

It is my opinion, however, that when a child needs public relief in order for it to attend school or to do proper school work without menacing its health that relief can not be extended by the board of education by authority of Section 7777, General Code, unless the child comes within the same classification as the child described in the statute.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1552.

BILL OF SALE—SHERIFF'S SALE BY ORDER OF COURT—CONTENTS OF
BILL OF SALE WHEN PREVIOUS STATEMENTS OF OWNERSHIP
CANNOT BE LOCATED.

SYLLABUS:

The provisions of Section 6310-8, General Code, in so far as they require a sheriff, bailiff or other like officer selling an automobile on order of court, to deliver to the transferee "all former bills of sale or statements of ownership" with the bill of sale executed by such officer, do not apply where such officer, in the exercise of the utmost diligence to obtain such former bills of sale or statements of ownership or certified copies thereof, is unable to do so. In such case the bill of sale executed by such officer should contain a full and complete statement of facts showing such impossibility as a part of the "special facts in the premises" provided for in said section of the General Code.

COLUMBUS, OHIO, January 9, 1928.

HON. CHALMERS R. WILSON, *Commissioner of Motor Vehicles, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of a communication from you enclosing a letter from the clerk of the Municipal Court of Alliance, Ohio, and requesting my opinion upon the question therein stated. The letter of the clerk is as follows:

"Upon automobiles or motor vehicles taken by our bailiff upon an order of attachment or execution, and then later ordered sold by the court, will we be compelled to furnish the previous bills of sale in making bill of sale to the purchaser at our bailiff sale?"

In many instances we do not have the previous bills of sale, and do not know where to secure same as the defendants' whereabouts in many cases are not known; and therefore it would be impossible for us to obtain the previous bills of sale or certified copies of same.

Will you kindly give us a ruling on same so that we may be able to effect a valid bill of sale to the purchaser of used motor vehicles which are sold at the bailiff sale?"

The question here presented calls for the construction and application of Section 6310-8, General Code, as amended in 111 O. L. 468, which section reads as follows:

"Each buyer, purchaser, transferee or person receiving or obtaining a 'used motor vehicle' shall obtain from the owner, vendor or person conveying or transferring such 'used motor vehicle,' at or before such sale, transfer,

conveyance or delivery, the bill of sale in duplicate as provided for in Section 6310-7 and verified as provided for in Section 6310-9. In case of transfer of ownership of a 'motor vehicle' or a 'used motor vehicle,' by inheritance, devise or bequest, or order in bankruptcy or insolvency, replevin or execution sale, re-possession upon default in the performance of the terms of the lease, conditional sale, agreement or otherwise than by the voluntary act of the owner, the 'bill of sale,' transferring such title as required by this chapter shall be signed by the executor, administrator, receiver, trustee, sheriff or other representative, or successor in interest of the owner in lieu of such owner, and delivered to the transferee together with all former 'bills of sale' or statements of ownership, and shall set forth in addition to such other information as is required by law to be contained in the bill of sale, the special facts in the premises."

The provision of this section of the General Code, requiring the officers and persons therein named to deliver to the transferee "all former bills of sale or statements of ownership," refers to and is to be construed with the like provision found in Sections 6310-11 and 6310-11a, General Code, relating to the transfer of title to a used motor vehicle by or to any corporation, partnership, association or person on private or other non-judicial sale or transfer. Construing and applying the provisions of Sections 6310-11 and 6310-11a, General Code, this department, in Opinion No. 648, directed to you under date of June 21, 1927, held that it was unlawful for any corporation, partnership, association or person to sell, convey, give away, transfer, or exchange a "used motor vehicle" as defined in Section 6310-3, General Code, without delivering to the purchaser or other person receiving or obtaining such used motor vehicle, a copy of all duly executed, verified and filed bills of sale or certified copies thereof back to and including the original bill of sale or back to and including the sworn statement. And it was likewise held by this department in said opinion that the clerk of courts is without authority to accept for filing the duplicate bill of sale of a used motor vehicle unless a copy of all former bills of sale back to and including the original bill of sale or back to and including the sworn statement, or certified copies thereof are presented to him with the duplicate bill of sale provided for and required by Section 6310-5, General Code.

In Opinion No. 1185, directed to the Bureau of Inspection and Supervision of Public Offices, under date of October 22, 1927, this department, construing and applying Section 6310-8, General Code, held:

"Mortgagees, lessees or vendees on conditional sale contracts, who repossess motor vehicles or used motor vehicles upon default in the performance of the terms of the contract of mortgage, lease or conditional sale, are required, upon the subsequent transfer of the ownership of such motor vehicles or used motor vehicles, to execute a bill of sale therefor as provided by law and deliver such bill of sale to the transferee together with all former bills of sale or sworn statements of ownership as required by Section 6310-8, General Code."

This conclusion was arrived at notwithstanding the contention made that in many instances it is impossible for the mortgagee, who has succeeded to the ownership of an automobile, which he has repossessed, to procure copies of all former bills of sale on such automobile. It is pointed out in said opinion, among other things, that the mortgagee of the automobile was in position to protect himself at the time of taking his mortgage on the car, either by requiring the mortgagor to leave with him the former bills of sale in the mortgagor's possession, or by making such notations there-

from as would enable the mortgagee conveniently to procure certified copies of such bills of sale.

With respect to the question here presented, it is obvious that in many instances it will be wholly impossible for the sheriff, bailiff or other like officer selling an automobile on order of the court to obtain such former bills of sale or statements of ownership mentioned and provided for in Section 6310-8, General Code, and, unlike the case of the mortgagee, lessee or conditional sale vender of an automobile, the sheriff, bailiff or other officer executing the order of court and directing the sale of such automobile is not in position to protect himself against the situation thus arising. It is a maxim of law that "there is no obligation to do impossible things." In the application of this maxim and principle of law, the courts have held that the law will not require the performance of an obligation imposed by law, as distinguished from one imposed by contract, where such performance is impossible. *First National Bank of Belle Plain vs. McConnell*, 103 Minn. 340, 343; *Williams vs. Hays*, 157 N. Y. 541, 548.

Said Section 6310-8, General Code, by its terms imposes upon the officers and other persons therein named as successor in interest of the owner of an automobile to deliver to the transferee of such automobile not only the "bill of sale" required by Section 6310-5, General Code, or 6310-7, General Code, as the case may be, but also all former bills of sale or statements of ownership; and by reason of these provisions of the statute, it is clear that from the standpoint of such officers or other persons named in the statute and of the transferee or person purchasing such automobile sold to him by such officers or persons on the order of the court or otherwise, the duty thus imposed on such officers and other persons so named is one arising from an office, trust or station. Even so, and if it be conceded that this duty is one which in proper cases may be enforced by mandamus or other appropriate remedy at law, it is, nevertheless, the rule that a duty and obligation thus imposed will not be enforced where the performance of such obligation and duty is impossible. 38 *Corpus Juris*, 555; *People ex rel vs. Chicago Ry. Co.*, 270 Ill. 278, 297; *City of Benton Harbor vs. St. Joseph and Benton Harbor Railway Company*, 102 Mich. 386; *Public Service Commission vs. International Railway Company*, 224 N. Y. 631; *Deckman vs. Village of Oak Harbor*, 10 O. C. C. 409; *State ex rel vs. Lynch*, 8 O. S. 348.

A sheriff, bailiff or other like officer selling an automobile on order of the court is required, of course, to make every effort fully to comply with the provisions of Section 6310-8 of the General Code; and it is only after such officer, in the exercise of the utmost diligence, has exhausted every means of obtaining such former bills of sale or statements of ownership or certified copies thereof, that the principles of law above noted excuse him from furnishing the same to the purchaser. It will be noted that Section 6310-8 of the General Code provides in effect that the sheriff, bailiff or other like officer selling an automobile on order of court "shall set forth in addition to such other information as is required by law to be contained in the bill of sale the special facts in the premises." The "bill of sale" here mentioned refers to the bill of sale in duplicate provided for by Section 6310-5, General Code, and in such case the sheriff or bailiff, in addition to setting out in such bill of sale the special facts advising that the sale of such automobile was made to the purchaser therein named on order of the court in some particular case therein referred to, should likewise make a complete, full and accurate statement of the reasons why former bills of sale or statements of ownership or certified copies thereof are not delivered to the purchaser, if in the particular case it is impossible for the officer to obtain the same. The bill of sale in duplicate, with said notations thereon, executed and delivered by such officer to the purchaser, should be presented to the clerk for filing. Though ordinarily, as above noted, the clerk of courts is without authority to accept for filing the duplicate bill of sale of a used motor vehicle, unless there is presented to him therewith a copy of

all former bills of sale back to and including the original bill of sale or the sworn statement of ownership, if any, yet in a case of this kind the law does not, in my opinion, require of the clerk of courts or of the transferee presenting such duplicate bill of sale for filing, anything more than the law in such case requires of the sheriff, bailiff or other like officers selling such car on court order; and the clerk of courts in such case should, in my opinion, accept for filing such bill of sale in duplicate without requiring of such purchaser or transferee former bills of sale or statements of ownership with respect to such automobile.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1553.

COUNTY COMMISSIONERS—AUTHORITY TO PURCHASE MOTOR VEHICLE FOR USE BY DOG WARDEN—PURCHASE PRICE APPROPRIATED OUT OF GENERAL FUND OF COUNTY.

SYLLABUS:

By the terms of Section 2412-1, General Code, a board of county commissioners has authority to purchase a motor vehicle or vehicles, with the approval of a judge of the Court of Common Pleas, for their use or for the use of any department under their direct control. Such board has authority to place such vehicle at the disposal of a county dog warden or deputies upon such regulations as such board may prescribe in order that the dog warden or deputies, if any, may carry out the duties imposed by law. The purchase price of such a vehicle must be appropriated out of the general fund of the county in accordance with law.

COLUMBUS, OHIO, January 9, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your letter dated January 5, 1928, which reads:

“Question: May the board of county commissioners of a county legally purchase an automobile for the dog warden and pay for the same out of the dog and kennel fund or any other public funds?”

Your inquiry may be paraphrased as follows:

1. Do any of the sections of the General Code enacted in House Bill No. 164 (112 v. 347) confer authority upon a board of county commissioners to purchase an automobile for the use of a county dog warden?
2. If not, does any other section of the General Code, confer such authority?

In answer to the first question your attention is directed to the following sections of the General Code, which, in so far as pertinent, provide:

Sec. 5652-7. “County commissioners shall appoint or employ a county dog warden and deputies to such number, for such periods of time, and