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AUTOMOBILE, NEW, PURCHASED IN FOREIGN STATE—RESIDENT OF OHIO—PRESENTS APPLICATION TO CLERK OF COURTS OF COUNTY OF RESIDENCE FOR CERTIFICATE OF TITLE—NECESSARY EVIDENCE OF OWNERSHIP OF MOTOR VEHICLE PRESENTED—COMPLIANCE WITH LEGAL REQUIREMENTS OF STATE WHERE PURCHASE MADE—CLERK OF COURTS MUST ISSUE OHIO CERTIFICATE OF TITLE, IF SATISFIED APPLICANT IS OWNER OF MOTOR VEHICLE.

SYLLABUS:

Where a resident of Ohio has purchased a new automobile in a foreign state and presents to the clerk of courts of the county in which he resides an application in proper form for a certificate of title for such motor vehicle, which is accompanied by whatever evidence of ownership of such motor vehicle is required by the law of the state from which such motor vehicle was brought into this state, the clerk of courts, if he is satisfied that the applicant is the owner of such new motor vehicle must issue an Ohio certificate of title for such motor vehicle.

Columbus, Ohio, May 7, 1946

Hon. Milton J. Andrews, Prosecuting Attorney
Ironton, Ohio

Dear Sir:

Your request for my opinion reads:

“The Clerk of Courts of this county has been refusing to issue a certificate of title to residents of Lawrence County, Ohio, who have purchased new cars outside the state of Ohio, in the absence of a manufacturer’s certificate of title.

The Ford Motor Company has been refusing to issue manufacturer’s certificate of title to residents of this state purchasing new cars in Kentucky and West Virginia and the clerk has been refusing to issue certificates of title to these purchasers in this county by reason of the fact that said purchasers do not have a manufacturer’s certificate of title.

I would appreciate your early opinion as to the necessity of a manufacturer’s certificate of title in cases of this kind. There is no question in my mind as to the necessity of the manufacturer’s certificate if the new car is sold in Ohio, but I would

like your opinion as to the right of the clerk to refuse a certificate of title to a purchaser of a new car where said new car is purchased in another state.”

Sections 6290-2, 6290-3 and 6290-5, General Code, in so far as they are pertinent to your question, provide as follows:

Section 6290-2:

“No manufacturer, importer, dealer or other person hereafter 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 duly executed in accordance with the provisions of this chapter and with such assignments thereon as may be necessary to show title in the purchaser thereof; nor shall such dealer purchase or acquire a new motor vehicle without obtaining from the seller thereof such manufacturer’s or importer’s certificate.”

Section 6290-3:

“No person except as provided in the preceding section hereafter 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 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.”

Section 6290-5:

“Application for 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 the law of another state from which such motor vehicle was brought into this state*. The clerk of courts shall retain the evidence of title presented by the applicant and on which the certificate of title is issued. The clerk of courts shall use reasonable diligence in ascertaining whether or not the facts in said application are true by checking the application and documents accompanying the same with the records of motor vehicles in his office; and if satisfied that the applicant is the owner of such motor vehicle and that the application is in the proper form, the clerk of courts shall issue a certificate of title over his signature and sealed with his seal, but not otherwise. * * *

(Emphasis added.)

The certificate of title law, of which the above quoted sections of the General Code are a part, has been held to be an authorized exercise of the police power of the state. *State ex rel. The City Loan and Savings Company v. Taggart*, 134 O. S. 374. It is well established that the police power of the state cannot extend beyond its territorial limits (8 O. Jur. 363), and it therefore follows that the state cannot require a foreign automobile manufacturer, importer or dealer to furnish to a dealer in another state the so-called Ohio manufacturer's certificate provided for in Section 6290-2, General Code, *supra*.

In the opinion in the case of *State ex rel. The City Loan and Savings Company v. Taggart*, 134 O. S. 374, at page 379 it is stated:

"Section 6290-2, General Code, requires a manufacturer, importer, dealer or other person, in selling or otherwise disposing of a new motor vehicle to a dealer, to be used by such dealer for purposes of display and resale, to deliver to such dealer a manufacturer's or importer's certificate showing title to the motor vehicle; and Section 6290-5, General Code, requires, under certain circumstances, that an application for a certificate of title must be accompanied by a manufacturer's or importer's certificate, or by other approved evidence of ownership when a motor vehicle is brought into Ohio from another state.

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."

The only question then is, what is "other approved evidence of ownership" of a motor vehicle brought into Ohio from another state. The question is specifically answered by that part of Section 6290-5, General Code, which I have emphasized in the quotation of the pertinent part of that section appearing in this opinion. The evidence of ownership required to accompany an application for an Ohio certificate of title for a motor vehicle for which such a certificate has never been issued and which has been brought into Ohio from another state, is that "evidence of ownership required by the law of another state from which such motor vehicle was brought into this state."

Section 6290-5, General Code, confers no judicial power on the clerk of courts. *State ex rel. City Loan and Savings Company v. Taggart*, 134 O. S. 374. On the contrary, its terms are mandatory and require that he "shall" issue a certificate of title over his signature, and sealed with his seal, provided (1) the application is in proper form, (2) it is accompanied by the proper evidence of ownership, and (3) the clerk of courts is satisfied that the applicant is the owner of the motor vehicle described in the application for the certificate of title.

Your letter does not state what evidence of ownership is being presented to the clerk of courts by those applicants for Ohio certificates of title who have purchased new cars in the states of West Virginia and Kentucky. However, I have been informed by the Bureau of Motor Vehicles that the evidence of ownership so presented complies in every respect with the laws of those states concerning such motor vehicles and that it would be acceptable to them as the proof of ownership required by their laws for the issuance of the indicia of title required in either of those states. It therefore follows that the clerk of courts must accept such evidence of ownership as a full compliance with the provisions of Ohio law concerning the evidence of ownership of a motor vehicle which must accompany an application for a certificate of title. If the application is in proper form and the clerk of courts is satisfied that the applicant is the owner of the motor vehicles, he must issue an Ohio certificate of title for it.

Therefore, in specific answer to your inquiry, it is my opinion that where a resident of Ohio has purchased a new automobile in a foreign state and presents to the clerk of courts of the county in which he resides an application in proper form for a certificate of title for such motor

vehicle, which is accompanied by whatever evidence of ownership of such motor vehicle is required by the law of the state from which such motor vehicle was brought into this state, the clerk of courts, if he is satisfied that the applicant is the owner of such new motor vehicle, must issue an Ohio certificate of title for such motor vehicle.

Respectfully

HUGH S. JENKINS
Attorney General