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1. MOTOR VEHICLE REGISTERED WITHOUT CHARGE — FEDERAL GOVERNMENT OR ANY AGENCY THEREOF EXERCISING GOVERNMENTAL FUNCTIONS SO ENTITLED—VEHICLE SHALL BE PUBLICLY OPERATED AND EXCLUSIVELY USED FOR PUBLIC PURPOSES—SECTION 6295 G. C.
2. MOTOR VEHICLE NOT PROPERLY REGISTERED—WHEN ASCERTAINED, DUTY OF REGISTRAR OF MOTOR VEHICLES TO TAKE NECESSARY ACTION TO ENFORCE REGISTRATION LAWS—SECTION 6290-1 G. C.

SYLLABUS:

1. The federal government, or any agency thereof which is exercising governmental functions, is entitled to have a motor vehicle registered without charge under the provisions of Section 6295, General Code, provided such vehicle is publicly operated and used exclusively for public purposes.

2. When it is ascertained a motor vehicle is not properly registered, it becomes the duty of the registrar of motor vehicles under the provisions of Section 6290-1, General Code, to take such action as may be necessary to enforce the registration laws.

Columbus, Ohio, October 29, 1943.

Bureau of Motor Vehicles, Department of Highways,
Columbus, Ohio.

Gentlemen :

Your request for my opinion reads :

"The present emergency has created circumstances and raised questions concerning the issuance of gratis license plates for government owned motor vehicles, particularly trucks and buses.

Heretofore this bureau issued gratis license plates upon proper application and presentation of proper Ohio certificate of title for motor vehicles owned by the Federal Government or any agency thereof including the U. S. Army, Navy, Defense Plant Corporation, Rubber Reserve Company and others, the issuance made solely on a publicly owned basis and on the definite assumption that the motor vehicles were operated exclusively for public purposes, or when ownership was vested in Defense Plant Corporation or Rubber Reserve Company, the operation was confined to corporate use of those corporations.

Because of the acute shortage of transportation facilities due primarily because of inability to obtain new buses and replacement parts for old buses, the U. S. Army has entered the picture to relieve the situation by leasing buses to existing transportation companies or to individual bus owners having operating authority, title to such buses remaining in the name of the U. S. Army. The question of license plate requirements is raised. It is our understanding that the U. S. Army uses two types of contract or lease, one where it is definitely known that the lessee will suffer financial loss in the operation of the buses in which case such lessee is compensated by the government and the other type of contract where it is presumed that the lessee will operate at a financial profit.

Under these circumstances your formal opinion is requested on the following :

1. Is the Federal Government or any agency thereof including Defense Plant Corporation and Rubber Reserve Company entitled to gratis license plates upon proper application accompanied by proper Ohio certificates of title?

2. Does the use of the motor vehicle have any bearing on the issuance of or refusal to issue gratis license plates?

3. If the answer to 2 is in the affirmative and it is determined that the use is restricted to a public purpose, what is the

responsibility of the Registrar in determining whether or not the intended use constitutes a public purpose? Is the applicant's affidavit as contained in the application, form of which is enclosed, sufficient to authorize issuance? What constitutes use for public purpose?

4. If after issuance of gratis license plates notwithstanding the affidavit executed on the application it is found that the motor vehicle is operated not for public purposes, what are the duties and powers of the Registrar?

Your early opinion will be appreciated."

Appended thereto is a printed form on which appears in large type the word "Gratis", and immediately underneath it is this language, "Application for 1943 Ohio registration of public owned motor vehicles." And since it bears on the matter under consideration, I note the wording of an affidavit also printed on said application which reads:

"Personally appeared before me, the undersigned, who being duly sworn deposes and says that he is the duly authorized representative of the branch of political subdivision named herein, that the statement of facts in this application is true and correct to the best of his knowledge and belief, THAT SAID POLITICAL SUBDIVISION IS THE OWNER OF THE MOTOR VEHICLE DESCRIBED HEREIN AND THAT SAID CAR IS BEING OPERATED FOR PUBLIC PURPOSES ONLY."

I infer from your aforementioned request that, when the necessary data is set forth on such application and the above affidavit is executed, it has been your practice to register without charge motor vehicles owned by the federal government and its agencies, the license plates which are issued by reason of such registration being, of course, the means whereby such vehicles may be identified.

I believe that in connection with your several questions it might be well at the outset to reflect upon the meaning of the words "Public purpose", since the legislation hereinafter referred to requires a motor vehicle to be so used. I therefore invite your attention to a statement which appears in 50 Corpus Juris, at page 860, to-wit:

"What may or may not be termed a 'public purpose' is not easily defined, and no definition has as yet been framed that will fit all conditions or provisions. In general a public purpose is a purpose relating to, and concerning, the public as contradistinguished from one or more individuals or corporations. In determining what is a public purpose, customs and usages may be

considered, but while recognizing the influence of customs and usages already established the courts recognize that customs and usages may change so that a purpose which was formerly conceded to be private may now be public. The term 'public purpose' is not to be construed narrowly, and the formulation of a general rule inflexibly applicable under all circumstances should be avoided. However, certain rules and tests have been formulated by which to determine whether a particular purpose is public or not. The determination of whether a particular purpose is public or private is ultimately a judicial question, but the public policy of the state as it has found expression in legislative enactments is entitled to weighty consideration and all reasonable doubts on the question should be resolved in favor of a legislative declaration thereon."

I turn now to a consideration of the several sections of the General Code which are apropos to your questions. Section 6294, General Code, provides in part that :

"Every owner of a motor vehicle and every person mentioned as owner in the last certificate of title bill of sale, or sworn statement of ownership of a motor vehicle which shall be operated or driven upon the public roads or highways of this state shall before the first day of April of each year, except as herein otherwise expressly provided, cause to be filed by mail or otherwise, in the office of the registrar or a deputy registrar, a written application in not less than triplicate for registration for the following registration year, beginning the first day of April of such registration year, on blanks to be furnished by the registrar for that purpose containing the following information: * * * "

Then follows a reference to the nature of the data to be supplied. Later on in this section we find this language :

* * * "Provided, however, that nothing in this section shall be so construed as to require the payment of license or registration taxes on a motor vehicle for any preceding year, or for any preceding period of a year, if such motor vehicle was not taxable for such preceding year or period under the provisions of sections 6291, 6292, 6294-1, 6294-2 and 6295 of the General Code. * * * "

It is therefore apparent that other legislative enactments are intended as applicable to certain motor vehicles. Reference to Section 6295, General Code, discloses that it provides in part :

"Motor vehicles, the title to which are in the state or any political subdivision thereof and used exclusively for public purposes shall be registered as provided in this chapter, without charge of any kind; but this provision shall not be construed as

excepting the operation of such vehicles from any other provision of this chapter and the penal laws relating thereto.

The *registrar of motor vehicles* shall accept any application to register a motor vehicle owned by the federal government which may be made by any officer, department or agent of such government." (Emphasis added.)

Shortly after this above quoted language was incorporated in this section, the Attorney General for 1920 had occasion to consider its purport. But in this connection it must be pointed out that, in lieu of the above emphasized words at the beginning of the quoted matter, the statute then provided, "Publicly owned and operated motor vehicles." In all other respects the section read the same as at present until we come to that portion thereof providing as to who shall accept such application. As will be observed, the registrar of motor vehicles has been substituted in place of the secretary of state. However, it is manifest this last mentioned change is of no consequence so far as the legal principles here involved are concerned.

In interpreting the above quoted portion of then Section 6295, it may be of some interest to note the views of my aforementioned predecessor. See Opinions of Attorney General for 1920, page 121, wherein it is stated :

"Theoretically speaking, under our form of government the people make all laws and their rights are superior to that of every other authority. However, the people can only operate through the agencies of government which they have established. It is believed that the language 'publicly owned and operated motor vehicles used exclusively for public purposes' relates to motor vehicles owned by the nation, state or any of their legally constituted subdivisions. * * *

* * * It seems clear that the legislature exempted, in section 6295, supra, from a charge all motor vehicles owned by the federal government. Therefore, it is not essential to discuss herein the proposition as to whether or not a state may legally require a federal agency to pay a license tax."

At a later date—and likewise before the enactment of the section into its present form—another of my predecessors had occasion to consider the authority of the secretary of state to register a motor vehicle which, although not owned by the federal government, it had the exclusive right to use for more than thirty days. I might say that one of the questions discussed was whether the federal government was an "owner" within the meaning of then Section 6290, and, having so concluded, it was held

that registration was authorized under the provisions of then Section 6295. I call attention to Opinions of Attorney General for 1927, page 2579, wherein it was said:

"I am therefore of the opinion that if any officer, department or agent of the federal government makes application to you to register a motor vehicle, of which it has the exclusive right to the use thereof for a period of greater than thirty consecutive days, it will be your duty to register said vehicle without charge of any kind pursuant to the provisions of Section 6295 of the General Code."

Several years later the provisions of said Section 6295 were again under review. The first paragraph of the syllabus of an opinion at page 182 of Opinions of Attorney General for 1933, notes the conditions that must exist before registration was authorized. It reads:

"Section 6295, General Code, does not authorize the Department of Motor Vehicles to register any motor vehicles, without charge, unless the following elements concur: (a) They are publicly owned. (b) They are publicly operated. (c) They are used exclusively for public purposes."

With the foregoing in mind, can it be said that in the use of the words "*Motor vehicles, the title to which are in the state*" instead of "*Publicly owned and operated motor vehicles*", it was the legislative intent to preclude the registration of government owned motor vehicles without charges of any kind? Stated conversely, was it the intent, by reason of such change in the language, that vehicles so owned must pay the registration fees required for privately owned vehicles? It would be difficult to reach the conclusion that the change in such legislation now requires a deviation from procedure heretofore followed for the several reasons which I shall hereinafter set forth.

In considering present Section 6295, it might appear at first blush that in the use of the word "state" it was intended to refer to those vehicles owned by the state of Ohio. But this cannot be the situation in view of the provisions of Section 6290, General Code, which states in part that:

"Definition of terms, as used in this chapter and in the penal laws, except as otherwise provided: * * *

16. 'State' includes the territories and federal districts of the United States, and the provinces of the Dominion of Canada."

As I read this language, a vehicle owned by any one of the other

states of the Union is entitled to registration without charge, provided it is used exclusively for public purposes. Likewise, vehicles owned by the several provinces that constitute the Dominion of Canada come within the provisions thereof. To say that the federal government—a union of all the sovereign states, created by the adoption of a federal constitution—is not within the purview of the statute seems to me to lead to an absurd conclusion. Legislation should never receive such a construction.

It is noteworthy that when Section 6295, *supra*, was enacted into its present form, the General Assembly did not omit that provision thereof to the effect that an application to register a motor vehicle owned by the federal government should be accepted. This concluding paragraph of the section, standing alone, does not provide that such a vehicle shall be used exclusively for public purposes. Nor does it say that registration should be without charge. If it were not intended that a motor vehicle of the federal government should come within the exemption provision, then what purpose could have been served by permitting this concluding paragraph to remain in the section under consideration? Certainly it has some meaning. I must conclude, therefore, in the light of the legislation as it previously existed and as interpreted by my aforementioned predecessors, that motor vehicles owned by the federal government are within the purview of Section 6295, *supra*. Such a construction permits the giving of effect to this last paragraph which would otherwise seem to be surplus language.

We might consider for a moment what would be the situation if it could be said that Section 6295, *supra*, does not authorize the exempting of motor vehicles owned by the federal government. I think it is well established that the means or agencies selected by the federal government as necessary or convenient to the exercise of its functions cannot be subjected to the taxing power of the states. It seems likewise settled that the federal government cannot tax the agencies of a state, or the means necessary to the exercise of its sovereign functions. Any attempt to tax vehicles owned by the federal government would necessarily result in a deviation from these principles. I am of course aware of the fact that Section 6291, General Code, which provides in part that "An annual license tax is hereby levied upon the operation of motor vehicles on the public roads or highways of this state" is an excise rather than a property tax. See *Calerdine v. Freiberg*, 129 O. S. 453, wherein the court, at page 457, said:

"At the threshold of this discussion it is of importance to observe that there is no dispute as to the precise nature of this tax. Both the Court of Common Pleas and the Court of Appeals

held it to be an excise rather than a property tax. Counsel have so considered it in their briefs and oral arguments. Clearly this is correct."

However, I cannot bring myself to the view that by the change in the wording of Section 6295, *supra*, it was thereby intended that the taxing power of this state should thus be extended to place what might be considered a burden upon the federal government in the exercise of its functions. But whether such a tax would or would not be a burden, I need not here decide. Suffice it to say that an effort to impose such a tax might be seriously doubted.

In your first question you have asked specifically as to the right to issue gratis license plates to a governmental agency and more particularly to Defense Plant Corporation and Rubber Reserve Company. During the past decade or so there have mushroomed into existence a great many corporations which have been created by act of Congress. Precisely why there has been this tendency on the part of the government to exercise its sovereign functions through these corporate devices has not always been apparent. However, when Congress makes use of the corporate entity in the exercise of its lawfully granted powers, the functions of the corporation are governmental in character and it becomes a governmental instrumentality. Speaking of the Home Owners Loan Corporation in the case of *Graves v. N. Y.*, 306 U. S. 466, 477 (1938), the court said :

"As that Government derives its authority wholly from powers delegated to it by the Constitution, its every action within its constitutional power is governmental action, and since Congress is made the sole judge of what powers within the constitutional grant are to be exercised, all activities of governments constitutionally authorized by Congress must stand on a parity with respect to their constitutional immunity from taxation (citing cases). And when the national government lawfully acts through a corporation which it owns and controls, those activities are governmental functions entitled to whatever tax immunity attaches to those functions when carried on by the Government itself through its departments. (Cases cited.)

And further it was stated :

"* * * so that every agency which Congress can constitutionally create is a governmental agency. And since the power to create the agency includes the implied power to do whatever is needful or appropriate, if not expressly prohibited, to protect the agency, there has been attributed to Congress some scope, the limits of which it is not now necessary to define, for granting or

withholding immunity of Federal agencies from state taxation.” (id. page 478)

Defense Plant Corporation and Rubber Reserve Company have sprung into being by virtue of the Reconstruction Finance Corporation Act (15 U. S. C. A. Section 606b). Pursuant thereto power was given to create corporations to aid the government of the United States in its national defense program. In view of what I have said with reference to these two corporations, it is manifest that so far as the right to register motor vehicles which they own, they should be regarded as enjoying the same privilege as that extended to the federal government.

Therefore, in specific answer to your first inquiry, it is my opinion that the federal government, or any agency thereof which is exercising governmental functions, is entitled to have a motor vehicle registered without charge under the provisions of Section 6295, General Code, provided such vehicle is publicly operated and used exclusively for public purposes.

I turn now to your second question. I believe it must be manifest, in view of what has hereinbefore been stated, that the use which is made of a motor vehicle is a determining factor with respect to whether or not it may be registered without charge. It follows, of course, that if registration is authorized under the provisions of Section 6295, *supra*, then so-called gratis license plates may be used for such vehicle. As this question calls for a “yes” or “no” answer, I must therefore answer in the affirmative.

Since I have answered your second question in the affirmative, I now give consideration to that portion of your third question which requests my opinion as to the responsibility of the registrar of motor vehicles to determine when application is made to exempt a motor vehicle pursuant to the provisions of Section 6295, *supra*, whether or not the intended use is for a public purpose.

It may be said that every public officer is bound to use reasonable skill and diligence in the performance of his official duties. In other words, he is bound, *virtute officii*, to bring to the discharge of his duties that prudence, caution and attention which men usually exercise in the management of their own affairs. I might suggest that when the federal government seeks registration of a motor vehicle, it may reasonably be assumed that, since it is public property as distinguished from private property, the intended use will be for a public purpose. In connection with publicly owned motor vehicles, you require an affidavit to be executed that the same “is being operated for public purposes only” in order to register the same pursuant to Section 6295, *supra*. Whether such vehicle

is so operated is of course a factual question. However, it would seem to me that the registrar of motor vehicles has taken reasonable precaution when he exacts such an affidavit, the nature of which I have hereinbefore set forth. In the absence of information which might be sufficient to lead to the belief the affidavit was false, the registrar would be acting properly in the premises.

The remaining portion of your question, viz., what constitutes use for public purposes, need not here be answered. I commented on this matter at the inception of this opinion.

I consider now your last question in the light of the information contained in the third paragraph of your letter. You have therein pointed out that, due to the acute shortage of transportation facilities, certain buses owned by the United States Army have been leased to existing transportation companies or individual bus owners. A leased bus, while still the property of the federal government, when used by a transportation company ceases to be used exclusively for public purposes or to be publicly operated. Under such circumstances, although it may have been properly registered at some previous time under the provisions of Section 6295, supra, this legislative enactment must be construed to mean that the character and type of use should continue throughout registration period. It does not give blanket authority for the operation of a vehicle for any purpose whatever. Were this section to be construed otherwise it would lead to this situation. Immediately following the date of registration a vehicle could be used for other than public purposes up to the time of the next registration. Such a situation would clearly thwart the purposes of the statutory enactments relating to registration.

You have inquired as to the duties and powers of the registrar when it is found that motor vehicles are not operated for public purposes. With respect thereto, I am assuming that the buses in question were leased subsequent to the date on which they were registered without charge. You mention also that the operation of said buses results from two types of lease—one wherein it is known that the lessee will sustain a loss, in which event the deficit is to be made up by the government, and the other wherein it is anticipated the lessee will make a profit. For reasons hereinafter set forth, I think it will be apparent the type of lease has no bearing on the matter.

I think I should point out that Section 6290-1, General Code, imposes certain duties upon the registrar. The pertinent portion thereof reads:

“There is hereby created in the department of highways, a bureau of motor vehicles which shall be administered by a regis-

trar of motor vehicles, referred to hereafter in this act as the registrar. * * *

*It shall be the duty of the registrar to enforce and administer the laws of the state relative to the registration of and certificates of title for motor vehicles and the licensing of motor vehicle dealers and salesmen. The registrar shall have power to adopt and promulgate such forms, rules and regulations as he may deem necessary to carry out the provisions of all laws he is required to administer * * ** (Emphasis added.)

In addition thereto I find the following statutory enactment which, in passing, I think it appropriate to call to attention. Section 1181-3 General Code, provides in part that :

“It shall be the duty of the state highway patrol to enforce the laws of the state relating to the registration and licensing of motor vehicles;” * * *

As the question may arise as to who is subject to prosecution when a motor vehicle is operated without being properly registered, I therefore feel I should refer you to Section 12620, General Code, which reads :

“Whoever, being the owner or *chauffeur* of a motor vehicle operated or driven upon the public roads or highways, fails to file or cause to be filed annually the application for registration required by law or to pay the tax therefor shall be fined not more than twenty-five dollars.” (Emphasis added.)

While it is manifest that the federal government cannot be subjected to prosecution under the provisions of this section, the enactment would reach the person who operated one of its vehicles if the same were not properly registered.

I might again refer to Section 6290, General Code, which provides in part that :

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

14. ‘Operator’ includes any person who drives or operates a motor vehicle upon the public highways.

15. ‘Chauffeur’ means any operator who operates a motor vehicle as an employe or for hire, or any operator whether or not the owner of the vehicle, operating such vehicle for transporting, for gain, compensation or profit, either (1) persons; or (2) property owned by another. * * *” (Emphasis added.)

Another of my predecessors had occasion to consider the provisions of the above mentioned Section 12620 with reference to their application to the operation of a publicly owned vehicle upon the highways of this state. I direct attention to Opinions of Attorney General for 1933, at page 821, paragraphs 3 and 4 of the syllabus reading:

“3. It is unlawful for a bus driver to operate a motor vehicle registered as a publicly owned and operated vehicle over the public highways for any other than a public purpose. Motor vehicles so registered can not legally be operated over the public highways for any private purpose.

4. The operating on public highways of a motor vehicle registered as a publicly owned and operated motor vehicle for any other than a public purpose, is a violation of section 12620, General Code, and violations should be prosecuted under that section.”

I am in full accord with the views of my aforesaid predecessor as above stated. As applied to the matter here under consideration, I believe this conclusion must be reached. A vehicle owned by the federal government which it leases to a person, firm or corporation, the right to control the movements thereof having passed out of the hands of the government, such vehicle ceases to be within the provisions of Section 6295, *supra*. Under such circumstances the operator or chauffeur thereof would be subject to prosecution for violation of the provisions of Section 12620, *supra*.

I apprehend that a categorical answer to your last question would leave in your mind some uncertainty as to the procedure to be followed when it is ascertained that a leased bus is operated on the roads or highways of this state. Your letter asks that under the circumstances therein set forth I render to you my opinion. I therefore feel that it is entirely appropriate that I make certain observations which I trust may prove to be of some assistance in solving the problem that has arisen by reason of the conditions that exist at this time. Our nation is presently engaged in a state of war which has resulted in a curtailment of the manufacture of motor vehicles. Transportation companies are without the usual means of replacing or supplementing their rolling equipment. Our transportation systems are struggling to provide the means whereby persons may be conveyed to their places of employment—in many instances to manufacturing plants engaged in work that is essential to the prosecution of the war effort. Under normal conditions there would be no occasion for the federal government to lease any of its vehicles so that their use ceased to be for a governmental purpose. But we must take the situation as we now find it.

I find no statutory authority for the registration of a motor vehicle by other than the owner. Consequently, I think it must follow that buses which the federal government leases should be registered by it. Such registration cannot be made pursuant to the provisions of Section 6295, *supra*. However, I see no reason why, if the proper registration fees are paid, it can make any difference from what source they are derived. While I am aware that under the type of lease wherein the government makes up any deficit that may be sustained by a transportation company in the operation of leased buses, I do not believe that the imposition of a registration fee can be said to impose a burden on the federal government which would interfere with the operation of any of its sovereign powers. I trust that this discussion may prove of some assistance with respect to the matter.

I must of course conclude that when a motor vehicle owned by the federal government, which was theretofore registered without charge under the provisions of Section 6295, General Code, is leased to a transportation company, the right to control the movements and operation being vested in the lessee, such vehicle ceases to be publicly operated and used exclusively for public purposes. When this situation comes about, the vehicle is no longer properly registered. Consequently, in specific answer to your fourth question, it is my opinion that :

When it is ascertained a motor vehicle is not properly registered, it becomes the duty of the registrar of motor vehicles under the provisions of Section 6290-1, General Code, to take such action as may be necessary to enforce the registration laws.

Respectfully,

THOMAS J. HERBERT,
Attorney General.