

In specific answer to your inquiries, it is my opinion that where existing Corporations A and C are merged into existing Corporation B rather than forming a new consolidated corporation, the Corporation B need not procure new licenses for the motor vehicles it itself has already registered, but Corporation B into which the constituent Corporations A and C merged must procure new registration and licenses for the motor vehicles acquired, pursuant to the merger agreement, from the constituent Corporations A and C, even though such motor vehicles are already registered and licensed by the constituent Corporations A and C.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

4221.

MOTOR VEHICLE—GRANTOR REQUIRED TO PRESENT COPIES OF BILLS  
 OF SALE TO CLERK OF COURTS.

**SYLLABUS:**

*By virtue of Section 6310-10, General Code, the duty is placed upon the grantor in a bill of sale for a motor vehicle to present both copies of the bill of sale to the clerk of courts of the county wherein the passage of title was consummated within three days after such passage of title. The grantor is subject to the penalties provided in Section 6310-14, General Code, if he or his lawfully appointed agent for such purpose does not present such bills of sale within the three-day period after the passage of title to the motor vehicle. Although the grantee, as such, may not present such copies of the bill of sale to the clerk of courts, he may do so if he acts as agent for and on behalf of the grantor.*

COLUMBUS, OHIO, May 4, 1935.

HON. FRANK A. ROBERTS, *Prosecuting Attorney, Batavia, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

“The Clerk of Courts of this county is having considerable difficulty with the new amendment to Section 6310-10 of the General Code of Ohio, House Bill 252. The principal difficulty is arising out of the clause of the amendment providing that ‘Bills of sale must be recorded by the grantor instead of the grantee.’

Should a literal conclusion be placed upon this statute serious difficulties would be presented to automobile dealers and other vendors. Automobiles are often sold and deliveries made to destinations far distant from the place of residence of the grantor and should it be necessary for him personally to deliver the bill of sale to the Clerk of Courts in the county of residence of the grantee, it appears that needless expenditure of time and effort would result.

The Clerk has also been advised by an agent of the Tax Commission that where a bill of sale is mailed to him unless the envelope contains the return address of the grantor rather than the grantee, he is not authorized to accept the same for filing. A strict interpretation of the language of the statute

might lead you to this conclusion. On the other hand, such a conclusion would seem to be absurd.

I would appreciate hearing as soon as possible as to just what procedure should be followed."

The recently enacted House Bill No. 252 amending Section 6310-10, General Code, reads in part as follows:

"Each corporation, partnership, association, or person *from* 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 or if the duplicate bill of sale is not accompanied by the vendor's portion of the prepaid tax receipts required by Section 5546-3 of the General Code and the purchaser's portion of such prepaid tax receipts are not affixed to the owner's copy of the bill of sale. It shall be the further duty of the clerk to ascertain that such prepaid tax receipts are so affixed and presented and to void such stamps in a manner prescribed by the tax commission. \* \* \* " (Italics the writer's)

Section 6310-14, General Code, provides:

"Whoever violates any provision of this act, except provisions of section 6310-12 of the General Code, shall upon conviction be subject to a fine of not less than twenty-five dollars nor more than five thousand dollars; and whoever violates any provisions of section 6310-12 of the General Code, shall upon conviction be fined not less than fifty dollars nor more than five thousand dollars or imprisoned not more than five years or both."

I also direct your attention to the recently enacted House Bill No. 253, a companion measure to House Bill No. 252, amending Section 6310-5, General Code, which provides in part 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. \* \* \* " (Italics the writer's)

It appears by the express terms of Section 6310-10, General Code, supra, that the corporation, partnership, association or person *from* whom title has in any manner been passed to a motor vehicle,—that is—*the grantor*, should file both copies of the duplicate bill of sale with the clerk of courts of the county in which the passage of title

is consummated. It is impossible for the grantor to comply with this provision of Section 6310-5, supra, that he must deliver both copies of the bill of sale to the purchaser, buyer, transferee or person receiving such motor vehicle at or before such sale of a motor vehicle and still present them to the clerk of courts. In view of such physical impossibility it is my opinion that the grantor need not deliver both copies of the bill of sale to the grantee inasmuch as impossible conditions of law may not be fulfilled. The presentation of both copies of the duplicate bill of sale to the clerk of courts by the grantor in lieu of the former provision prior to the amendment of Section 6310-10, that such duty was on the grantee is a new matter, whereas the provision that the grantor shall "deliver both copies" to the grantee is a mere verbatim duplication of Section 6310-5, supra, prior to its amendment and it evidently was not changed due to oversight by the legislative body. Therefore, it would appear that the real intention of the legislature, to find which is the primary object of all statutory construction, is to require the grantor rather than the grantee to present both copies of the bill of sale to the clerk of courts of the county wherein the passage of title was consummated within three days after such sale, transfer, conveyance, gift or passage of title.

I have informally advised since the enactment of House Bill 252 that the grantee has no authority to present the bill of sale nor the clerk of courts to accept it, and I am still of that opinion that the grantee, *as such*, cannot present the bill of sale nor can the clerk of courts accept it from the grantee as such. However, it is my view that the following fundamental maxim is applicable to the situation, i. e. "qui facit per alium facit per se". In other words, the well recognized rule applies that an agency may be created for the performance of any lawful act and that what a person may lawfully do, if acting in his own right and in his own behalf, he may lawfully delegate to an agent. This general rule applies, ordinarily, as much to acts done under statute, or by authority of statute, as to any other class of acts. See Vol. I, *Mechem on Agency*, page 48.

Consequently it is my opinion that the corporation, partnership, association or person *from* whom title has in any manner been passed to a motor vehicle must present to the clerk of courts of the county wherein the sale, transfer, conveyance, gift or passage of title is consummated within three days immediately thereafter, both copies of the duplicate bill of sale. That is, the duty by virtue of Section 6310-10, General Code, quoted in part supra, is placed upon the person ordinarily designated the "grantor," but such grantor may by verbal delegation of authority, make any qualified grantee or any other qualified person his agent for the purpose of filing such bill of sale. It must be noted however, that since the duty is placed upon the grantor to present such bills of sale to the clerk of courts of the county wherein the passage of title to the motor vehicle was consummated, that such grantor is subject to the penalties provided in Section 6310-14, General Code, if he or his lawfully appointed agent for such purpose does not do so within the three day period after the passage of title to the motor vehicle. Although, it is my opinion that the clerk of courts has no authority to accept such bills of sale from the grantee, *as such*, he may accept them from the grantee if the grantee presents them as the agent of the grantor and on behalf of the grantor.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*