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1. AEROPLANE—NOT A MOTOR VEHICLE—SECTION 6290, G. C.
2. LIEN ON AEROPLANE—SECTION 6290-9, G. C.—NO APPLICATION TO SUCH LIEN—HOLDER OF CHATTEL MORTGAGE ON MOTOR VEHICLE—MAY HAVE NOTATION OF LIEN MADE ON CERTIFICATE OF TITLE.
3. CHATTEL MORTGAGE ON OTHER LIEN ON AEROPLANE SHOULD BE FILED IN OFFICE OF COUNTY RECORDER—SECTION 8560, ET SEQ., G. C.

SYLLABUS:

1. An aeroplane is not a motor vehicle within the meaning of that term as it is defined in Section 6290 of the General Code.

2. Section 6290-9 of the General Code, providing that the holder of a chattel mortgage or other similar instrument on a motor vehicle may have a notation of his lien made on the certificate of title for such motor vehicle, has no application to the recording of a lien on an aeroplane.

3. A chattel mortgage or other lien on an aeroplane should be filed in the office of the county recorder in accordance with the provisions of Section 8560, et seq., of the General Code.

Columbus, Ohio, May 10, 1943.

Hon. Marcus Shoup,
Hon. Marcus Shoup, Prosecuting Attorney,

Dear Sir :

This will acknowledge receipt of your request for my opinion, which reads as follows :

“Recently a chattel mortgage designating an airplane as security was presented for record filing at the County Recorder’s Office.

Due to the existing law requiring liens upon motor vehicles to be entered with the Clerk of the Common Pleas Court, some question has arisen as to whether an airplane constitutes such a mechanism as would require a lien or mortgage held against the same to be entered at the office of the Clerk of the Common Pleas Court rather than filed with the Recorder.”

Section 6290, General Code, defines a motor vehicle as follows :

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

1. ‘Vehicle’ means everything on wheels or runners, except vehicles operated exclusively on rails or tracks or from overhead electric trolley wires and vehicles belonging to any police department, municipal fire department, volunteer fire department or salvage company organized under the laws of Ohio or used by such department or company in the discharge of its functions.
* * *

2. ‘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 and agricultural tractors and machinery used in the production of horticultural, agricultural and vegetable products.
* * *”
(Emphasis the writer’s.)

Section 6290-9, General Code, provides in part that the holder of a chattel mortgage, trust receipt, conditional sales contract or similar instrument for a motor vehicle upon presentation of said instrument to the clerk of courts of the county where the certificate of title for such motor

vehicle was issued, together with the certificate of title and the fee prescribed by law, may have a notation of such lien made on the face of such certificate of title. Said section further provides that such an instrument for a motor vehicle may not be filed or recorded in the office of the County Recorder in accordance with the provisions of Sections 8560 to 8572 inclusive of the General Code.

It is, of course, a matter of common knowledge that an aeroplane is propelled by mechanical power and, with the exception of an aeroplane which takes off from and lands on water, it does use its wheels in taking off and landing. However, such use of its wheels is only incidental to its principal function of flight through the air.

An examination of all of the sections of the chapter of the General Code concerning a motor vehicle as defined in Section 6290, hereinbefore quoted, discloses that they all deal with vehicular traffic on the public streets and highways of this state.

Section 6290-1 provides for the creation of a Bureau of Motor Vehicles in the *Department of Highways*.

Section 6291 provides for an annual license tax to be levied on the operation of motor vehicles on *public roads or highways*.

Section 6296-1, et seq., provides that all those who drive a motor vehicle upon the *public roads* of the State must be licensed so to do.

Section 6298-1, et seq. (the Financial Responsibility Law), provides that the Registrar of Motor Vehicles must revoke the right of a person to *operate a motor vehicle on the roads* of the State under certain conditions.

Section 6302-1, et seq., is entitled "*Automobile Dealers and Salesman's Licensing Act*", and requires a license for a dealer or salesman engaged in the business of selling motor vehicles at retail.

Section 6307-1, "*The Uniform Traffic Act*", provides for the regulation of traffic on *public streets and highways* of the State.

Section 6308-7, et seq., entitled "*The Hospital Reimbursement Law*", provides for the reimbursement of hospitals which have treated indigent patients who were injured by the operation of a motor vehicle on a *public street or highway* of this State.

A further indication that the Legislature in defining a "motor vehicle"

had in mind only vehicular traffic on the public roads and streets, is contained in the exception appearing in Sub-section 2 of Section 6290, hereinbefore quoted, namely, "equipment used in construction work and *not designed for or used in general highway transportation.*" Such an interpretation of a "motor vehicle" has been the basis of administrative practice in enforcing the motor vehicle laws of this State for more than thirty years. Any other interpretation of that term would lead to such absurd results as that a common lawn mower, powered by a small gasoline motor, or even a child's small toy fire engine, powered by a spring which can be wound up with a key, would be subject to the motor vehicle laws contained in this chapter of the code.

If the term "motor vehicle" is construed to include an aeroplane, we would be faced with the anomalous situation wherein an aeroplane designed to take off and land on wheels on land is a motor vehicle, while a seaplane which uses floats in taking off and landing on water is not a motor vehicle, and an amphibian plane belongs to both classes.

It should also be noted that while the subject of "Motor Vehicles" is found in Chapter 21 of the Code, a separate chapter, No. 21-A, is devoted to the subject of "Aeronautics." Section 6310-29 of the latter chapter defines an aircraft as follows:

" 'Aircraft' means any contrivance, now known or hereafter invented, used, or designed for navigation of a flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment."

Since an aeroplane, as heretofore pointed out, uses its wheels only in taking off and landing, and even in that operation it does not use the public streets or highways, it seems evident that the Legislators did not intend to include it in their definition of a motor vehicle.

It is fundamental in the construction of legislative acts that the usual and ordinary meaning is given to the language used therein. The term "vehicle" is commonly used to denote something which operates on land. It is defined in Bouvier's Law Dictionary, Rawles Third Revision, Vol. 3, p. 3389, as follows:

"Vehicle. The word includes every description of carriage or other artificial contrivance used or capable of being used as a means of transportation on land."

In Webster's New International Dictionary a "vehicle" is defined as:

“That in or on which any person or thing is or may be carried, especially on land, as a coach, wagon, car, bicycle. etc.; a means of conveyance.”

The question as to whether an aeroplane was a motor vehicle within the meaning of that term, as used in the National Motor Vehicle Act, was considered by the Supreme Court of the United States in the case of *McBoyle vs. United States of America*, 283 U. S., 25. The statute involved in that case defined a motor vehicle to be:

“The term ‘motor vehicle’ shall include an automobile, automobile truck, automobile wagon, motorcycle, or any other self-propelled vehicle not designed for running on rails.”

In the opinion Justice Holmes pointed out that the usual and popular concept of a vehicle is something running on land as contrasted with something which flies through the air. It was the opinion of the court in that case that an aeroplane was not a motor vehicle within the meaning of the above quoted statute.

The fundamental question involved in your inquiry, namely, is an aeroplane a “motor vehicle” within the meaning of that term as it is defined in Section 6290, General Code, was presented to the Common Pleas Court of Belmont County in the case of *Hanson, Administrator, vs. Lewis, Administrator*, 11 O. O. 42, 1938 U. S. Aviation Reports 73, decided December 9, 1937. The action was one for a wrongful death and involved the question of liability for an aeroplane accident. The petition alleged simple negligence on the part of the defendant's decedent, to which petition defendant demurred. His contention was that the aeroplane mentioned in the petition was a motor vehicle within the definition appearing in said Section 6290 and that therefore the provisions of the “Guest Statute,” Section 6308-6, General Code, exempted him from liability to plaintiff, whose decedent was riding in the aeroplane as a guest of defendant's decedent. However, the court held that the definition of a “motor vehicle” as it appears in said Section 6290, General Code, did *not* include an aeroplane and that therefore the guest statute had no application in that case.

In view of the foregoing and in specific answer to your inquiry, it is therefore my opinion that:

1. An aeroplane is not a motor vehicle within the meaning of that term as it is defined in Section 6290 of the General Code.
2. Section 6290-9 of the General Code, providing that the holder of

a chattel mortgage or other similar instrument on a motor vehicle may have a notation of his lien made on the certificate of title for such motor vehicle, has no application to the recording of a lien on an aeroplane.

3. A chattel mortgage or other lien on an aeroplane should be filed in the office of the county recorder in accordance with the provisions of Section 8560, et seq., of the General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.