

1479.

APPROVAL, NOTES OF GRANDVIEW HEIGHTS EXEMPTED VILLAGE
SCHOOL DISTRICT, FRANKLIN COUNTY—\$175,000.00.

COLUMBUS, OHIO, February 1, 1930.

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

1480.

MOTOR VEHICLE—MORTGAGEE REPOSSESSING A VEHICLE MUST
DELIVER TO A PURCHASER ALL BILLS OF SALE—WHEN CLERK
OF COURTS MAY MAKE CERTIFIED COPIES FOR SUCH MORTGA-
GEE.

SYLLABUS:

1. *A mortgagee, that repossesses a motor vehicle after the conditions of the mortgage have been broken and does not have copies of all former bills of sale, cannot lawfully give a bill of sale to a subsequent purchaser setting forth the special facts with reference to the manner of obtaining title to such automobile, but must execute a bill of sale therefor in the same way that any other association or person is required to do, that is by delivering to the purchaser a properly verified bill of sale, together with all bills of sale or certified copies thereof, back to and including the original bill of sale or back to and including the sworn statement.*

2. *The clerk of courts may make certified copies of bills of sale for a mortgagee who has repossessed an automobile after the conditions of the mortgage have been broken, when such mortgagee files an affidavit setting forth such facts and the further fact that he is unable to obtain copies of the bills of sale from the mortgagor.*

COLUMBUS, OHIO, February 1, 1930.

HON. PAUL J. WORTMAN, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date in which you request my opinion upon the following questions:

"1. Can the mortgagee who repossesses a motor vehicle under default in the mortgage, but who is unable to secure copies of former bills of sale, give a bill of sale to a subsequent purchaser as the successor in interest, setting up the special facts in the premises as under Section 6310-8?

2. Can the mortgagee who has repossessed a motor vehicle and who has not received a bill of sale or copies of former bills of sale from the mortgagor secure certified copies from the clerk of courts of former bills of sale without filing an affidavit that the copies have been lost, stolen or destroyed as provided in Section 6310-13a?"

As stated in your letter, the first question was answered by my predecessor in an opinion rendered October 21, 1927, found in Opinions of the Attorney General,

1927, Vol. III, p. 2093. My predecessor held as disclosed by the fourth branch of the syllabus as follows:

“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 contract or mortgage, lease or conditional sale, are required, upon the subsequent transfer of the ownership of such motor vehicles or used motor vehicles, to execute a bill of sale therefor as provided by law and deliver such bill of sale to the transferee together with all former bills of sale or sworn statements of ownership as required by Section 6310-8, General Code.”

Without entering into an extended discussion of this question, it is sufficient to say that after careful consideration of the opinion of my predecessor, I am unable to find any reason to depart from his holding and therefore your first inquiry must be answered in the negative.

With reference to your second inquiry, Section 6310-13a is pertinent. Section 6310-13a provides in part as follows:

“In case a copy of the bill of sale or sworn statement which has been filed according to the provisions of this chapter shall be 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 sworn statement of ownership has been lost, stolen or destroyed and on the payment of a fee of twenty-five cents. * * * ”

In the course of the opinion herein referred to rendered by my predecessor, he says:

“In a communication from one of the representatives of a mortgage company in this state it is contended that in most instances it is impossible for the mortgagee who has succeeded to the ownership of a car which he has repossessed after the conditions of the mortgage had been broken to procure certified copies of all former bills of sale. * * * * * ”

It is hard to conceive how a mortgage company can hide behind the failure of itself and its administrative officers to conform to the plain provisions of the law in the past and plead that as an excuse for not now complying with the law. It is equally hard to conceive how it can contend that in its former transactions it has acted in good faith in cases such as the concrete example it presents. Surely it would not have been so careless as not to have made some investigation as to how the applicant for the loan had acquired his title, and it would seem to me that the first source of information to be investigated would be the evidence of ownership which the law clearly required the owner of a car to have in his possession. If that were done, and the mortgage company was so solicitous of the feelings of the mortgagee as to not ask him to leave with them the former bills of sale which he had in his possession, surely there would have been nothing unethical or improper in making a notation of what these papers show so that if it became necessary to repossess the car it would not have to ‘search the records of every county in the state until the right county is found.’”

This language seems to indicate that mortgagees, in repossessing an automobile

after the conditions of the mortgage have been broken, could obtain certified copies of former bills of sale even though such bills of sale were not stolen, lost or destroyed. I am inclined to agree with this view. The provisions of Section 6310-13a are merely directory and do not limit the clerk to cases where the owner can make an affidavit that the former bills of sale were lost, stolen or destroyed. Any person who is the owner of an automobile is entitled to copies of bills of sale to complete evidence of his chain of title and if, for any good and sufficient reason, he cannot obtain them, the clerk of courts is authorized to make certified copies upon the filing of an affidavit by the owner setting forth the facts showing the reasons for requesting such certified copies and it is within the discretion of the clerk to make certified copies if he is satisfied that the person is the owner of the automobile and has good reason for applying for certified copies.

In specific answer to your inquiries, I am of the opinion that:

1. A mortgagee, that repossesses a motor vehicle after the conditions of the mortgage have been broken and does not have copies of all former bills of sale, cannot lawfully give a bill of sale to a subsequent purchaser setting forth the special facts with reference to the manner of obtaining title to such automobile, but must execute a bill of sale therefor in the same way that any other association or person is required to do, that is by delivering to the purchaser a properly verified bill of sale, together with all bills of sale or certified copies thereof, back to and including the original bill of sale or back to and including the sworn statement.

2. The clerk of courts may make certified copies of bills of sale for a mortgagee who has repossessed an automobile after the conditions of the mortgage have been broken, when such mortgagee files an affidavit setting forth such facts and the further fact that he is unable to obtain copies of the bills of sale from the mortgagor.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1481.

APPROVAL, ABSTRACT OF TITLE TO LAND OF FREE METHODIST
CHURCH OF NORTH AMERICA IN WORTHINGTON TOWNSHIP,
RICHLAND COUNTY, OHIO.

COLUMBUS, OHIO, February 1, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of recent date submitting for my examination and approval abstract of title, warranty deed, encumbrance estimate No. 6297, controlling board certificate and other files relating to the proposed purchase by the State of Ohio of a tract of land in Worthington Township, Richland County, Ohio, which is owned of record by the trustees of the Free Methodist Church of North America, and which is more particularly described as being a part of the southwest quarter of Section 13, township 21 of range 17, and described as follows: Beginning for the same at the southeast corner of said quarter; thence west with the south boundary line of said quarter 16 rods; thence north 5 rods; thence east 16 rods; thence south 5 rods to the place of beginning, containing one-half acre of land.

An examination of the abstract of title submitted shows that the trustees of said church have a good and indefeasible fee simple title to the property here