

899

MOTOR VEHICLE—SALE IN OHIO BY RESIDENT OF ANOTHER STATE—OHIO CERTIFICATE OF TITLE MUST BE SECURED IN NAME OF SELLER—NECESSARY FOR LAWFUL TRANSFER OF TITLE TO OHIO PURCHASER IN OHIO.

## SYLLABUS:

Whenever a resident of another state sells a motor vehicle in Ohio, he must first secure an Ohio certificate of title in his own name before he may lawfully transfer title to the Ohio purchaser in Ohio.

Columbus, Ohio, November 6, 1951

Hon. John Rossetti, Prosecuting Attorney  
Stark County, Canton, Ohio

Dear Sir:

I have before me your request for my opinion, which reads as follows:

“The Clerk of Courts of Stark County has requested us to secure the ruling of your office on the following question:

"A troublesome case has arisen in this county because of the frequency with which motor vehicles owned by residents of other states are sold to Ohio residents. For example, a case recently arose where a resident of the State of Michigan possessing a certificate of title came to Canton, Ohio, and within a few days after his arrival he sold his car in Canton and went back to the State of Michigan. The Michigan certificate of title was duly transferred and assigned to the Ohio owner and the signature of the seller was notarized by an Ohio notary public. The Ohio owner then made an application to the Clerk of Courts for an Ohio certificate of title and handed to the clerk as evidence of ownership the Michigan certificate of the previous owner, together with the transfer to the applicant on the reverse side thereof. The Clerk of Courts has refused to issue an Ohio certificate and has followed a ruling of motor vehicle registration to the effect that if the notary on the assignment of the certificate of the other state is a notary of the other state, the Ohio certificate can issue to the Ohio owner. However, if the notary on the assignment of the certificate of the other state is an Ohio notary, an Ohio certificate cannot issue to the Ohio owner unless the notary jurat is changed or the foreign owner secures an Ohio certificate.

"Section #6290-3 and #6290-5 seem to be the statutes applicable. The first obviously requires that no person can sell a motor vehicle without delivering a certificate of title, although the statute does not state that it must be an Ohio certificate. The second statute, #6290-5, also obviously provides for situations where a motor vehicle is brought into this state for which there is no certificate of title. In brief, the latter section gives power to the clerk of courts to issue an Ohio certificate when the application for the same is accompanied by a certificate of title or a bill of sale or other evidence of ownership required by the law of another state. We think that #6290-5 governs the situation and that even though the transfer or assignment takes place in Ohio the Clerk of Courts must issue a certificate based on the assignment or certificate of evidence of ownership issued by the other state.

"Because of the frequency with which this troublesome question comes up, we would like to have a ruling from your office on the following question :

"Whenever a resident of another state sells a motor vehicle in Ohio, must he secure an Ohio certificate of title before transferring to the Ohio owner under Section #6290-3; or may the transferee compel the issuance of an Ohio certificate of title on his own application accompanied by the certificate of the foreign state properly transferred and endorsed to the Ohio applicant?"

Section 6290-3, General Code, reads as follows :

"No person except as provided in the preceding section

hereafter shall sell or otherwise dispose of a motor vehicle without delivery (delivering) to the purchaser or transferee thereof a certificate of title with such assignment thereon as may be necessary to show title in the purchaser, nor purchase or otherwise acquire a motor vehicle unless he shall obtain a certificate of title for the same in his name in accordance with the provisions of this chapter."

This section was enacted by Amended House Bill No. 773 of the 92nd General Assembly and was effective in its present form January 1, 1938.

Your request indicates that Section 6290-5, General Code, governs the situation and requires an Ohio title to be issued when the transferee presents the foreign Certificate of Title which has been assigned to him within the State of Ohio. That section provides in part as follows :

"Application for a certificate of title shall be made upon a form hereinafter prescribed by this chapter ; and shall be sworn to before a notary public or other officer empowered to administer oaths ; and shall be filed with the clerk of courts of the county in which the applicant resides if the applicant be a resident of this state or if not such resident, in the county in which the transaction is consummated ; and shall be accompanied by the fee prescribed in this chapter ; and if a certificate of title has previously been issued for such motor vehicle in this state, shall be accompanied by said certificate of title duly assigned, unless otherwise provided for in this chapter. If a certificate of title has not previously been issued for such motor vehicle in this state said application, unless otherwise provided for in this chapter, shall be accompanied by a manufacturer's or importer's certificate as provided for in this chapter ; or by a proper bill of sale or sworn statement of ownership, the originals of which have been duly filed with the clerk of courts, or a duly certified copy thereof ; or by a certificate of title, bill of sale or other evidence of ownership required by law of another state from which such motor vehicle was brought into this state. \* \* \*"

It can be seen that if a certificate has not previously been issued in Ohio, one of three documents must be presented to the Clerk of Courts : (1) A manufacturer's or importer's certificate, as provided for in this chapter ; (2) A proper bill of sale or sworn statement of ownership, the original of which has been duly filed with the Clerk of Courts, or a duly certified copy thereof ; (3) 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 first and third provisions do not seem to need interpretation and in Opinion No. 924, Opinions of the Attorney General for 1946, page 299, the then Attorney General held that the third provision meant just what it said. The second provision apparently was designed to cover situations in which the original purchase of a motor vehicle was made prior to the enactment of the Certificate of Title Law.

The problem which you have presented is whether the words "properly assigned" should be inserted into the third provision of Section 6290-5, General Code, even though the General Assembly has not seen fit to do so.

In my opinion there are two reasons why the language of Section 6290-5 should not be so interpreted. In the first place, Section 6290-3, General Code, dealing with transfers made within the State of Ohio and referring to certificates of title, apparently refers to Ohio certificates. Those are the only ones concerning which the General Assembly could legislate. (Under the old bill-of-sale law, the terms "bill-of-sale" and "sworn statement" were uniformly held to mean "Ohio bill-of-sale" and "Ohio sworn statement." See Opinion No. 1185, Opinions of the Attorney General for 1927, page 2093. Since an Ohio certificate can be transferred only after it has been obtained, it must follow that the General Assembly contemplated that the foreign owner should first obtain an Ohio certificate, *as he is entitled to do under the clear provisions of Section 6290-5, General Code.*

Secondly, I find that this interpretation of Section 6290-3, General Code, is set forth in a book of instructions issued by the Bureau of Motor Vehicles to the Clerks of Courts of Ohio, entitled "Specifications of forms and instructions for the issuance of Ohio Certificate of Title." This instruction manual was last issued on December 1, 1949, and contains the following instructions with regard to the transfer of title to motor vehicles, at pages 67 and 68 of that manual:

"6. No Certificate of Title or Manufacturer's Certificate or Certificate of Origin, of another state may be accepted where assignment shows that it was attested to in Ohio. In such case the person or dealer, first bringing such motor vehicle to Ohio—shall obtain in his name an Ohio Certificate of Title and assign the Ohio Certificate to the new purchaser in the regular manner.

"7. In case where an Ohio resident purchases a motor vehicle from a non-resident of Ohio and the actual transfer of

ownership occurs in Ohio such non-resident must first obtain an Ohio title in his own name and then assign title in the regular manner. In case where an Ohio resident purchases a motor vehicle from a non-resident of Ohio and the actual transfer of ownership occurs outside of Ohio, the laws of that state will govern and the Ohio resident must surrender the foreign certificate of title or other legal evidence of ownership required by law in that state, to the Clerk of Courts of the county of his residence in order to obtain an Ohio Certificate of Title.

"8. In cases where an Ohio resident purchases a motor vehicle from a non-resident of Ohio and the actual transfer of ownership occurs in Ohio such non-resident must first obtain an Ohio title in his own name and then assign title in the regular manner. It is suggested that the non-resident convert his foreign title to an Ohio title in the Ohio County Clerk of Court's office in the county in which the Ohio purchaser resides.

"In cases where an Ohio resident purchases a motor vehicle from a non-resident of Ohio and the actual transfer of ownership occurs outside of Ohio, the laws of that state will govern and the Ohio resident must surrender the foreign certificate of title or other legal evidence of ownership required by law in that state, to the Clerk of the county of his residence in order to obtain an Ohio certificate of title."

Similar instructions were contained in a previous manual issued by the Bureau of Motor Vehicles in the year 1937. The only significance of the notary public's signature is that the clerks of court are instructed to accept the jurat as evidence of where the transfer took place.

Since this administrative practice has been continued for fourteen years by the Bureau of Motor Vehicles, I believe that the principle enunciated in the case of *Industrial Commission v. Brown*, 92 Ohio St., 309, at page 311, is dispositive of the present question. Nichols, Chief Justice, in that opinion held as follows:

"Administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do. \* \* \*"

I am unable to find any statutes or cases which make it imperative to set aside such a long continued administrative interpretation of Section 6290-3, General Code.

Under the principles set forth above, it is my opinion, and you are

hereby advised, that whenever a resident of another state sells a motor vehicle in Ohio, he must first secure an Ohio certificate of title in his own name before he may lawfully transfer title to the Ohio purchaser in Ohio.

Respectfully,

C. WILLIAM O'NEILL

Attorney General