of title.

The clerk of courts shall not be required to retain on file any bills of sale or duplicates thereof covering any motor vehicle for a period longer than seven years after the date of the filing thereof and thereafter the same may be destroyed."

By virtue of the above section, the clerk of courts is required to maintain on file in his office a copy of every certificate of title issued by him. Furthermore, he is required to maintain indexes for such certificates of title.

Section 6290-9, General Code, provides in part :

"The provisions of sections 8560 to 8572, inclusive, of the General Code shall never be construed to apply to or to permit or require the deposit, filing or other record whatsoever of a chattel mortgage, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or other similar instrument, or any copy of same, made hereafter and covering a motor vehicle. Any mortgage, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or other similar instrument made hereafter and covering a motor vehicle, if such instrument is accompanied by delivery of said manufacturer's or importer's certificate and followed by actual and continued possession of same by the holder of said instrument, or in the case of a certificate of title if a notation of same has been made by the clerk of courts on the face thereof, shall be valid as against the creditors of the mortgagor whether armed with process or not, and subsequent purchasers, mortgagees and other lien holders or claimants but otherwise shall not be valid against them. All liens, mortgages and encumbrances noted upon a certificate of title shall take priority according to the order of time in which the same are noted thereon by the clerk of courts. Exposure for sale of any motor vehicle by the owner thereof, with the knowledge or with the knowledge and consent of the holder of any lien, mortgage or encumbrance thereon, shall

not render the same void or ineffective as against the creditors of such owner, or holders of subsequent liens, mortgages or encumbrances upon such motor vehicle.

The holder of a chattel mortgage, trust receipt, conditional sales contract or similar instrument, upon presentation of said instrument to the clerk of courts of the county where such certificate of title was issued, together with the certificate of title and the fee prescribed by this chapter, may have a notation of such lien made on the face of such certificate of title. The clerk of courts shall enter said notation and the date thereof over his signature and seal of office, and he shall also note such lien and the date thereof on the duplicate of same in his files and on that day shall notify the registrar who shall do likewise. The clerk of courts shall also indicate by appropriate notation on such instrument itself the fact that such lien has been noted on the certificate of title.

When such lien is discharged, the holder thereof shall note a cancellation of same on the face of the certificate of title over his signature and shall deliver it to the owner. Said owner may, upon presentation of said certificate of title to the clerk of courts, have the clerk of courts note the cancellation of said lien on the face of said certificate of title. The clerk of courts, if such cancellation appears to be genuine, shall note said cancellation on said certificate of title and he shall also note said cancellation on his records and notify the registrar who shall do likewise."

The only records of certificates of title, bills of sale and encumbrances on motor vehicles are found in the office of the clerk of courts of each county. However, chattel mortgages covering motor vehicles, executed prior to the effective date of the certificate of title law (January 1, 1938), are still found in the office of the county recorder.

In the case of *Atlanta Title & Trust Co. v. Tidwell*, 173 Ga. 499, the court said at page 512:

"The examinations and abstracts which are complained of in this case relate to original documents on file for record, and records made by the clerk of titles and liens on property. The records in the clerk's office relating to these matters result from statutes making it the duty of the clerk to keep books and record therein deeds, mortgages, and other instruments as prescribed by the statutes. The records so made are essentially public, intended to charge constructive notice of their contents to the general public, and correspondingly to afford opportunity to the general public to learn the facts which such records disclose."

In the case of *Direct Mail Service, Inc. v. Registrar of Motor Ve-*

hicles, et al., decided by the Supreme Judicial Court of Massachusetts January 4, 1937, the court said:

“The very object of requiring registration of automobiles is to make readily available to the public at all times accurate information as to their ownership and as to the persons responsible for their operation.”

It is obvious, therefore, that the records as to certificates of title maintained in the office of the county clerk of courts are public records and as such are subject to inspection by the public. It has been held repeatedly by the courts that the right of inspection of public records ordinarily includes the right to make copies of such records. In the case of *Direct Mail Service, Inc. v. Registrar, et al.*, supra, the third branch of the syllabus reads:

“The right to inspect public records commonly carries with it the right to make copies, without which the right to inspect would be practically valueless.”

The court said in the opinion:

“We see no reason why the right to make copies is not coextensive with the right to inspect. We believe that in general the public interest will be best served by the largest freedom in the use for lawful purposes of public records kept at the public expense.”

The next question to be considered is whether the fact that the list is being obtained for commercial purposes affects the general rule hereinbefore pronounced.

In the case of *Nowack v. Fuller*, 243 Mich. 200, the plaintiff was the publisher of a newspaper and sought to examine certain records in the office of the state auditor general relating to the expenditure of a certain fund. The court said at page 209:

“It is the duty of the auditor general to exhibit his official records to any citizen of Michigan who desires to inspect them for any proper and lawful purpose in circumstances not detrimental to the public business.”

In the case of *Burton v. Tuite*, 78 Mich. 363, the court said at page 374:

“I do not think that any common law ever obtained in this free government that would deny to the people thereof the right

of free access to, and public inspection of, public records. They have an interest always in such records, and I know of no law, written or unwritten, that provides that, before an inspection or examination of a public record is made, the citizen who wishes to make it must show some special interest in such record. * * * I also have the right to examine any title that I see fit, recorded in the public offices, for the purpose of selling such information, if I desire."

There is considerable authority to the effect that it was the rule at common law that the right to inspect public records was confined to those individuals who had an interest in the subject matter thereof. However, so far as the rule in Ohio is concerned, it is stated in 35 O. J. at page 45:

"It pretty generally is held that subject to proper regulations and restrictions the public records are open to the inspection of any and all persons who choose to examine them, regardless of whether or not they have any definite interest in the subject matter thereof.

The rule in Ohio is that public records are the people's records, and that the officials in whose custody they happen to be are merely trustees of the people; therefore anyone may inspect such records at any time, subject only to the limitation that such inspection does not endanger the safety of the record, or unreasonably interfere with the discharge of the duties of the officer having custody of the same."

In the case of *State, ex rel. v. Ditley*, 12 N. P. (N. S.) 319, the court held as stated in the headnote:

"The proceedings of the tax commission of Ohio constitute a public record, and subject to proper regulations are open to inspection by any and all persons who choose to examine them, regardless of their interest or lack of interest in the subject matter."

The general rule is stated in 108 A. L. R. 1395 as follows:

"The few cases which a comprehensive search has revealed * * * indicate that automobile records are generally considered 'public records' which any citizen has the right to examine and copy irrespective of his purpose in so doing, provided that he complies with the reasonable regulations of the custodian of the records, and examines and copies them in such a way as not to interfere with the work of the custodian or the equal right of others to examine and copy such records."

From the above citations, it may be seen that the record of certificates of title is a public record which may be inspected and copied, regardless of the purpose of the person inspecting the same, subject only to the reasonable regulations of the custodian.

In your communication you make reference to Section 6290-7a, General Code, and I assume that you are inquiring whether that section affects the answer to your question. This section provides:

“The registrar is authorized, upon application of any person and payment of the proper fees to prepare and furnish lists containing title information in such form and subject to such territorial division and/or other classification as the director may authorize; to search the records of the bureau and make reports thereof, and to make photographic copies of the bureau records and attestations thereof.

Fees therefor shall be charged and collected as follows:

a. For lists of titles for the entire state, \$3,500.00 yearly; for any part or parts thereof, divided according to counties and not by make of motor vehicle, a sum computed at the following rates per title: for lists containing less than 5,000 titles, \$10.00 per thousand titles or part thereof; for lists containing from 5,000 to but not including 10,000 titles, \$9.00 per thousand titles or part thereof; for lists containing from 10,000 titles or more, \$7.00 per thousand titles or part thereof; provided that the minimum fee shall be \$3.00; and be it further provided that for furnishing lists classified according to the make of the motor vehicle or the name of the manufacturer, \$11.00 per thousand titles or part thereof with the same minimum as above provided.

b. For searches of the records and written reports thereof, three cents for each name, number or fact reported on, with a minimum charge of \$1.00; and

c. For photographic copies of records and attestations thereof, under the signature and seal of the registrar, \$1.00 a copy. Such copy of copies shall be taken as prima facie evidence of the facts therein stated, in any court of the state of Ohio. Any individual, firm or corporation may obtain without charge oral or written reports concerning up to and including three titles in any one day and up to and including twenty titles in any one month. The registrar and clerks of court shall furnish without charge to state highway patrolmen, sheriffs or chiefs of police information on any title.

Fees collected as herein provided shall be received by the cashier of the bureau of motor vehicles and by him paid to the

treasurer of the state to the credit of the state highway maintenance and repair fund and the sums arising therefrom are appropriated to the use of said fund.”

It will be noted that Section 6290-7a, *supra*, makes no reference to the records maintained in the office of the clerk of courts. However, the above section is concerned only with a situation where the registrar of motor vehicles *prepares and furnishes a written list* concerning title information, etc. No mention is made of the general public making an inspection and there is nothing in said section which would affect such inspection.

In the Atlanta Title & Trust Co. vs. Tidwell case above referred to, the court said :

“It is declared in the Civil Code, Section 5995: ‘The clerks of the superior courts of this state shall be entitled to charge and collect the following fees for official duties performed by them, to wit: * * * For inspection of books, when their aid is required, \$0.25. * * * For examination of record and abstract of result, \$1.50. The first of these provisions relates to inspection of the books by a member of the public who requires the aid of the clerk in making the inspection, while the second relates to examination of the records and making abstract of the result where the clerk renders the entire service. These do not deny the right of the individual members of the public to make examinations and abstracts of the results of such examinations but only impose charges or fees for services which the clerk may render in making such examinations and abstracts.”

The above reasoning seems to apply directly to the instant case. The fees provided in Section 6290-7a, *supra*, are only to be charged when the registrar of motor vehicles renders the services therein enumerated. However, such a provision does not deny the right of the public to inspect and copy the records of certificates of title.

With regard to the exercise by the public of its right to inspect public records, it was stated by the court in the case of Direct Mail Service vs. Registrar, et al., *supra* :

“In order to avoid any misapprehension perhaps we ought to add that the right of an applicant to copy a great mass of records may be circumscribed by physical limitations which are unavoidable if the right itself is to be preserved both for the applicant and for others. No one person can take possession of the registry or monopolize the record books so as to interfere unduly with the work of the office or with the exercise of equal rights by others, and the applicant must submit to such reasonable supervision on

the part of the custodian as will guard the safety of the records and secure equal opportunity for all.”

In view of the above and in specific answer to your inquiry, I am of the opinion that a member of the public may inspect and make lists of certificates of titles covering motor vehicles for commercial purposes subject only to the limitations that such inspection and copying does not endanger the safety of the record or unreasonably interfere with the discharge of the duties of the custodian of such records.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1618.

MUNICIPAL POLICE OFFICERS—WITNESS AND MILEAGE FEES—WHEN TESTIFYING BEFORE GRAND JURY, SUBJECT TO PROVISIONS SECTION 3024 G. C.—EXCEPTION—CRIMINAL PROCEEDINGS INSTITUTED BY GRAND JURY UPON ITS OWN MOTION—FEES FOR ATTENDANCE IN PROSECUTIONS INVOLVING A FELONY—SHALL BE DEPOSITED WITH TREASURER, POLICE RELIEF FUND—MILEAGE FEES NOT REQUIRED TO BE SO DEPOSITED.

SYLLABUS:

1. *The witness and mileage fees allowed to municipal police officers when called to testify before a grand jury are subject to the provisions of Section 3024, General Code, except in those instances in which the criminal proceedings are instituted by the grand jury upon its own motion.*

2. *Under the provisions of Section 3024, General Code, municipal police officers shall deposit the fees for attendance allowed them in prosecutions under a criminal law of the state involving a felony with the treasurer of the Police Relief Fund for the credit of the fund; said officers, however, are not required so to deposit mileage fees allowed in such cases.*

COLUMBUS, OHIO, December 28, 1939.

HON. WARD C. CROSS, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion on the following:

“Several municipalities in the County have inquired of my office as to whether or not, under House Bill 82, effective September 6, 1939, known as General Code Section 3024, the witness fees