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SALES—OHIO NEW CAR DEALER WHO PURCHASES NEW CAR FROM FOREIGN DEALER MUST PROCURE MANUFACTURER'S OR IMPORTER'S CERTIFICATE—SECTION 4505.05 R. C.—CAR TO BE FOR DISPLAY AND SALE IN OHIO AS NEW CAR—O. A. G. 924, 1946, DISTINGUISHED.

SYLLABUS:

Where an Ohio new car dealer purchases a new car from a new car dealer in a foreign state, such Ohio new car dealer must comply with Section 4505.05, Revised Code, by procuring a manufacturer's or importer's certificate, if such new car is to be held for display and sale as a new car in Ohio. (Opinion No. 924, Opinions of the Attorney General for 1946, distinguished.)

Columbus, Ohio, November 21, 1956

Hon. Harold D. Spears, Prosecuting Attorney
Lawrence County, Ironton, Ohio

Dear Sir:

I have before me your request for my opinion in which you incorporate the following question:

“In your opinion, can an Ohio new car dealer purchase a new car from a new car dealer of another state without receiv-

ing a Manufacturer's Certificate of Origin assigned to the Ohio new car dealer by the new car dealer of the other state, or is an invoice from the new car dealer of the other state to the new car dealer of Ohio sufficient?"

The manner in which application is to be made for an Ohio certificate of title is prescribed in Section 4505.06, Revised Code, which provides in pertinent part:

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

(Emphasis added.)

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In opinion No. 924, Opinions of the Attorney General for 1946, page 299, this section was under consideration and it was there stated that a resident of Ohio who was a purchaser "user" of a new car purchased in a foreign state need only present, in proper form, an application for certificate of title which is accompanied by whatever evidence of ownership of such motor vehicle as was required by the law of the state from which such motor vehicle was brought into this state. This procedure is expressly authorized in Section 4505.06, supra.

It should be noted, however, that this section has an express proviso wherein it is said, "unless otherwise provided in such sections." In Section 4505.05, Revised Code, the instances are prescribed in which a manufacturer's or importer's certificate is required to be obtained. This section 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.*" (Emphasis added.)

These sections were held to be constitutional in State, ex rel. The City Loan & Savings Co., v. Taggart, 134 Ohio St., 374, wherein it was said at page 379:

"No extra-territorial scope may be given to these sections. The law must be limited in its operation to those manufacturers, etc., who are subject to the jurisdiction of Ohio, and to those persons in Ohio who are obligated to secure a certificate of title under the law of this state. If they do not present the documentary proof demanded they are not entitled to a certificate."

A new car dealer in Ohio is clearly a person in Ohio and by virtue of Section 4505.06, supra, is obligated to secure a certificate of title in the name of the purchaser upon sale of a motor vehicle. Thus, while the state of Ohio cannot exercise jurisdiction over subjects of foreign states, the state does possess the power to govern Ohio new car dealers and control the method by which the ownership of new cars is transferred in Ohio. This is a valid exercise of the police power as the court in the

Taggert case, *supra*, stated. An Ohio resident who purchases a car in a foreign state submits to the laws of that state, but such a resident who purchases a car from a new car dealer in Ohio relies upon the protection offered by the Ohio certificate of title. Unless the new car dealer is required to obtain the manufacturer's or importer's certificate as prescribed by Section 4505.05, *supra*, the Ohio purchaser has no assurance that there has been no fraud in obtaining the certificate of title or that he is, in fact, purchasing a new car.

Accordingly, it is my opinion that where an Ohio new car dealer purchases a new car from a new car dealer in a foreign state, such Ohio new car dealer must comply with Section 4505.05, Revised Code, by procuring a manufacturer's or importer's certificate, if such new car is to be held for display and sale as a new car in Ohio. Opinion No. 924, Opinions of the Attorney General for 1946, distinguished.

Respectfully,

C. WILLIAM O'NEILL
Attorney General