

OPINION NO. 86-098**Syllabus:**

R.C. 1303.15 does not apply to the transfer of certificates of title for motor vehicles.

To: David E. Bowers, Allen County Prosecuting Attorney, Lima, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 10, 1986

I have before me your request for my opinion concerning whether R.C. 1303.15 applies to the transfer of certificates of title for motor vehicles.

The section about which you ask reads as follows:

An instrument payable to the order of two or more persons:

(A) if in the alternative is payable to any one of them and may be negotiated, discharged, or enforced by any of them who has possession of it;

(B) if not in the alternative is payable to all of them and may be negotiated, discharged, or enforced only by all of them. (Emphasis added.)

You wish to know whether R.C. 1303.15 permits a person, who is named in the alternative on a certificate of title for a motor vehicle, to transfer title to such vehicle independently, when none of the other persons named in the certificate join in the transfer.

R.C. 1303.01(A) states, in part: "As used in sections 1303.01 to 1303.78, inclusive, of the Revised Code, unless the

context otherwise requires:...(5) 'Instrument' means a negotiable instrument."

R.C. 1303.03, which defines the characteristics of a "negotiable instrument," reads, in part, as follows:

(A) Any writing to be a negotiable instrument within sections 1303.01 to 1303.78, inclusive, of the Revised Code, must:

- (1) be signed by the maker or drawer; and
- (2) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation, or power given by the maker or drawer except as authorized by sections 1303.01 to 1303.78, inclusive, of the Revised Code; and
- (3) be payable on demand or at a definite time; and
- (4) be payable to order or to bearer.

A motor vehicle certificate of title is a document which evidences ownership of a motor vehicle, see R.C. 4505.03, 4505.04, and is clearly not a negotiable instrument within the meaning of R.C. 1303.03. For example, it is not a promise or order to pay a sum certain in money. See, e.g., R.C. 4505.06(B)(2) and R.C. 4505.07 (setting forth the form of a certificate of title). Therefore, unless the context of R.C. 1303.15 requires a different meaning for the word "instrument," a certificate of title is not an instrument for purposes of R.C. 1303.15.¹ The context of R.C. 1303.15, however, is such that the word "instrument" cannot include a motor vehicle certificate of title. R.C. 1303.15 deals with instruments which are "payable" to two or more persons. A certificate of title may contain an assignment of certificate of title whereby the owner of a motor vehicle sells and assigns his right, title, and interest in the certificate of title and motor vehicle described therein. See R.C. 4505.07. The certificate of title, however, cannot be said to be "payable" to anyone. It is evident that the context of R.C. 1303.15 requires that the definition of "instrument" found in R.C. 1303.01(A)(5) be used in R.C. 1303.15. See U.C.C. §3-116² official comment (an instrument "names either A or B as payee, so that either of them who is in possession becomes a holder...and may negotiate, enforce or discharge the instrument" (emphasis added)).

¹ Limitations on the scope of R.C. Chapter 1303 are stated in R.C. 1303.02(A), which reads in part, as follows: "Sections 1303.01 to 1303.78, inclusive, of the Revised Code do not apply to money, documents of title, or investment securities" (emphasis added). Thus, it appears that a certificate of title evidencing ownership of a motor vehicle would be specifically exempted from the provisions of R.C. Chapter 1303, including R.C. 1303.15. R.C. 1301.01(O), however, defines "document of title," for purposes of R.C. Chapter 1303, and states in part: "To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass." See generally R.C. Chapter 1307. Thus, it does not appear that, for purposes of R.C. 1303.02(A), a certificate of title covering a motor vehicle is a "document of title."

² U.C.C. §3-116 is codified in Ohio as R.C. 1303.15.

In addition, I am not aware of any statutory provision which provides that a person who is named in the alternative on the certificate of title for a motor vehicle may independently transfer title to such vehicle when none of the other persons named in the certificate of title join in the transfer.

It is, therefore, my opinion, and you are hereby advised, that R.C. 1303.15 does not apply to the transfer of certificates of title for motor vehicles.