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MOTOR VEHICLE — PURCHASER WITHOUT DEALER'S LICENSE NOT ENTITLED TO PROCURE CERTIFICATE OF TITLE WITHOUT PAYMENT OF SALES TAX—PURCHASER ALLEGED TRANSFER NOT A RETAIL SALE—SECTIONS 4517.01 THROUGH 4517.18, 5739.01 RC.

SYLLABUS:

A person who purchases motor vehicles without having a dealer's license as required by Sections 4517.01 to 4517.18, inclusive, Revised Code, is not entitled to procure a certificate of title without payment of the sales tax on the ground that the transfer is not a retail sale as defined by Section 5739.01, Revised Code.

Columbus, Ohio, March 26, 1956

Hon. Oliver R. Marshall, Prosecuting Attorney
Lake County, Painesville, Ohio

Dear Sir:

Your request for my opinion reads in part as follows:

“My question is this: Does the law require the payment of a sales tax, by a person who purchases an automobile house trailer for the purpose of reselling the same in its identical form, but is not licensed as an automobile dealer?”

The difficulty presented by your inquiry does not lie with the Sales Tax Act but with restrictions in the motor vehicle laws. Section 4517.02, Revised Code, states in part as follows:

“No person other than a salesman or dealer licensed according to sections 4517.01 to 4517.18, inclusive, of the Revised Code, shall engage in the business of selling motor vehicles at retail within this state.”

Section 4517.18, Revised Code, provides:

“No person shall engage in the business of selling, displaying, offering for sale, or dealing in motor vehicles at retail without having a license therefor as required by sections 4517.01 to 4517.18, inclusive, of the Revised Code.”

Section 4501.01, Revised Code, defines "motor vehicle" as follows:

"As used in Chapters 4501., 4503., 4505., 4507., 4509., 4511., 4513., 4515., and 4517. of the Revised Code, and in the penal laws, except as otherwise provided:

"* * * (B) 'Motor vehicle' means any vehicle propelled *or drawn by power* other than muscular power or power collected from overhead electric trolley wires, except road rollers, traction engines, power shovels, power cranes, and other equipment used in construction work and not designed for or employed in general highway transportation, well drilling machinery, ditch digging machinery, farm machinery, threshing machinery, hay baling machinery, corn sheller, hammermill and agricultural tractors and machinery used in the production of horticultural, agricultural, and vegetable products." (Emphasis added.)

The possession of a vendor's license issued pursuant to Section 5739.17, Revised Code, does not permit a person to engage in the retail sale of motor vehicles without a dealer's license any more than a vendor's license would authorize a person to sell beer or intoxicating beverages without a permit from the Department of Liquor Control.

It is true that the clerk of courts is not required to collect the tax when the transaction in this state is not a retail sale as defined by Section 5739.01, Revised Code, and it is likewise true that a sale for resale is not a retail sale as defined in that section. However, under the provisions of Chapter 4517., Revised Code, already noted, only a licensed dealer in motor vehicles is permitted to buy a motor vehicle for resale. Therefore, a clerk of courts can issue a certificate of title without collection of the sales tax, on the basis that the vehicle is to be resold, only in those cases where the application for such certificate is made by a licensed dealer.

Therefore, it is my opinion and you are advised that a person who purchases motor vehicles without having a dealer's license as required by Sections 4517.01 to 4517.18, inclusive, Revised Code, is not entitled to procure a certificate of title without payment of the sales tax on the ground that the transfer is not a retail sale as defined by Section 5739.01, Revised Code.

Respectfully,
C. WILLIAM O'NEILL
Attorney General