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MOTOR VEHICLE MAY BE JOINTLY OWNED IN OHIO—RIGHT OF SURVIVORSHIP INCIDENT TO JOINT OWNERSHIP—MUST BE CREATED BY CONTRACT—ANY LANGUAGE WHICH CLEARLY MANIFESTS INTENTION OF JOINT OWNERSHIP IS SUFFICIENT—NO PARTICULAR FORM REQUIRED.

SYLLABUS:

Under the law of Ohio, a motor vehicle may be jointly owned, and if the right of survivorship is to exist as an incident to a joint ownership, such right must be created by contract. No particular form of language is required to create joint ownership of a motor vehicle; any language which clearly manifests such intention is sufficient.

Columbus, Ohio, May 24, 1948

Hon. Charles T. Stahl, Prosecuting Attorney
Williams County, Bryan, Ohio

Dear Sir:

You have submitted for my opinion the following questions:

“1. May a true joint ownership of a motor vehicle be created under the Certificate of Title Act and the law of Ohio?”

"2. If a true joint ownership may be created in a motor vehicle under the law of Ohio, what words should be used on the certificate of title to show such joint ownership?"

It also appears, from a statement contained in your letter, that the question of survivorship is a matter of concern in connection with the above questions, and consequently, consideration will be given thereto.

I am unable to specifically determine your interpretation of the term "true joint ownership" as used in your inquiry. However, you are probably aware that joint ownership or joint tenancy was significant at common law for its right of survivorship whereby the entire property upon the death of one of two joint tenants passed to the surviving joint tenant free from all claims of the heirs and devisees of the deceased joint tenant. This characteristic was evolved in feudal times to circumvent a form of taxation payable to the overlord for the privilege of inheritance. But when the feudal system fell into disrepute, joint tenancy with its incident of survivorship no longer was a favorite of the court. Consequently, where the language of a conveyance did not include survivorship and the intent of the parties was vague, courts invariably favored tenancy in common. This ruling was evident in Ohio as early as 1826 in *Sergeant v. Steinberger*, 2 O. 305, when the court declared that joint tenancies did not exist in this state. Thereafter, in *Miles v. Fisher*, 10 O. 4; *Wilson v. Fleming*, 13 O. 68; and *Farmers' and Merchants' National Bank v. Wallace*, 34 O. S. 152, the Ohio Supreme Court held that a joint tenancy was not founded on principles of natural justice, and that such an estate was inconsistent with our system of descent and distribution. Therefore, the same joint tenancy at common law, which was created with an incidental right of survivorship by means of which property passed to the surviving owner, now was interpreted by our courts as tenancy in common which resulted in the descent of property according to the deceased's will or to his heirs.

Nevertheless, the equivalent of joint tenancy with the right of survivorship still exists in Ohio. In *Re Hutchison*, 120 O. S. 542, provided that joint owners could create the right of survivorship by contract. The syllabus of the above case reads in part:

"* * * 2. While joint tenancy with the incidental right of survivorship does not exist in Ohio, parties may nevertheless contract for a joint ownership with the right of survivorship and at the death of one of the joint owners the survivor succeeds to the title to the entire interest, not upon the principle of sur-

vivorship as an incident to the joint tenancy but by the operative provisions of the contract.

“3. Where two persons purchase property to be owned by them in common during their joint lives and at the death of either to become the property of the other each party has an undivided one-half interest during their joint lives and each has a vested estate in remainder in the one-half interest of the other.”

Various cases previous to the latter decision stated that words of survivorship could not be ignored, but *In Re Hutchison* was the first case which clearly provided for the contract theory of survivorship in this state.

It would appear that the General Assembly recognized the above ruling by the enactment of the fifth paragraph of Section 5332, General Code, which reads:

“A tax is hereby levied upon the succession to any property passing, in trust or otherwise to or for the use of a person, institution or corporation, in the following cases: * * *

“5. Whenever property is held by two or more persons jointly, so that upon the death of one of them the survivor or survivors have a right to the immediate ownership or possession and enjoyment of the whole property, the accrual of such right by the death of one of them shall be deemed a succession taxable under the provisions of this subdivision of this chapter in the same manner as if the enhanced value of the whole property belonged absolutely to the deceased person, and had been by him bequeathed to the survivor or survivors by will.”

An interpretation of the above section with reference to the present problem may be found in Opinion No. 3581, Opinions of the Attorney General for 1941 at page 164. Numerous court decisions are quoted in the latter opinion which substantiate the right of parties to contract for survivorship, one of which is *Foraker, Executor, v. Kocks, Administratrix*, 41 O. App. 210, which provides in the first four sections of the syllabus:

“1. Joint tenancy with incidental right of survivorship does not exist in Ohio.

“2. Notwithstanding nonexistence of joint tenancy with right of survivorship, parties may contract for joint ownership with such right.

“3. If joint tenancy is expressed without words of survivorship, it will be considered as tenancy in common.

“4. Although joint tenancy is expressed, survivorship is not presumed.”

In view of the foregoing, it would appear, and it is accordingly my opinion, that a motor vehicle may be jointly owned in Ohio; and if the right of survivorship is to exist as an incident to a joint ownership, such right must be created by contract.

While the Certificate of Title Law (Sections 6290-2 through Section 6290-17, General Code) does not specifically provide for such joint ownership, there is nothing contained therein which prohibits it.

Respectfully,

HUGH S. JENKINS,
Attorney General.