

854.

APPROVAL, NOTES OF MONTPELIER EXEMPTED VILLAGE SCHOOL DISTRICT, WILLIAMS COUNTY, OHIO—\$4,500.00.

COLUMBUS, OHIO, May 22, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

855.

APPROVAL, NOTES OF MASSILLON CITY SCHOOL DISTRICT, STARK COUNTY, OHIO—\$50,000.00.

COLUMBUS, OHIO, May 22, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

856.

APPROVAL, NOTES OF ELYRIA CITY SCHOOL DISTRICT, LORAIN COUNTY, OHIO—\$75,000.00.

COLUMBUS, OHIO, May 22, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

857.

BILL OF SALE—AUTOMOBILE—MUST BE FILED IN COUNTY WHERE OWNER RESIDES—WHERE MADE, ACKNOWLEDGED OR DELIVERED IMMATERIAL.

SYLLABUS:

A bill of sale for an automobile is required by the provisions of Section 6310-13, General Code, to be filed in the county in which the owner resides, and it is immaterial where the bill of sale was made, acknowledged or delivered by the vendor.

COLUMBUS, OHIO, May 22, 1933.

HON. LESTER S. REID, *Prosecuting Attorney, Chillicothe, Ohio.*

DEAR SIR:—Your recent request for opinion reads:

“General Code Section 6310-11a provides for the filing of a bill of sale with the clerk of courts of the county in which passage of title was consummated within three days thereafter.

The grantor of a used motor vehicle, living in Highland County,

sold an automobile in this county. The facts as evidenced by the statements of the witnesses on the bill of sale show that the entire transaction was consummated in this county. The grantor went across the line into a foreign county and made the oath on the bottom of the bill of sale. Thus the bill of sale has on it a grantor residing in Highland County and a grantee residing in Ross County near the county line and the grantor making his affidavit in Fayette County. The Clerk of Courts of this county would not file the bill of sale and relied on and stated that the county in which the oath of the grantor is made governs where the bill of sale is to be filed. There is nothing on the bill of sale which governs or states where the actual sale was consummated and this is only known from oral statements made by the witnesses outside of the instrument.

The exact question is, what rule should be followed in such an instance in determining where the sale was consummated in order that the statute may be complied with?"

Section 6310-13, General Code, provides that the bill of sale for a motor vehicle shall be filed with the clerk of courts of the county in which the purchaser resides. Such section reads:

"No person residing in this state shall drive, use or operate, a 'motor vehicle' or 'used motor vehicle' upon the public highways thereof, without having a 'bill of sale' for the motor vehicle as defined in this act, or without having first filed, with the clerk of courts, of the county in which his residence is established, a sworn statement containing the name, residence of each and every bona fide owner or owners of the 'used motor vehicle' the name of the manufacturer of make, the manufacturer's number, the engine or motor number, as well as any other numbers thereon, the horsepower of such 'used motor vehicle,' and a general description of the body thereof, and obtain from said clerk, a certified copy of such statement."

You state that the vendee of the vehicle resides in Ross County. It is therefore evident that the bill of sale should be filed in such county.

You do not enclose a copy of the bill of sale in question; I am therefore assuming, for the purposes of this opinion, that such bill of sale is in all respects regular, except as to the acknowledgment clause.

You state that the transaction out of which the sale of the motor vehicle arose, took place in Ross County; that although the vendor resided in Highland County the acknowledgment of the bill of sale was made and attested in Fayette County. Section 6310-9, General Code, sets forth the requirements of the verification of such instrument. In so far as material, such section reads:

"Each bill of sale shall be duly verified by the seller or other person as defined in (G. C.) section 6310-1 of this act, before a notary public, or other person, authorized by law to administer oaths, before the delivery of either, to the corporation, partnership, association or person buying, receiving or obtaining title to such 'motor vehicle' or 'used motor vehicle,' by the oath or affirmation of the manufacturer, importer, corporation, partnership, association or person selling, transferring, convey-

ing, giving away or passing title, or by the duly authorized agent of such manufacturer, importer, corporation, partnership, association or person.

* *"

While a notary public may not take acknowledgments to instruments in any county other than that for which he was appointed, I am unable to discover any provision of law which would make an otherwise valid attestation void by reason of the fact that the affiant was a resident of another county, state or nation.

Section 6310-11a, General Code, provides that the bill of sale shall be filed in the county "in which passage of title was consummated." The passage of title to personal property is at the time of delivery. Since the entire sale was consummated in Ross County, which is the same county as the residence of the purchaser, it follows that the provisions of either statute (§6310-11a, General Code, or §6310, General Code) are complied with by the filing of the bill of sale in Ross County. It therefore, is unnecessary at this time to attempt to reconcile the apparent inconsistency in the provisions of these sections.

Specifically answering your inquiry it is my opinion that, a bill of sale for an automobile is required by the provisions of Section 6310-13, General Code, to be filed in the county in which the owner resides, and it is immaterial where the bill of sale was made, acknowledged or delivered by the vendor.

Respectfully,

JOHN W. BRICKER,

Attorney General.

858.

JUSTICE OF PEACE—UNAUTHORIZED TO REMIT OR SUSPEND PAYMENT OF FINE FOR COMMISSION OF MISDEMEANOR—MAY SUSPEND IMPOSITION OF SENTENCE AND PLACE DEFENDANT UNDER SUPERVISION OF PROBATION OFFICER.

SYLLABUS:

A justice of peace has no authority to remit or suspend the payment of a fine for the commission of a misdemeanor. However, he may suspend the imposition of sentence and place the defendant on probation under control and supervision of a probation officer with the condition that the costs of prosecution be paid by the defendant.

COLUMBUS, OHIO, May 22, 1933.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your request of recent date for a written opinion upon the following question:

"Is it legal for a justice of the peace to suspend all or any part of a fine in a misdemeanor case in which such justice has jurisdiction to assess a fine?"

The establishment of the office of justice of the peace and the jurisdiction,