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THERE IS NO PROVISION OF LAW WHICH WOULD AUTHORIZE ISSUANCE OF MOTOR VEHICLE REGISTRATION PLATES TO SEAT COVER COMPANIES, CAR WASH COMPANIES, POLISHING COMPANIES, ETC.—§4503.31, R.C.

SYLLABUS:

1. Seat cover companies, car wash companies, polishing concerns, body shops and similar businesses which service motor vehicles for motor vehicle dealers, do not hold title to the vehicles nor hold such vehicles exclusively for sale, and, therefore, do not qualify for registration placards, commonly referred to as "S" plates, issued pursuant to Section 4503.31, Revised Code.

2. Transportation of a motor vehicle to and from a seat cover company, car wash company, polishing concern, body shop, or a similar business, from a motor vehicle dealer, for the purpose of servicing such motor vehicle, is not "transporting and delivering" within the purview of Section 4503.33, Revised Code, and the person, firm, or corporation furnishing such transportation is not entitled to an "in transit" permit pursuant to said section.

3. There is no provision of law which would authorize the issuance of motor vehicle registration plates to seat cover companies, car wash companies, polishing concerns, body shops, or similar businesses which service motor vehicles for motor vehicle dealers, for the transportation of such vehicles to and from the dealer or manufacturer.

Columbus, Ohio, April 11, 1960

Hon. C. W. Ayers, Registrar, Bureau of Motor Vehicles  
Columbus, Ohio

Dear Sir:

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

"Section 4503.31 of the Revised Code provides:

"Persons other than manufacturers or dealers may register annually with the registrar of motor vehicles and obtain placards to be displayed on motor vehicles as provided by this section. Applications for annual registration shall be made at the time provided for payment of the tax imposed on manufacturers and dealers and shall be in the manner to be prescribed by the registrar. The fee for such registration shall be twenty-five dollars and shall not be reduced when the registration is for a partial part of a year. Applicants may procure certified copies of such registration upon the payment of a fee of five dollars for each such copy.

“Upon the filing of the application and the payment of the fee prescribed by this section, the registrar shall issue to each applicant a certificate of registration and assign a distinctive number and furnish one placard with the number thereon. With each of the certified copies of the registration provided for in this section the registrar shall furnish one placard with the same numbering assigned in the original registration certificate and shall add thereto such special designation as necessary to distinguish one set of placards from another. All placards furnished by the registrar pursuant to this section shall be so marked as to be distinguishable from placards issued dealers or manufacturers. Placards issued pursuant to this section may be used only on motor vehicles owned or being held exclusively for sale, and being transported or being used in testing or being demonstrated for purposes of sale or lease.

“The fees collected by the registrar pursuant to this section are levied for the purposes recited in section 4503.02 of the Revised Code and shall be paid into the state treasury in the same manner and at the same time and credited to the same funds as the taxes imposed by such section.’

“The Bureau of Motor Vehicles has during the years 1956, 1957, 1958 and 1959 issued plates, commonly referred to as ‘S’ plates, under the above cited section of the Revised Code, to car wash concerns, car polishing concerns, seat cover companies and various other businesses who do not hold title to the motor vehicle. The cars in question are new or used motor vehicles owned by a dealer, or in some cases a manufacturer, who send them to various concerns for service of one type or another. I have, during this registration year, taken the position that Section 4503.31 of the Revised Code does not authorize the issuance of the ‘S’ plate to a person who does not own the vehicle.

“The seat cover companies, car wash companies, polishing concerns, body shops and similar businesses contend they are entitled to this type of registration. They further contend that if they do not qualify for this type of plate, they may make a direct charge for transporting the vehicle of a dealer to and from their place of business and thereby qualify for an ‘in transit’ plate as set forth in Section 4503.33 of the Revised Code.

“I respectfully request your opinion as to whether :

1. The above described operators qualify for the ‘S’ plate under Section 4503.31 of the Revised Code.
2. These concerns may upon making a nominal charge for transporting the vehicles to and from their place of business qualify for an ‘in transit’ plate as set forth in Section 4503.33 of the Revised Code.

3. The concerns involved may form a separate transportation company, incorporate under the laws of Ohio for the purposes of transporting vehicles to and from the dealer, make a nominal charge for the transportation service and qualify for an 'in transit' plate under Section 4503.33 of the Revised Code.

4. In the event that your answers to the preceding questions are in the negative, may they obtain any type of registration of such vehicles to and from the dealer or manufacturer."

Section 4503.31, Revised Code, provides in part:

"Persons other than manufacturers or dealers may register annually with the registrar of motor vehicles and obtain placards to be displayed on motor vehicles as provided by this section.  
\* \* \*

"\* \* \* Placards issued pursuant to this section may be used only on motor vehicles owned or being held exclusively for sale, and being transported or being used in testing or being demonstrated for purposes of sale or lease.

"\* \* \*

\* \* \*

\* \* \*

You state that the placards issued in accordance with this section are commonly called "S" plates and I will use that term in treating the question. The above quoted portion of the section restricts the use of this type of registration to vehicles owned or used exclusively for sale by persons other than manufacturers and dealers, and clearly sets forth the requirements for the issuance of "S" plates as follows:

1. The vehicle must be "owned or \* \* \* held exclusively for sale."
2. The vehicle "owned or \* \* \* held exclusively for sale" must be:
  - (a) transported, or
  - (b) used in testing, or
  - (c) demonstrated for purposes of sale.

I can find no Ohio cases which have dealt with this problem, but one of my predecessors in Opinion No. 4486, Opinions of the Attorney General for 1941, page 9121, considered the use of the "S" plate by salvage dealers, the first paragraph of the syllabus reading:

"Persons engaged in the business of dismantling, salvaging and rebuilding motor vehicles may use placards, issued pursuant to Section 6301-2, General Code, on motor vehicles owned or being held exclusively for sale and being transported or being

used in testing or being demonstrated for the purpose of sale or lease, if, so far as the sale is concerned, such sale is casual or isolated."

Your request indicates that the bureau of motor vehicles over a four year period has issued "S" plates to various businesses who do not own or hold vehicles exclusively for sale. The law recognizes the principle that continued long administrative interpretation of a statute may be considered in construing a statute which is ambiguous, uncertain or unclear. The courts, however, have ruled that such matters may not be considered when the statute is clear and unambiguous. The *State ex rel. Brooks Equipment Mfg. Co., v. Evatt*, 137 Ohio St., 125. *State ex rel. Tejan v. Lutz*, 31 N.P., 473. Section 4503.31, Revised Code, is clear and unambiguous, and therefore the past practice of the bureau cannot be here considered even though inconvenience may result to those individuals who have relied on the interpretation.

The persons described in your request are engaged in the business to your first question, it is my opinion that the persons described in your vehicles nor do they hold them exclusively for sale. Therefore, in answer to your first question, it is my opinion that the persons described in your request do not qualify for registration placards commonly referred to as "S" plates, under Section 4503.31, Revised Code.

The legislature first authorized the registrar of the bureau of motor vehicles to issue "in transit" plates in 1937, (117 Ohio Laws 391), in former Section 6301-1, General Code, now Section 4503.33, Revised Code. Former Section 6301-1, General Code provided for the issuance of "in transit" plates to drive-away operators transporting and delivering new vehicles. This enactment was unquestionably the result of Opinion No. 1885, Opinions of the Attorney General for 1933, page 1765, where one of my predecessors held that the registrar of the bureau of motor vehicles was correct in questioning the issuance of "dealer's plates" to drive-away or forwarding companies whose sole function was the delivery of new motor vehicles from the manufacturer or distributor to a retailer. The first syllabus of the opinion reads as follows:

"By virtue of section 6301, and subsection 13 of section 6290, General Code, independent contractors towing or hauling motor vehicles from the manufacturer to the dealer cannot be issued dealers' plates by the registrar of motor vehicles."

In enacting Section 6301-1, General Code, *supra*, creating the "in transit" permit, the legislature apparently recognized the growth of the automobile industry over the years, its attendant problems of distribution, and the legislative void as to registration of vehicles being transported to dealers.

In 1953, Section 6301-1, General Code, was recodified as Section 4503.33, Revised Code. In 1953 the section was amended to require the issuance of one placard instead of two. (125 Ohio Laws 727). In 1955, Amended House Bill No. 260, (126 Ohio Laws 727) amended the section and the pertinent part thereof reads as follows :

"A person, firm, or corporation engaged in this state as a drive-away operator or *trailer transporter* or *both* in the business of transporting and delivering, by means of the full amount method, the saddle mount method, the tow bar method, *tow-away method*, or any combination thereof, or under their own power, new motor vehicles from the manufacturer or any other point of origin to any point of destination, or *used motor vehicles from any individual, firm, or corporation to any point of destination, or both*, shall make application to the registrar of motor vehicles for an 'in transit' permit. This application shall be accompanied by a registration fee of fifty dollars, and shall show such information as deemed necessary by the registrar. Upon the filing of the application and the payment of the fee, the registrar shall issue to each permittee a certificate of registration bearing a distinctive number or designation *of the registration* and one placard bearing a corresponding number or designation \* \* \*, which placard must be carried and displayed by each such motor vehicle in like manner as provided by law for other motor vehicles while operated upon a public highway in transit from the manufacturer or any other point of origin to any point of destination.

"\* \* \*

The legislature obviously recognized the need to expand the use of the "in transit" plate to meet the growing needs and methods of transporting motor vehicles. Thus, the section was amended to include the trailer transport, the tow bar method and the transportation of used motor vehicles. The emergency clause contained in this act (1955) is indicative of the need that existed in recognizing the use of such a plate for transporting used motor vehicles. The emergency clause reads :

"Section 3. This act is hereby declared to be an emergency measure, necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is to pro-

vide the machinery for issuance of in-transit permit to transporters of used motor vehicles who will otherwise have no license under which to operate. Therefore this act shall go into immediate effect.”

The legislative history of present Section 4503.33, Revised Code, clearly indicates that the “in transit” plate was created for the specified purpose of transporting motor vehicles from manufacturers, distributors, dealers, or individuals by independent drive-away operators or trailer transporters. There is no question that the individuals described in your letter are not trailer transporters. The basic question therefore is whether the persons you mention may, by charging a fee for transportation services, qualify as drive-away operators.

It would seem there are certain basic requirements which must exist before an application for “in transit” plates should be granted. The permittee:

1. Must be doing business within this state.
2. Must be transporting and delivering new cars, used cars or trailers as his business.
3. Must be transporting new cars, used cars or trailers by full mount, saddle mount, tow bar, tow-away or a combination thereof, or under their own power.
4. Must be transporting and delivering the vehicles or trailers from the manufacturer, or any other point or origin, to specific points of destination, or both.

It is obvious that the mere fact that an individual charges for the transporting of a vehicle, or forms a separate corporation with the stated purpose of operating a drive-away or transportation company, can not in itself be considered the sole criteria for determining whether the individual, firm, or corporation is entitled to an “in transit” plate. Section 4503.33, Revised Code, specifies that the registrar of the bureau of motor vehicles shall require each person to fill out an application wherein he sets forth such information as is deemed necessary. There is no doubt that if the application indicates that the person meets all of the above requirements for the issuance of the “in transit” plate, the registrar should issue the plate.

The persons, firms, or corporations described in your letter obviously are not engaged in business as “drive-away operators,” as contemplated

in Section 4503.33. The fact that they transport vehicles incidental to the operation of their business does not of itself qualify the individual for such a plate. There is no doubt that an individual might be a drive-away operator and operate another business, but where the primary function of the business is the rendition of a service such as washing or polishing cars, installing seat covers or some similar service, the transportation of the vehicle is incidental to the primary purpose, and such a person cannot be considered a drive-away operator." Further, I do not believe that it was intended that the words "transporting and delivering" as used in Section 4503.33, *supra*, were intended to cover driving a vehicle to a location for servicing, but that such words were intended to cover strictly the transporting and delivery of vehicles incident to their sale.

The purpose of the motor vehicle registration law is to provide a simple method of identifying the owner of a motor vehicle, to prevent theft; or in case of accident; and to efficiently regulate motor vehicle dealings. Sections 4503.30, 4503.31 and 4503.33, Revised Code, are the only licensing provisions wherein registration is not keyed directly to ownership. Section 4503.30 regulates the issuance of placards to dealers and manufacturers; Section 4503.31 covers "S" plates which have been previously discussed. Therefore, to answer your fourth question, if the persons mentioned in your letter do not qualify for "in transit" plates, "S" plates, or "dealers" plates there are no other provisions of law whereby they can obtain registration for the vehicles they wish to transport.

Answering your specific questions, therefore, it is my opinion and you are advised:

1. Seat cover companies, car wash companies, polishing concerns, body shops, and similar businesses which service motor vehicles for motor vehicle dealers, do not hold title to the vehicles nor hold such vehicles exclusively for sale, and, therefore, do not qualify for registration placards commonly referred to as "S" plates, issued pursuant to Section 4503.31, Revised Code.

2. Transportation of a motor vehicle to and from a seat cover company, car wash company, polishing concern, body shop, or a similar business, from a motor vehicle dealer, for the purpose of servicing such motor vehicle, is not "transporting and delivering" within the purview of Section 4503.33, Revised Code, and the person, firm, or corporation furnishing

such transportation is not entitled to an "in transit" permit pursuant to said section.

3. There is no provision of law which would authorize the issuance of motor vehicle registration plates to seat cover companies, car wash companies, polishing concerns, body shops, or similar businesses which service motor vehicles for motor vehicle dealers for the transportation of such vehicles to and from the dealer or manufacturer.

Respectfully,

MARK McELROY

Attorney General