

1641.

APPROVAL, BONDS OF THE VILLAGE OF LEETONIA, COLUMBIANA  
COUNTY—\$24,000.00.

COLUMBUS, OHIO, January 31, 1928.

*Industrial Commission of Ohio, Columbus, Ohio.*

1642.

APPROVAL, BONDS OF MENTOR VILLAGE SCHOOL DISTRICT, LAKE  
COUNTY—\$16,000.00.

COLUMBUS, OHIO, January 31, 1928.

*Industrial Commission of Ohio, Columbus, Ohio.*

1643.

APPROVAL, BONDS OF HARRIS-ELMORE SCHOOL DISTRICT, OTTAWA  
COUNTY, OHIO—\$56,461.00.

COLUMBUS, OHIO, January 31, 1928.

*Industrial Commission of Ohio, Columbus, Ohio.*

1644.

BILL OF SALE—REGISTRATION—CERTIFICATE ISSUED BY CLERK  
WITH RESPECT TO FILED BILL OF SALE—MAY BE USED IN AP-  
PLYING FOR REGISTRATION—EVEN THOUGH ORIGINAL BILL OF  
SALE IS HELD BY FINANCE COMPANY.

**SYLLABUS:**

*A certificate, issued by the clerk with respect to a bill of sale for a motor vehicle  
filed with such clerk, may be properly used by the owner of the vehicle, demanding*

*and receiving such certificate, in making application for the registration of such motor vehicle, although the retained copy of the bill of sale filed with such clerk be at the time held by the dealer or a finance company.*

COLUMBUS, OHIO, January 31, 1928.

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

DEAR SIR:—This is to acknowledge receipt of your communication of recent date which reads as follows:

“Section No. 6310-13-A, G. C., provides for the procedure in case of lost Bills of Sale and forms to be furnished by a clerk of court.

The first part of this section provides that where a bill of sale has been lost, stolen or destroyed a certified copy thereof may be procured from the clerk of courts upon presentation of an affidavit showing that such bill of sale or a sworn statement of ownership has been lost, stolen or destroyed.

The second paragraph under this section provides that the clerk of courts shall either at the time of filing a bill of sale or sworn statement of ownership, or later, upon the request of an owner of a motor vehicle for which a bill of sale or sworn statement of ownership has been filed with such clerk, issue a certificate bearing the name and seal of the clerk of courts, setting forth that such bill of sale or sworn statement of ownership has been filed and giving the information that would be contained in such bill of sale.

Section No. 6294, G. C., providing for applications for registration require that the applicant at the time of making such application shall present for inspection proper bills of sale or sworn statements of ownership, the originals of which have been duly filed with the clerk of courts, or a certificate or certificates of the clerk of courts certifying that such bills of sale or sworn statements of ownership have been duly filed with such clerk.

We find in the registration of motor vehicles for license plates that it has become a most general practice where cars are sold on a time payment plan that the finance company, who finances the purchase of such motor vehicles, are requiring that the bill of sale be delivered to them instead of to the purchaser and such bill of sale is being held either by the dealer or the finance company until the final payment is made on such machine. In order to meet the requirements on presenting a bill of sale or a clerk's certificate, in lieu thereof, when making application for license plates the usual procedure is to have the bills of sale filed with the clerk of courts and then have such clerk issue a clerk's certificate on such bills of sale, the clerk's certificate being delivered to the purchaser and the bill of sale retained by the dealer or the finance company.

We feel that the action of the dealer or finance company in not delivering the bills of sale to the purchaser is a violation of the law pertaining to the delivery of such bills of sale, but inasmuch as this department is not charged with the enforcement of the bill of sale law the question that we are concerned with is whether or not the clerk's certificate is being properly used in such cases as cited above.

Will you kindly give us your opinion on the matter of the proper use of the clerk's certificate?”

You state that the only question on the facts set out in your communication that you are concerned with, is whether the clerk's certificate with respect to a bill

of sale for a motor vehicle filed with such clerk, is properly used in securing registration of such motor vehicle under Section 6294, General Code, when the retained copy of such bill of sale after filing is turned over to the dealer, who sold said motor vehicle, or to some finance company to be held until all the payments on the purchase price of the motor vehicle have been made.

Looking to the provisions of Section 6310-13a, General Code, referred to in your communication, it will be noted that said section in the first paragraph thereof provides for the issuance by the clerk, of a certified copy of a bill of sale filed with him when the retained copy thereof has been lost, stolen or destroyed, and proof of such fact has been made by affidavit and the prescribed fee therefor is paid.

With respect to the issuance by the clerk of certificates of bills of sale filed with him said Section 6310-13a, General Code, provides *inter alia* as follows:

"The clerk of courts shall, either at the time of filing a bill of sale or sworn statement of ownership, or later, upon request of an owner of a motor vehicle for which a bill of sale or sworn statement of ownership has been filed with such clerk, and upon payment of a fee of twenty-five cents issue a certificate bearing the name and seal of the clerk of courts, setting forth that such bill of sale or sworn statement of ownership has been filed, the name of the grantor and grantee of the bill of sale, or the name of the person making the sworn statement of ownership, the date of filing of such bill of sale or sworn statement of ownership and a description of the motor vehicle, including the model, type, manufacturer's number and engine number for which bill of sale or sworn statement of ownership has been filed."

Section 6294, General Code, provides for the annual registration of motor vehicles upon an application of the owners thereof. The only provisions of this section that are at all pertinent to the consideration of the question presented in your communication are the following:

"At the time of making such application the applicant shall present for inspection proper bills of sale or sworn statement of ownership, the originals of which have been duly filed with the clerk of courts, or a certificate or certificates of the clerk of courts certifying that such bills of sale or sworn statement of ownership have been duly filed with such clerk, showing title to the motor vehicle to be registered in such application. If such application is not in proper form, or if the applicant owned the motor vehicle on the preceding tax listing day and it was not listed for personal property taxes, or if proper bills of sale or sworn statement of ownership or proper certificate thereof, does not accompany the application, the license shall be refused. A duplicate copy of such application shall be forwarded by the deputy commissioner to the commissioner of motor vehicles."

Section 6294, *supra*, in express terms permits the owner of a motor vehicle to present for the inspection of the Commissioner of Motor Vehicles, or his deputies, such certificate issued by the clerk on a bill of sale filed by such owner, in lieu of the retained copy thereof. Inasmuch as there is nothing in the provisions of either of the sections of the General Code above noted, which in any way defines or limits the purpose for which the owner of a motor vehicle filing a bill of sale may require the clerk to issue a certificate with respect to such bill of sale, I do not see how any question can arise with respect to the right and duty of the Commissioner of Motor Vehicles, or his deputies, to accept the same for inspection when presented by the owner of the motor vehicle in making application for the registration of such motor

vehicle; and this is true without reference to the reasons, which may actuate the owner of the motor vehicle in requiring such certificate from the clerk, or in presenting such certificate for inspection at the time of making application for the registration of such motor vehicle.

As to the duty of the clerk in issuing such certificate, with respect to a bill of sale filed with him, it may be observed that he has no discretion in the matter if a request for such certificate is made by the owner of a motor vehicle who has filed a bill of sale therefor, and the prescribed fee is tendered; nor is the clerk concerned in the reasons which prompt the owner in making the request for such certificate, or in the purpose for which he intends to use the same.

In Opinion No. 1185, directed to the Bureau of Inspection and Supervision of Public Offices under date of October 2, 1927, this department construing Section 6310-8, and the related sections of the General Code, held that 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 mortgage or conditional sale, are required, upon the subsequent transfer of the title to such motor vehicle or used motor vehicles, to deliver to the transferee a bill of sale therefor, together with all former bills of sale or sworn statements or statements of ownership that may have theretofore been issued with respect to such motor vehicles or used motor vehicles.

In this opinion the observation is made that the mortgagee of an automobile was in a position to protect himself at the time of taking his mortgage on such automobile, either by requiring the mortgagor to turn over to him the former bills of sale in the mortgagor's possession, or by making such notations from such former bills of sale as would enable the mortgagee to procure certified copies of bills of sale theretofore executed with respect to said automobile.

The practice of dealers and finance companies of requiring purchasers of automobiles on the time-payment plan to turn over to them the retained copies of bills of sale on automobiles so sold has doubtless arisen from the fact that county clerks throughout the state are requiring bills of sale on repossessed automobiles sold by dealers and finance companies to be accompanied by all former bills of sale executed with respect to such automobiles.

This observation, however, may be beside the point. So far as your question is concerned it is enough for us to know that the owner of a motor vehicle after filing a bill of sale therefor has a clear legal right to demand and receive of the clerk the certificate provided for in the above quoted provisions of Section 6310-13a, General Code, and that he has an equally clear legal right to present such certificate to the Commissioner of Motor Vehicles or his deputies for inspection when making application for the registration of his car under the provisions of Section 6294, General Code.

By way of specific answer to your question therefore, I am of the opinion that the certificate, issued by the clerk with respect to a bill of sale for a motor vehicle filed with such clerk, may be properly used by the owner of the vehicle demanding and receiving such certificate in making application for the registration of such motor vehicle, although the retained copy of the bill of sale filed with such clerk be at the time held by the dealer or a finance company.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*