

OPINION NO. 72-044**Syllabus:**

1. In order to avoid the late filing fee prescribed by Section 4505.06, Revised Code, an applicant for issuance of a new certificate of title to a motor vehicle must file the application within fifteen days after both delivery of the vehicle and assignment of the old certificate of title to the purchaser.

2. The fifteen-day limit applies to applicants who present an out-of-state assigned certificate as well as those who present an Ohio assigned certificate.

To: C. Donald Curry, Registrar, Bureau of Motor Vehicles, Columbus, Ohio
By: William J. Brown, Attorney General, May 25, 1972

Your request for my opinion as to the effect of a recent amendment of a Section in Chapter 4505, Revised Code, the Certificate of Motor Vehicle Title Law, reads as follows:

"May I respectfully request your opinion on the recently enacted Amended House Bill No. 651 which reads in part:

"In all cases of transfer of motor vehicles the application for certificate of title shall be filed within fifteen days after the assignment or delivery of such motor vehicle. Whenever an application for a certificate of title is not filed within such period, the clerk shall collect a fee of five dollars for the issuance of the certificate. The fee shall be in addition to all other fees established by Chapter 4505. of the Revised Code, and shall be retained by the clerk. The registrar of motor vehicles shall provide, on the certificate of title form prescribed by section 4505.07 of the Revised Code, language necessary to give evidence of the date on which the assignment or delivery of such motor vehicle was made."

"Is the fifteen days computed from the earliest date of assignment or delivery or the later date of the two if the vehicle is not assigned and delivered on the same date?

"Does the fifteen days apply to an applicant presenting an out-of-state certificate of title as well as one pre-

sending an assigned Ohio title?"

The certificate of title law, first enacted in 1937, was designed to prevent fraud, traffic in stolen automobiles, and other "well known and flagrant types of abuse which were perpetrated under the old 'Bill of Sale Law.'" State, ex rel. City Loan & Savings Co., v. Taggart, 134 Ohio St. 374, 375 (1938); Casualty Co. v. Gall, 11 Ohio App. 2d 217, 218 (1967), affirmed, 15 Ohio St. 2d 261 (1968); see also the following language from Section 4501.02, Revised Code:

* * * * *

"All laws relating to the licensing of automobile dealers and salesmen designating and granting power to the registrar shall be liberally construed to the end that the practice and commission of fraud in the business of selling motor vehicles may be prohibited and prevented."

Chapter 4505, *supra*, carefully prescribes the procedures to be followed for the transfer of title to an automobile, and the Registrar is given broad authority to administer the law and to issue appropriate regulations. Section 4505.02, Revised Code, provides in pertinent part:

"The registrar of motor vehicles shall issue such regulations as he deems necessary to insure uniform and orderly operation of sections 4505.01 to 4505.19, inclusive, of the Revised Code, and the clerks of the courts of common pleas shall conform thereto. The registrar shall receive and file in his office all instruments forwarded to him by such clerks under such sections and shall maintain indexes covering the state at large for the instruments so filed. * * *

"The registrar shall check with his record all duplicate certificates of title received in his office from such clerks. If it appears that a certificate of title has been improperly issued, the registrar shall cancel such certificate. * * *"

Section 4505.03, Revised Code, provides that no automobile shall be sold without delivery of the seller's certificate of title properly assigned to the purchaser. The Section reads as follows:

"No person, except as provided in section 4505.05 of the Revised Code, shall sell or otherwise dispose of a motor vehicle without delivering to the purchaser or transferee thereof a certificate of title with such assignment thereon as is necessary to show title in the purchaser; nor shall any person, except as provided in section 4505.11 of the Revised Code, purchase or otherwise acquire a motor vehicle without obtaining a certificate of title for it in his name in accordance with sections 4505.01 to 4505.19, inclusive, of the Revised Code."

No purchaser acquires title to an automobile until he has received a certificate of title. Section 4505.04, Revised Code, provides in pertinent part:

"No person acquiring a motor vehicle from the owner thereof, whether such owner is a manufacturer, importer,

dealer, or otherwise, shall acquire any right, title, claim, or interest in or to said motor vehicle until such person has had issued to him a certificate of title to said motor vehicle, or delivered to him a manufacturer's or importer's certificate for it; * * *."

Where a new vehicle is transferred, no title passes unless the manufacturer's or importer's certificate of ownership is properly assigned to the dealer or other purchaser. Section 4505.05, Revised Code, provides:

"No manufacturer, importer, dealer, or other person shall sell or otherwise dispose of a new motor vehicle to a dealer to be used by such dealer for purposes of display and resale, without delivering to such dealer a manufacturer's or importer's certificate executed in accordance with sections 4505.01 to 4505.19, inclusive, of the Revised Code, and with such assignments thereon as are necessary to show title in the purchaser thereof. No dealer shall purchase or acquire a new motor vehicle without obtaining from the seller thereof such manufacturer's or importer's certificate."

The recent amendment to which you refer altered and amplified the third paragraph of Section 4505.06, Revised Code. The first two paragraphs, which remain the same, read as follows (133 Ohio Laws, 2696):

"Sec. 4505.06. Application for a certificate of title shall be made upon a form prescribed by Section 4505.07 of the Revised Code, and shall be sworn to before a notary public or other officer empowered to administer oaths. Such application shall be filed with the clerk of the court of common pleas of the county in which the applicant resides if the applicant is a resident of this state or, if not a resident, in the county in which the transaction is consummated. Such application shall be accompanied by the fee prescribed in section 4505.09 of the Revised Code; and if a certificate of title has previously been issued for the motor vehicle in this state, it shall be accompanied by said certificate of title duly assigned, unless otherwise provided in sections 4505.01 to 4505.19, inclusive, of the Revised Code. If a certificate of title has not previously been issued for such motor vehicle in this State, said application, unless otherwise provided in such sections, shall be accompanied by a manufacturer's or importer's certificate; or by a proper bill of sale or sworn statement of ownership, the originals of which have been filed with the clerk, or a certified copy thereof; or by a certificate of title, bill of sale, or other evidence of ownership required by the law of another state from which such motor vehicle was brought into this state. If the application refers to a motor vehicle last previously registered in another state, the application shall also be accompanied by the physical inspection certificate required by section 4505.061 of the Revised Code. The clerk shall retain the evidence of title presented by the applicant and on which the certificate of title is issued. The clerk shall use reasonable diligence

in ascertaining whether or not the facts in said application are true by checking the application and documents accompanying it with the records of motor vehicles in his office; if satisfied that the applicant is the owner of such motor vehicle and that the application is in the proper form, the clerk shall issue a certificate of title over his signature and sealed with his seal.

"In the case of the sale of a motor vehicle by a dealer to a general purchaser or user, the certificate of title shall be obtained in the name of the purchaser by the dealer upon application signed by the purchaser."

Prior to amendment the third paragraph of Section 4505.06, supra, provided as follows (133 Ohio Laws, 2697):

"In all other cases such certificates shall be obtained by the purchaser. In all cases of transfer of motor vehicles the application for certificate of title shall be filed within seven-days after the delivery of such motor vehicle."

As a result of the amendment the third paragraph now reads (amended language emphasized):

"In all other cases such certificates shall be obtained by the purchaser. In all cases of transfer of motor vehicles the application for certificate of title shall be filed within fifteen days after the assignment or delivery of such motor vehicle. Whenever an application for a certificate of title is not filed within such period, the clerk shall collect a fee of five dollars for the issuance of the certificate. The fee shall be in addition to all other fees established by Chapter 4505. of the Revised Code, and shall be retained by the clerk. The registrar of motor vehicles shall provide, on the certificate of title form prescribed by section 4505.07 of the Revised Code, language necessary to give evidence of the date on which the assignment or delivery of such motor vehicle was made."

There has been some uncertainty as to the exact point of time at which, under the above Sections, title to an automobile passes from the seller to the buyer. Compare Casualty Co. v. Call, 15 Ohio St. 2d 261 (1968), with Commercial Credit Corp. v. Pottmeyer, 176 Ohio St. 1 (1964). See also Oldsmobile, Inc. v. Petry, 12 Ohio App. 2d 68 (1967); Opinion No. 676, Opinions of the Attorney General for 1959. But it is unnecessary to deal with that issue here. Your question assumes that there has been a sale in compliance with the commercial code (Section 1302.42 (B), Revised Code) by the assignment of the seller's certificate of title and the delivery of the automobile. Commercial Credit Co. v. Schreyer, 120 Ohio St. 568 (1929); Opinion No. 7, Opinions of the Attorney General for 1963. You ask how soon the application for a new certificate of title in the name of the purchaser must be filed with the clerk of court.

The amendment to Section 4505.06, supra, provides that the application for a new certificate must be filed with the clerk of court "within fifteen days after the assignment or delivery of such motor vehicle", and that if it is not timely filed the clerk shall charge an additional fee of five dollars. If both the assignment of the

certificate and the delivery of the vehicle occur simultaneously, there is, of course, no problem about the running of the fifteen-day period. But if the assignment and the delivery occur on different date, the specific question is whether the fifteen days begin to run from the earlier date, or from the later one.

As has been noted above, the certificate of title law was designed to eliminate, as nearly as possible, uncertainty, confusion, and abuses in the transfer of title to a motor vehicle. The issuance of a new certificate of title is obviously intended to take place after the sale has been completed; and the sale, as has also been pointed out above, is not completed until the seller's old certificate of title has been assigned to the purchaser and the vehicle has been delivered to the purchaser. Mere delivery of the car would not accomplish a sale in view of Sections 4505.03, 4505.04 and 4505.05, supra. Neither is assignment of the seller's certificate of title alone sufficient to constitute a sale, although it would undoubtedly be held a contract to sell upon which the buyer could bring an action for specific performance. Since the intent of the certificate of title law is that the new certificate be issued after the sale is complete, and since the sale is not complete until both the old certificate has been assigned and the vehicle has been delivered, I conclude that, when these two acts occur on different dates, the fifteen-day period for issuance of the new certificate under Section 4505.06, supra, begins to run from the later of the two dates. In a previous Opinion on another aspect of this same Section, I referred to the well settled rule that statutes must be interpreted to avoid ambiguity and to produce a reasonable and consistent whole. Opinion No. 71-037, Opinions of the Attorney General for 1971. Pursuant to Section 1.02 (H), Revised Code, the words "assignment or delivery" should be read "assignment and delivery", since that is what the sense of the certificate of title law requires. See Toledo v. Bernoir, 18 Ohio St. 2d 94, 99-100 (1969), interpreting another phrase of the same Section.

No administrative difficulties should be created by this interpretation, since the Registrar has authority to issue all necessary regulations (Section 4505.02, supra), and under the amendment to the third paragraph of Section 4505.06, supra, he may provide for evidence of the dates of the assignment and the delivery of the vehicle on the assignment form.

Your second question asks whether the fifteen-day limit of Section 4505.06, supra, applies to an applicant for a new certificate who presents an out-of-state certificate which has been assigned to him. In view of the plain language of that Section and of the succeeding Section 4505.061, Revised Code, I think that there can be no doubt that the fifteen-day limit does apply in such a case, just as it applies to an applicant who presents an assigned Ohio certificate of title.

In specific answer to your questions it is, therefore, my opinion, and you are so advised, that:

1. In order to avoid the late filing fee prescribed by Section 4505.06, Revised Code, an applicant for issuance of a new certificate of title to a motor vehicle must file the application within fifteen days after both delivery of the vehicle and assignment of the old certificate of title to the purchaser.

2. The fifteen-day limit applies to applicants who present an out-of-state assigned certificate as well as those who present an Ohio assigned certificate.