

was on account of goods, such as shrubbery sold and delivered from its office or plant in Ohio on orders therefor taken by agents in Ohio and elsewhere, such business should be considered Ohio business for the purpose of determining the franchise tax to be assessed on this corporation. *Western Cartridge Co. vs. Emmerson*, 281 U. S. 511.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1861.

MOTOR VEHICLE—SOLD WITHIN THIS STATE BILL OF SALE REQUIRED → CLERK OF COURTS UNAUTHORIZED TO ACCEPT SWORN STATEMENT OF OWNERSHIP WITHOUT BILL OF SALE.

SYLLABUS:

Even though a motor vehicle was originally purchased outside the state of Ohio, if such motor vehicle is later sold within the state of Ohio, a bill of sale is required from such vendor to the vendee, and the clerk of courts is without authority to accept for filing a mere sworn statement of ownership without such bill of sale.

COLUMBUS, OHIO, November 13, 1933.

HON. JOSEPH J. LABADIE, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

“I am writing you with respect to a question which has arisen in the Clerk’s office of Putnam County, Ohio. As you no doubt have read, the men who broke out of the Indiana prison at Huntington delivered a bank robber by name of Dillinger from the Allen County Jail at Lima, and in such delivery killed the Sheriff of Allen County.

The parents of one of these men reside in Putnam County and when our officers made a raid on the farm of the parents they found a new automobile which was at first believed stolen, bearing no license tags. The officers took this car and now have it in their possession. The brother of Pierpont, the man who shot the Sheriff, was taken in custody for concealing this car, and since that time has been transferred to the Allen County Jail. His attorney came to the Clerk’s office and claimed that he, the brother, owned this automobile and requested filing of a sworn statement of ownership and is seeking to gain possession of this car. The Clerk refused to accept it because there was a break in the chain of title and Fred Pierpont, claimant, can show no Bill of Sale or other evidence of conveyance of this car to him. The car was purchased by one of the escaped convicts and killers of the Sheriff of Allen County, in Chicago, and has been identified as one of the cars used in perpetration of the robbery of the bank at St. Marys, Ohio, by the same convicts.

Please advise me whether or not the Clerk is required in law to accept a sworn statement of ownership from this party for the car when

there is a break in the title, and advise whether or not a Bill of Sale, certificate of title or other evidence of conveyance is necessary from the convict to Fred Pierpont. In any event, we will hold the automobile for the reason that it was used in committing a felony. Would you consider this proper procedure?"

As I understand it the motor vehicle in question was purchased in Chicago, Illinois, by one of the escaped convicts. Fred Pierpont, a brother of one of the convicts, alleges he owns this automobile, claiming to have purchased it from the convict. The convict has never executed a Bill of Sale to Fred Pierpont, but nevertheless the claimant, Fred Pierpont, has requested the Clerk of Courts to accept, for filing, a sworn statement of ownership in lieu of a Bill of Sale. Since you have not stated sufficient facts I am assuming, for the purpose of this opinion, that the purported transfer of title to this automobile took place within the state of Ohio.

Section 6310-3, General Code, defines "used motor vehicle".

Section 6310-4, General Code, reads as follows:

"It shall be unlawful to sell, convey, give away, transfer, exchange, receive, purchase or obtain any 'motor vehicle' or 'used motor vehicle' *within this state*, except in the manner and subject to the conditions hereinafter provided." (Italics the writer's.)

Section 6310-14, General Code is the penal section applicable to the entire Bill of Sales Act (Secs. 6310-3 to 6310-14, inclusive, G. C.), and it states in part:

"Whoever violates any provision of this Act, except provisions of Section 6310-12 of the General Code, shall upon conviction be subject to a fine of not less than twenty-five dollars nor more than five thousand dollars * * *."

The above sections apply both to the seller and the buyer. The penal section applies to both seller, buyer, and the Clerk of Courts.

The law governing the seller of a "used motor vehicle" is set forth in Sections 6310-7, 6310-9, 6310-11 and 6310-12, General Code, these sections prescribing what the seller must do when selling a "used motor vehicle".

Section 6310-7, General Code, makes it the duty of the seller to execute in duplicate, in the presence of two witnesses, a Bill of Sale according to the provisions of said section which fixes the contents of such Bill of Sale, and deliver the same to the buyer.

Section 6310-9, General Code, makes it the duty of the seller to have the Bill of Sale executed in duplicate duly verified.

Section 6310-8, General Code, provides that the buyer shall obtain from the seller a verified Bill of Sale in duplicate as provided for in Section 6310-7, General Code.

Section 6310-11a, General Code, among other things, defines the duty of the Clerk of Courts in regard to the filing of Bills of Sale and sworn statements for "used motor vehicles". It provides in part:

"Each * * * person *to whom title shall in any manner within this state be passed* to a 'used motor vehicle' shall obtain from the * * *

It is stated at page 2099 of the above opinion :

"Inasmuch as the statutes of Ohio have no extra-territorial effect, the bill of sale spoken of in the statutes refers only to bills of sale made *when transfers have been made in this state* and the sworn statement of ownership refers to the original sworn statement made when the car was first operated on the highways of this state. *A person who purchases a motor vehicle outside the state* would not be required so far as the Ohio statute is concerned to procure a bill of sale therefor nor would the seller be required to give such bill of sale; the transaction would be governed by the laws of the State where the transaction was made. If the law of that state provided for bills of sale upon the transfer of titles to motor vehicles, a bill of sale in accordance with the law of that state should of course be procured.

A person who purchases a car outside the state, however, must necessarily procure the necessary information so that he can file a sworn statement of ownership when he brings a car into this state, also a car cannot be registered or operated on the highways of this state. * * *

A person coming into this state or a non-resident of the state, desiring to register a car in this state and operate the same on the highways thereof, *if the car has not been purchased in this state or has never been transferred in this state*, obviously could not evidence his ownership by the filing of bills of sale because none would be in existence, but he should file a sworn statement of ownership as prescribed by the statutes.

If, however, the element of extra-territorial transactions, or transactions taking place prior to 1921, do not enter into the chain of title of a used motor vehicle a sworn statement of ownership cannot become one of the links in the chain of title of such a car *and county clerks are not authorized to treat them as such*, but should insist on the proper bills of sale or certified copies thereof being produced." (Italics the writer's.)

At page 2103 appears the following language:

"* * * The sections of the General Code, in question do not refer to or include bills of sale or sworn statements authorized or required by the laws of any other sovereignty."

It was held in Opinions of the Attorney General for 1928, Vol. II page 1546 as disclosed by the syllabus:

"A sworn statement of ownership of a used motor vehicle cannot be made to accomplish the purpose of a bill of sale of such used motor vehicle."

Referring to the concrete case set up by you in your statement and applying the principles of law above referred to, it is apparent that a sworn statement of ownership would not of itself be sufficient, but there would also be required a bill of sale from the convict to Fred Pierpont, inasmuch as the purported sale of the automobile took place in Ohio, on the facts upon which I have predicated my opinion.

When Fred Pierpont purchased or otherwise acquired title to the motor vehicle in question in Ohio from the escaped convict, such convict should have executed the sworn statement that the car was brought from outside of Ohio

into Ohio and that its title had never been transferred within the state, and he should also have executed a bill of sale to Fred Pierpont.

Specifically answering your inquiry, it is my opinion that even though a motor vehicle was originally purchased outside the state of Ohio, if such motor vehicle is later sold within the state of Ohio, a bill of sale is required from such vendor to the vendee, and the clerk of courts is without authority to accept for filing a mere sworn statement of ownership without such bill of sale.

In view of my answer to this question I deem it unnecessary to answer your question concerning the break in the chain of title to this car.

With respect to your third question, I note that you intend to hold this car for the stated reason that it was used in the commission of a felony. I presume this is a matter of which your court of Common Pleas has taken jurisdiction, and therefore I am precluded from an expression of an opinion thereon.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1862.

APPROVAL, BONDS OF CITY OF SALEM, COLUMBIANA COUNTY,
OHIO—\$14,000.00.

COLUMBUS, OHIO, November 13, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1863.

APPROVAL, LEASE TO GAME REFUGE LAND IN WARREN COUNTY,
OHIO—CLARENCE N. GREER.

COLUMBUS, OHIO, November 13, 1933.

HON. WILLIAM H. REINHART, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication submitting for my approval a game refuge lease No. 2198 which has been executed to the State of Ohio by one Clarence N. Greer of Clear Creek Township, Warren County, Ohio. This lease, which is one for a term of five years, leases and demises to the State for game refuge purposes two certain tracts of land containing 165 and 134 acres of land, respectively, located in Clear Creek Township, Warren County, Ohio, which tracts of land are more particularly described by metes and bounds in said lease. Upon examination of this lease, I find that the same has been properly executed by the lessor therein named.

Upon examination of the provisions of the lease in so far as they relate to the authority, duties and powers of the conservation division and of the conservation council, I find that the same are within the provisions of sections 1435-1, 1438-1 and other related sections of the General Code pertaining to the power and authority of the conservation division and of the conservation council.