

1905.

BILL OF SALE—WHERE NEGOTIATIONS OF SALE HAVE TAKEN PLACE IN TWO OR MORE COUNTIES.

SYLLABUS:

1. *Under the provisions of Section 6310-10, General Code, any corporation, partnership, association, or person to whom title has been passed for any motor vehicle, is required to file with the clerk of courts of the county in which said sale is consummated, duplicate copies of the bill of sale therefor.*

2. *Where negotiations to the contract have taken place in two or more counties, the bill of sale is required to be filed with the clerk of courts in the county where the sale has finally been consummated.*

COLUMBUS, OHIO, March 27, 1928.

HON. ERNEST M. BOTKIN, *Prosecuting Attorney, Lima, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

“In the law with reference to the sale of motor vehicles, namely, Section 6310-10 of the General Code, it is provided that each corporation, partnership, association or person to whom title has in any manner been passed to a motor vehicle should present to the clerk of courts of the county in which the sale, transfer, gift or passage of title is consummated within three days immediately thereafter both copies of the duplicate bill of sale. In this county we have construed the words ‘county in which the sale, transfer, gift, or passage of title is consummated’ to apply to the county where the sale is made or rather where the bill of sale is delivered. We understand that in Lucas County this is construed as relating to the county in which the bill of sale is executed. This suggests the question which we desire to present, namely:

Where the negotiations in connection with the sale of a motor vehicle are transacted in L County by the agent of a corporation having its principal place of business in A County, and the bill of sale for said motor vehicle is prepared by said agent in L County and forwarded to the office of said corporation in A County to be executed as provided by Section 6310-5 of the General Code, then returned to the agent in L County for delivery to the purchaser in which of said counties shall the bill of sale be filed with the Clerk of Courts?”

We have experienced some difficulties in connection with the above situation and shall appreciate your opinion of the same.”

Section 6310-10 of the General Code, provides as follows:

“Each corporation, partnership, association, or person to whom title has in any manner been passed to a motor vehicle shall present to the clerk of courts of the county in which the sale, transfer, conveyance, gift or passage of title is consummated within three days immediately thereafter, both copies of the duplicate bill of sale. It shall be the duty of the clerk of courts to refuse to accept for filing the duplicate bill of sale if

such instrument is not executed and witnessed according to the provisions of this act (G. C. Sections 6310-3 to 6310-14).

The clerk of courts shall if such instruments are properly executed and witnessed, affix his official seal and the date of the filing upon each instrument, assign to each set of duplicate bills of sale a distinctive number, which he shall stamp upon both original and duplicate and make an alphabetical index of the grantors and grantees and of the motor vehicles according to make, type and model. The clerk shall thereupon return one copy to the person presenting the bill of sale and place the others in a file to be kept by him for such purpose. Any instrument purporting to be a bill of sale, which does not bear the official seal of the clerk of courts of the county where the sale, gift, transfer, conveyance or passage of title took place shall be null and void. The clerk of courts of each county shall charge a fee of twenty-five cents for filing each duplicate bill of sale."

By the terms of the above mentioned section it is made the duty of each corporation, partnership, association or person to whom the title has been passed to a motor vehicle to cause to be filed with the proper clerk of courts the bill of sale. The language of the section pertinent to your inquiry is, "the person to whom title has * * * been passed * * * shall present to the clerk of the courts of the county in which the *sale, transfer, conveyance, gift or passage of title is consummated* * * * ." The bill of sale is required to be filed with such clerk of courts. This section also requires the clerk of courts to refuse to accept for filing the bill of sale if it is not executed according to the provisions of the act of which this section is a part.

The pertinent part of Section 6310-5, General Code, is as follows:

"It shall be unlawful for a corporation, partnership, association, or person, the manufacturer of motor vehicles or the importer of motor vehicles, to sell, convey, lease, give away, transfer or exchange a motor vehicle, directly or through an agent or agency of such manufacturer or importer, or other person, unless such manufacturer, corporation, partnership, association, person or importer or the agent of either, shall, at or before such sale, conveyance, transfer, lease, gift, exchange or passage of title, execute, in the presence of two witnesses, a bill of sale in duplicate, and deliver both copies to the purchaser, buyer, transferee, or person receiving such motor vehicle.

Such bill of sale shall contain the name of the manufacturer or maker, the manufacturer's number, the engine or motor number, as well as any other numbers thereon, and the horse-power of such motor vehicle with a general description of the body thereto, the name and residence address of the purchaser, buyer, lessee, transferee, or person receiving such motor vehicle, together with a full account of any other number or marks on appliances attached thereto, which may identify or tend to identify such motor vehicle. * * * "

This section makes it unlawful to dispose of a motor vehicle without the execution of a bill of sale therefor. This bill of sale, among other things, is required to show "the name and residence address of the purchaser, buyer, lessee, transferee, or the person receiving such motor vehicle," in proper form for filing.

Your question is directed to the place of filing, or the proper clerk of courts with which to file the bill of sale in a given case, where negotiations in connection with the sale of a motor vehicle are transacted partly in one county and partly in

another. In the particular instance which you cite, the bill of sale is prepared by the agent in L County and forwarded to the office of the selling corporation in A County, the execution of the bill of sale to be accomplished in the latter county, and the bill of sale then returned to the agent in L County for delivery to the purchaser. You do not state in which county the purchaser resides, which is probably immaterial for the purposes of this opinion.

You state it has been your practice to construe "the words, county in which the sale, transfer, gift, or passage of title is consummated to apply to the county where the sale is made or rather where the bill of sale is delivered."

An examination of the wording of the statute discloses that it is not where negotiations looking to the sale take place, but where "passage of title is consummated." If, therefore, your delivery of the bill of sale is the last act in completing the sale, the passage of title is there consummated, and your theory of the place to file the bill of sale is correct. If, however, the passage of title is consummated and the transaction closed in L County regardless of where the bill of sale is executed or delivered, the filing should be in L County, and if the passage of title is made and consummated at the time of the delivery of the bill of sale in L County, then the bill of sale should be filed with the clerk of courts of L County.

While it would seem from the statement of facts contained in your letter that the passage of title was consummated in L County, I feel that sufficient facts are not given in your communication to enable me finally to determine the question presented.

With reference to the time of transfer of title to personal property, your attention is directed to Sections 8398 and 8399, General Code, contained in Ch. 1, Div. V, Tit. VII, entitled "Sales." These sections read in part as follows:

Section 8398. "(1) When there is a contract to sell specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties, usages of trade, and the circumstances of the case."

Section 8399. "Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer:

Rule 1. When there is an unconditional contract to sell specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment, or the time of delivery, or both, be postponed.

Rule 2. When there is a contract to sell specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing be done.

Rule 3. * * *

Rule 4. * * *

Rule 5. If a contract to sell requires the seller to deliver the goods to the buyer, or at a particular place, or to pay the freight or cost of transportation to the buyer, or to a particular place, the property does not pass until the goods have been delivered to the buyer or reached the place agreed upon."

In construing and applying Section 8399, *supra*, the Supreme Court of Ohio, in the case of *Rchr, Recr., vs. The Trumbull Lumber Co.*, 110 O. S. 208, held as follows:

"Under the provisions of Section 8398, General Code, when there is a contract to sell specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred, and by the clear terms of that section and Section 8399, General Code, the rule set forth in the latter section for ascertaining the intention of the parties has no application where 'a different intention appears' from 'the terms of the contract, the conduct of the parties, usages of trade, and the circumstances of the case.'"

In view of what has been said, it is my opinion that:

1. Under the provisions of Section 6310-10, General Code, any corporation, partnership, association, or person to whom title has been passed for any motor vehicle, is required to file with the clerk of courts of the county in which said sale is consummated, duplicate copies of the bill of sale therefor.

2. Where negotiations to the contract have taken place in two or more counties, the bill of sale is required to be filed with the clerk of courts in the county where the sale has finally been consummated.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1906.

GASOLINE—MUNICIPALITY MAY PASS ORDINANCE REQUIRING PUBLIC FILLING STATIONS TO POST QUALITY OF GASOLINE SOLD.

SYLLABUS:

A municipality may legally enact and enforce a reasonable ordinance requiring public filling stations to post in a conspicuous place the quality of the gasoline sold.

COLUMBUS, OHIO, March 27, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your inquiry as follows:

"May a municipal corporation legally enact and enforce an ordinance requiring public filling stations to post in a conspicuous place the quality of gasoline sold?"

You have not furnished me with any specific ordinance, so that in this opinion I will confine myself solely to a consideration of the question of the validity of such a provision.

Peculiar provisions of certain ordinances and their application to peculiar sets of facts might have important bearing upon the decision of specific cases. The justification for such an ordinance must be found, if at all, in the police power of the city.