

1883.

APPROVAL, BONDS OF CITY OF CLEVELAND, CUYAHOGA COUNTY,
OHIO, \$25,000.00.

COLUMBUS, OHIO, November 17, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1884.

APPROVAL, BONDS OF CLEVELAND HEIGHTS CITY SCHOOL DIS-
TRICT, CUYAHOGA COUNTY, OHIO, \$13,000.00.

COLUMBUS, OHIO, November 17, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1885.

MOTOR VEHICLE—DEALER'S LICENSE PLATES CANNOT BE ISSUED TO INDEPENDENT CONTRACTORS TOWING OR HAULING MOTOR VEHICLES FROM MANUFACTURER TO DEALER — USE OF DEALER'S CAR OR LICENSE PLATES FOR PRIVATE PURPOSES BY DEALER, AGENT AND PERSON OUTSIDE EMPLOY—SERVICE TRUCK CLASSIFIED AS "COMMERCIAL CAR"—CHAUFFEUR'S LICENSE REQUIRED BY TRUCK OWNER WHEN.

SYLLABUS:

1. *By virtue of section 6301, and sub-section 13 of section 6290, General Code, independent contractors towing or hauling motor vehicles from the manufacturer to the dealer cannot be issued dealers' plates by the registrar of motor vehicles.*

2. *A person outside the dealers' employ who borrows from the dealer or his agents, and operates for strictly private purposes a dealers' motor vehicle with dealers' license attached thereto violates section 12618-2, General Code, and is subject to the penalties therein provided.*

3. *A person outside the dealers' employ who borrows from the dealer or his agents, and operates a dealers' motor vehicle for strictly private purposes substituting his own license plates for the dealers' violates section 12622 and section 12618, General Code, and is subject to the penalties therein provided.*

4. *If a dealer loans a dealers' motor vehicle to a person outside his employ for strictly private purposes, he is not exempt from other registration or taxation with respect to such motor vehicle as he is no longer the owner only for the purpose of "sale, lease or other like disposition" under section 6301, General Code.*

5. *It is a violation of section 12618-2 and section 12618, General Code, for an agent of a dealer to use the dealers' license plates on the agents' privately owned car, and such agent is liable to the penalties therein provided.*

6. *It is a violation of section 12618-2, General Code, for an agent of a dealer to use a dealers' motor vehicle with dealers' license plates attached thereto for strictly private purposes.*

7. *By virtue of section 6301, General Code, a dealer using a dealers' motor vehicle for private purposes is not exempt from other registration or taxation provided for other motor vehicles.*

8. *A dealer using a dealers' motor vehicle for private purposes violates section 12618-2, General Code, and is subject to the penalties therein provided.*

9. *A service truck should be classified as a "commercial car" for the purpose of taxation and its scale weight should include the weight of the wrecking equipment permanently attached thereto.*

10. *If a person owns a truck and drives it himself for contract hauling for commercial purposes, he is required to take out a chauffeur's license.*

COLUMBUS, OHIO, November 17, 1933.

HON. GLEN DAILY, *Registrar of Motor Vehicles, Columbus, Ohio.*

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

"1. It has been the practice of the Department of Motor Vehicles to issue Dealers License plates to Drive-away and Forwarding Companies. The function of these companies is to deliver new motor vehicles from the manufacturer or distributor to the retailer. For instance, an automobile dealer in Columbus will order a quantity of cars from his manufacturer in Detroit and instead of them being shipped by freight or truck, the dealer will contract with a Drive-away Company who use dealers plates secured from this department, this company driving the cars through to Columbus. If the consignment is small one man is placed in each car; however, many times the number of cars being driven in is so large that one car is driven and another is towed. The system of towing is by means of a contrivance known as a tow-bar which is attached to the car behind from the car being driven and is so close that it is almost impossible to see if each car is equipped with license plates. They usually come through in convoys, sometimes as many as fifty in a string and very rarely do they adhere to the law. Sometimes it is practically impossible for the motorist to get around this large string of cars. These Drive-away Companies operate under contract which was made by the dealer and themselves and an OK given by the manufacturer. The other system being used in transporting vehicles from the point of manufacture and point of distribution are freight and truck. Can I issue Dealers Plates to Drive-away and Forwarding Companies?

2. Another question in regard to Dealers License Plates that we would like to have straightened out is the loaning by dealers of their dealers plates to customers or parties outside of their immediate organization for private use. For instance, automobile dealers are continually being placed in an embarrassing position by having their customers request the loan of a demonstration car or used car in which to make private calls, often wanting to go quite a distance from the dealers place of business. These conditions usually

arise due to the fact that the customer's car is being repaired in the shop which sometimes means keeping the car for a day or possibly longer. It is hard for the dealer to refuse but at the same time he is well aware that many things may happen from loaning the car with the dealers plates, and which may cause him trouble. The dealers would appreciate being relieved from this embarrassing position. Should they refuse this loan of plates?

3. (a) Another common practice on the part of a large number of automobile dealers is to permit their salesmen to use their Dealers Plates on their own cars.

(b) Other times dealers cars are being used for demonstration purposes but are also being driven nights and Sundays for private use.

(c) The dealers themselves use these plates for private use since they change their car every 60 or 90 days by placing the car back in stock and taking out a new one. This is to protect them from holding an obsolete model, the car being placed back in stock within 90 days can be sold with little or no loss. Can these plates be used for these purposes?

4. My fourth question is in regard to service truck equipment. These trucks are used for a particular purpose, however, the equipment thereon cannot be used for anything other than wrecking service. The only occasion the dealer has for their use is when there is a wreck on the street or highway. Should they be classified as commercial vehicles? If so, should their scale weight include or exclude the wrecking equipment, such as cranes and winches that are bolted to the truck itself.

5. If a man owns a truck and drives it himself for contract hauling for commercial purposes, is he required to take out a Chauffeur's License the same as a man who is hired to drive for the owner of a truck?

We would like to have your formal opinion on the above matters."

Your first question is whether or not so-called "Drive-away" or "Forwarding Companies" can be issued dealers' plates. I note from your request that these companies make contracts with the dealers subject to the approval of the manufacturers for the towing of new cars from the manufacturer to the dealer. Such companies use their own towing cars, and title to the new cars never passes to the forwarding companies. Under such circumstances it is my opinion that such companies and their agents are not agents or employes of the dealers or manufacturers but are independent towing or hauling contractors.

House Bill No. 271 of the regular session of the 90th General Assembly now effective as Section 6301, General Code, provides with reference to dealers plates:

"A manufacturer of, or dealer in motor vehicles, shall make application, in like manner, as provided in this chapter, for each gasoline, steam, electric or other make of motor vehicles, so manufactured or dealt in, to be determined by the motive power of such vehicles; excepting that for the purpose of such application *the district of registration shall be stated for each place in this state at which the business of manufacturing or dealing in motor vehicles or any branch thereof is carried on*, and the application shall show the make, or makes, so manufactured or dealt in at each such place. Upon the filing of such application, and the payment of the tax imposed by this chapter the * * * registrar shall assign to each make of motor vehicle therein described a distinctive number which must be carried and displayed by each motor vehicle of such make in like manner

as provided in this chapter while it is operated on the public highway until it is sold or transferred.

Such manufacturer or dealer, so registering a make of motor vehicle, may procure certified copies of such registration certificate upon the payment of a fee of two dollars. With each of such certified copies the * * * registrar shall furnish two placards with the same numbering provided in the original registration certificates, and may thereto add such special designation as may be necessary to distinguish one set thereof from another. Nothing in this section nor in section six thousand two hundred and ninety-two of the General Code, shall be construed as to exempt any manufacturer or dealer from registration or taxation in respect of any other motor vehicle of which he is the owner for any purpose other than sale, lease or other like disposition.”
(Italics the writer’s)

Senate Bill No. 396 of the 90th General Assembly provides :

“Section 6290. Definition of terms, as used in this chapter and in the penal laws, except as otherwise provided :

* * * * * * * * *

13. “Manufacturer” and “dealer” include all persons, firms and corporations engaged in the business of manufacturing, selling or dealing in motor vehicles.

* * * * * * * * *

It is apparent from the reading of Section 6301, General Code, especially the italicized portion supra, “the district of registration shall be stated for each place in this state at which the business of manufacturing or dealing in motor vehicles, or any branch thereof is carried on”, and Sub-section 13 of Section 6290, General Code, supra, that under no reasonable interpretation can such independent contractors who tow or haul motor cars from the manufacturer to the dealer be said to be “engaged in the business of manufacturing, selling or dealing in motor vehicles”, and consequently it is my opinion that you cannot issue dealers’ plates to such “Drive-away” or “Forwarding Companies”.

With regard to your second question you state that dealers are in the habit of loaning dealers’ cars with dealers’ plates to customers or parties outside of their immediate organization for private use, and inquire as to the legality of such a practice. I call your attention to the following provisions of the Ohio General Code :

“Sec. 12618. Whoever operates or drives a motor vehicle upon the highways of this state, displaying thereon a distinctive number or identification mark which is fictitious, or belongs to another motor vehicle. * * * shall be fined, etc. * * *”

“Sec. 12618-2. Whoever operates or drives a motor vehicle upon the highways of this state displaying thereon a distinctive number or identification mark belonging to a manufacturer or dealer, when such motor vehicle is not held by such manufacturer or dealer exclusively for sale, lease or other like disposition shall be fined twenty-five dollars, and for a subsequent offense

shall be fined not less than fifty dollars nor more than five hundred dollars or imprisoned for sixty days, or both."

"Sec. 12622. Whoever operates or causes to be operated upon a public road or highway a motor vehicle of a manufacturer or dealer unless it carries and displays, as provided by law, two placards, except as provided in Section 12613, issued by the Director of Highways, bearing the registration number of the manufacturer or dealer of such machine, shall be fined not more than twenty-five dollars."

It is my opinion that under Section 12618-2, General Code, supra, a motor vehicle which is loaned for strictly private use to a customer or party outside the dealers' employment, "is not held by such * * * dealer exclusively for sale, lease or other like disposition". Consequently if a customer or party outside the dealers' employ operates or drives a dealers' car with dealers' plates under such circumstances he is violating Section 12618-2 of the Criminal Code and is subject to the penalties provided therein.

It is also my opinion that under a somewhat similar arrangement to the above if such party, under such circumstances, borrows the dealers' car for strictly private purposes and uses his own license plates, by virtue of Section 12622 and Section 12618, supra, such party is violating Sections 12622 and 12618 of the Criminal Code and is subject to the penalties therein imposed.

I also call your attention to the latter part of Section 6301, General Code, which provides:

" * * * Nothing in this section nor in section six thousand two hundred and ninety-two of the General Code shall be construed as to exempt any manufacturer or dealer from registration or taxation in respect of any other motor vehicle of *which he is the owner for any purpose other than sale, lease or other like disposition.*" (Italics the writer's.)

By virtue of this section, the dealer, if he loans a dealers' car under the circumstances described supra, is the owner for more than the purpose of "sale, lease or other like disposition" and would not be exempt from other registration or taxation in respect to such motor vehicle.

Consequently it is my opinion, in specific answer to your second inquiry, that a dealer should not so loan a dealers' car with dealers' plates attached, or allow a dealers' car to be used with the borrowers' plates for strictly private purposes.

With reference to part (a) of your third inquiry it is my opinion that it is a violation of Section 12618-2 and Section 12618, General Code, for a salesman of a dealer to use the dealers' plates on a privately owned car of the salesman.

With regard to part (b) of your third inquiry it is my opinion that if a salesman of a dealer uses a demonstration car with dealers' plates for private uses at night and on Sundays, as outlined in your request, and not for its proper use for demonstration purposes, that under such conditions the salesman is violating section 12618-2, General Code.

With regard to part (c) of your third inquiry, by virtue of Section 6301, General Code, a dealer using a dealers' car with dealers' licenses for private purposes, as contrasted with demonstration purposes, is using such vehicle for another purpose than "sale, lease or other like disposition", and consequently such vehicle is not exempt from registration or taxation provided for any other motor vehicle. Such dealer

also violates Section 12618-2, General Code. Consequently it is my opinion that dealers' license plates should not be used for these purposes.

Your fourth question concerns service trucks used for wrecking service. And you inquire whether or not such trucks should be classified as "commercial cars". In Senate Bill No. 396 of the 90th General Assembly, Section 6290 with reference to definition of terms provides:

" * * * * * * * * * "

2. "Motor vehicle" means any vehicle propelled or drawn by power other than muscular power, except road rollers, traction engines,***power shovels and power cranes used in construction work and not designed for or employed in general highway transportation, well drilling machinery, ditch digging machinery and farm machinery."

* * * * * * * * *

4. "Commercial tractor" except as defined in subdivision three means any motor vehicle having motive power designed or used for drawing other vehicles, or designed or used for drawing another motor vehicle while carrying a portion of such other motor vehicle or its load, or both.

5. "Passenger car" means any motor vehicle designed and used for carrying not more than seven persons.

6. "Commercial car" means any motor vehicle having motive power designed and used for carrying merchandise or freight, or for carrying more than seven persons, *or used as a commercial tractor.*

* * * * * * * * * "

(Italics the writer's)

Section 6291, General Code, levies a tax on the operating of all motor vehicles on the public roads and highways of this state.

Section 6292, General Code, provides the rates of taxation, and classifies all motor vehicles into three types, for the purpose of determining the rates of taxation: First, motor bicycles or motorcycles, second, passenger cars, third, commercial cars and trailers. The third paragraph of such section provides that on commercial cars the tax is to be paid at the rate of seventy cents (.70) per hundred pounds or part thereof, for the first two thousand pounds or part thereof, of weight of vehicle fully equipped.

It is my opinion that by virtue of section 6292 referred to supra, a service truck falls within the classification of a "commercial car". This is for the reason that such term necessarily includes all taxable cars other than motorcycles and passenger cars for the purpose of taxation.

You further inquire as to whether the scale weight of such a commercial car should include or exclude the weight of the wrecking equipment, such as cranes and winches which are bolted to the truck itself. I call your attention to a former opinion of this office, Opinions of the Attorney General for 1932, Vol. 1, page 30 at page 35 wherein it is stated:

"It must be presumed that the legislature intended the language 'fully equipped' to have a meaning. If it were meant that a truck was to be taxed as delivered from the manufacturer, it would have used the language 'truck chassis' * * * .

I believe that under the rules of construction laid down by the court, I must presume that the legislature had in mind common business practice and when it used the language 'weight of vehicle fully equipped', it meant the weight upon which the tax was computed to be that of the vehicle which included the equipment regularly and permanently attached to or built into such vehicle and regularly a part thereof.

I am therefore of the opinion that the tax is to be computed not only upon the chassis of the truck but upon the weight including any equipment built into or upon such chassis in such manner as to become a part thereof."

I agree with the result and reasoning of this opinion and it is my opinion that in computing the scale weight of a service car for the purpose of taxation there should be included the weight of the wrecking equipment bolted or otherwise attached to the truck.

Your fifth and last inquiry concerns the definition of the word "Chauffeur" and you ask specifically whether or not a man who owns a truck and drives it himself for contract hauling for commercial purposes, is required to take out a chauffeur's license.

Section 6320, General Code, provides in part :

"A person operating a motor vehicle, as chauffeur, shall file, annually, by mail or otherwise, with the * * * director of highways, or his duly authorized agent, upon blanks prepared under the authority of the * * * director of highways, an application for registration. The * * * director of highways shall appoint examiners and cause examinations to be held at convenient points throughout the state, as often as may be necessary. * * * Such said application for registration as chauffeur of a motor bicycle, motorcycle or motor tricycle shall be accompanied with a registration fee of one dollar (\$1.00), and such said application for registration as chauffeur of any other motor vehicle shall be accompanied by a registration fee of three dollars (\$3.00)."

Section 12624 which is a part of the Criminal Code, provides :

"Whoever operates a motor vehicle as a chauffeur without filing in the office of the director of highways the application required by law and paying the legal fee therefor, shall be fined not more than fifty dollars or suspended from the right to apply for a registration as a chauffeur for one year, or both."

Senate Bill No. 396 of the 90th General Assembly, being Section 6290, General Code, provides inter alia in Sub-section 15 :

" * * * * * * * * "

15. "Chauffeur" means any operator who operates a motor vehicle as an employee or for hire.

* * * * * * * * "

Much of the difficulty and confusion encountered in the practical operation of this law is because of the unfortunate use of the term "chauffeur" which ordinarily

has a narrower connotation than the definition laid down by the legislature. However, the word "chauffeur" has been defined by the legislature in clear terms as to what its meaning should be in these laws. It is to be noted from the legislative definition of the word "chauffeur" that it says "any operator who operates a motor vehicle" for hire and in the statute there is no exclusion of any such operator who owns *his own motor vehicle*. A man driving his own truck for contract commercial hauling falls within such classification as he is an "operator who operates a motor vehicle * * * for hire".

This construction, which appears to me to be the only reasonable construction of this section, is reinforced by prior opinions of this office. The legislative definition of the word "chauffeur" was identical when construed in Opinions of the Attorney General 1930, Vol. 1, page 164 at page 166 wherein it was stated:

" * * * The definition of chauffeur, however, as contained in paragraph 15 of Section 6290, supra, does not only include the operator of a motor vehicle as an employee, but also includes one who operates a motor vehicle for hire. I am of the view that any operator who operates a motor vehicle for hire is a chauffeur within the meaning of the section regardless of who owns the motor vehicle operated by him. In other words, if a motor vehicle is operated for hire, the pertinent consideration is the use to which the vehicle is put and not the ownership thereof. Certainly a taxicab driver is operating a motor vehicle for hire and is a chauffeur as defined in the section regardless of who owns the taxicab.* * * "

I am in accord with both the result and reasoning of the opinions referred to supra and consequently it is my opinion that if a man owns a truck and drives it himself for contract hauling for commercial purposes, he is required to take out a chauffeur's license.

Specifically answering your inquiries and summing up my conclusions, it is my opinion that:

1. By virtue of section 6301 and sub-section 13 of section 6290, General Code, independent contractors towing or hauling motor vehicles from the manufacturer to the dealer cannot be issued dealers' plates by the registrar of motor vehicles.

2. A person outside the dealers' employ who borrows from the dealer or his agents, and operates for strictly private purposes a dealers' motor vehicle with dealers' license attached thereto violates section 12618-2, General Code, and is subject to the penalties therein provided.

3. A person outside the dealers' employ who borrows from the dealer or his agents, and operates a dealers' motor vehicle for strictly private purposes substituting his own license plates for the dealers' violates section 12622 and section 12618, General Code, and is subject to the penalties therein provided.

4. If a dealer loans a dealers' motor vehicle to a person outside his employ for strictly private purposes, he is not exempt from other registration or taxation with respect to such motor vehicle as he is no longer the owner only for the purpose of "sale, lease or other like disposition" under section 6301, General Code.

5. It is a violation of section 12618-2, General Code, for an agent of a dealer to use the dealers' license plates on the agents' privately owned car, and such agent is liable to the penalties therein provided. It is also, under such circumstances, a violation of section 12618, General Code.

6. It is a violation of section 12618-2, General Code, for an agent of a dealer to use a dealers' motor vehicle with dealers' license plates attached thereto for strictly private purposes.

7. By virtue of section 6301, General Code, a dealer using a dealers' motor vehicle for private purposes is not exempt from other registration or taxation provided for other motor vehicles.

8. A dealer using a dealers' motor vehicle for private purposes violates section 12618-2, General Code, and is subject to the penalties therein provided.

9. A service truck should be classified as a "commercial car" for the purpose of taxation and its scale weight should include the weight of the wrecking equipment permanently attached thereto.

10. If a person owns a truck and drives it himself for contract hauling for commercial purposes, he is required to take out a chauffeur's license.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1886.

APPROVAL, BONDS OF TOLEDO CITY SCHOOL DISTRICT, LUCAS COUNTY, OHIO, \$34,000.00.

COLUMBUS, OHIO, November 20, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1887.

APPROVAL, BONDS OF CITY OF AKRON, SUMMIT COUNTY, OHIO.
\$6,000.00.

COLUMBUS, OHIO, November 20, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1888.

SANITARY DISTRICT—AUTHORIZED BY SECTIONS 6602-34, ET SEQ
TO EMPLOY ATTORNEY TO CONDUCT LEGAL BUSINESS.

SYLLABUS:

The director or directors of a sanitary district organized in pursuance of Sections 6602-34 et seq., of the General Code of Ohio, may in his or their discretion lawfully