

**OPINION NO. 74-031****Syllabus:**

Certificates of title for motor vehicles ordered into storage pursuant to R.C. 737.29, whose sale is authorized by R.C. 737.32, may be issued in accordance with the procedure set out in R.C. 4505.10. (Opinion No. 70-117, Opinions of the Attorney General for 1970, approved and followed)

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**To: C. Donald Curry, Registrar, Bureau of Motor Vehicles, Columbus, Ohio**  
**By: William J. Brown, Attorney General, April 24, 1974**

**Your request for my opinion reads as follows:**

**"This Bureau is in receipt of several inquiries concerning the effect of Amended House Bill No. 24,**

effective October 6, 1971. Reference is made to Ohio Revised Code Section 737.331 which was repealed, and to Ohio Revised Code Sections 4513.60, 4513.61, and 4513.62.

"Is the Bureau of Motor Vehicles authorized to issue a Certificate of Title for unclaimed motor vehicles ordered into storage pursuant to Ohio Revised Code Section 737.297

"If your answer to the first question is in the affirmative, to whom should the Certificate of Title be issued?"

You have also enclosed materials outlining the circumstances under which the vehicles in question were ordered into storage. These circumstances include impoundment of a vehicle incident to the arrest of the driver for a variety of offenses, as well as situations where the car had been illegally parked. R.C. 737.29, pursuant to which the vehicles were ordered into storage, reads as follows:

"Stolen or other property recovered by members of the police force of a municipal corporation shall be deposited and kept in a place designated by the mayor. Each such article shall be entered in a book kept for that purpose, with the name of the owner, if ascertained, the person from whom taken, the place where found with general circumstances, the date of its receipt, and the name of the officer receiving it.

"An inventory of all money or other property shall be given to the party from whom taken, and in case it is not claimed by some person within thirty days after arrest and seizure it shall be delivered to the person from whom taken, and to no other person, either attorney, agent, factor, or clerk, except by special order of the mayor.

Authority to sell property ordered into storage under R.C. 737.29 and remaining unclaimed for ninety days is found in R.C. 737.32:

"Property, unclaimed for the period of ninety days, shall be sold by the chief of police of the municipal corporation, marshal of the village, or licensed auctioneer at public auction, after giving due notice thereof by advertisement, published once a week for three successive weeks in a newspaper of general circulation in the county. The proceeds shall be paid to the treasurer of the municipal corporation and be credited to the general fund."

R.C. 737.33 provides for the disposition of proceeds from a sale under R.C. 737.32:

"Upon the sale of any unclaimed or impounded property as provided in section 737.32 of the Revised Code, if any such unclaimed or impounded property was ordered removed to a place of storage or stored, or both, by or under the direction of a chief of police of the municipal corporation or

marshal of the village, any expenses or charges for such removal or storage, or both, and costs of sale, provided the same are approved by such chief of police or marshal, shall first be paid from the proceeds of such sale. Notice shall be given by registered mail, thirty days before the date of such sale, to the owner and mortgagee, or other lien holder, at their last known address."

Reference is made in your letter to R.C. Sections 4513.60, 4513.61, and 4513.62, which provide for the impoundment and disposition of abandoned motor vehicles. However, those Sections apply only to motor vehicles that have been left for more than seventy-two hours on private property or more than forty-eight hours on public streets and property. Under Am. H.B. No. 650, effective July 9, 1974, these Sections will also apply to motor vehicles which have been left at a garage or place of storage for a longer period than that agreed upon. While these sections provide express authority and a procedure for issuance of a certificate of title in such cases, they do not speak to the case of motor vehicles impounded for reasons other than abandonment under other Sections than R.C. 4513.60 et seq. In such a case authority for such issuance must be found elsewhere, if at all.

In Opinion No. 70 117, Opinions of the Attorney General for 1970, my predecessor had occasion to consider the need for a certificate of title when a motor vehicle of greater than \$200 value is to be sold pursuant to R.C. 737.32. He noted that before a law enforcement agency can transfer title to a motor vehicle, the agency must first procure title to such vehicle in the agency's name. See R.C. 4505.03. He found authority for issuance of a certificate of title in R.C. 4505.10. That Section requires a court order authorizing the transfer of title, and specifies the procedure as follows:

"In the event of the transfer of ownership of a motor vehicle by operation of law, as upon inheritance, devise or bequest, order in bankruptcy, insolvency, replevin, or execution sale, or whenever the engine of a motor vehicle is replaced by another engine, or whenever a motor vehicle is sold to satisfy storage or repair charges, or repossession is had upon default in performance of the terms of a security agreement as provided in sections 1309.01 to 1309.50, inclusive, of the Revised Code, the clerk of the court of common pleas of the county in which the last certificate of title to said motor vehicle was issued, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or, when that is not possible, upon presentation of satisfactory proof to the clerk of ownership and rights of possession to such motor vehicle, and upon payment of the fee prescribed in section 4505.09 of the Revised Code, and presentation of an application for certificate of title, may issue to the applicant a certificate of title to such motor vehicle. Only an affidavit by the person or agent of the person to whom possession of such motor vehicle has passed, setting forth the facts entitling

him to such possession and ownership, together with a copy of the journal entry, court order, or instrument upon which such claim of possession and ownership is founded, is satisfactory proof of ownership and right of possession. If the applicant cannot produce such proof of ownership he may apply directly to the registrar of motor vehicles and submit such evidence as such applicant has, and the registrar may thereupon, if he finds the evidence sufficient, authorize the clerk to issue a certificate of title. If, from the records in the office of said clerk, there appears to be any lien on said motor vehicle, such certificate of title shall contain a statement of said lien unless such application is accompanied by proper evidence of its extinction."

(Emphasis added.)

In the situation in question the vehicles have been ordered into storage pursuant to R.C. 737.29 and may be sold by the chief of police of the municipal corporation under R.C. 737.32. This authority to sell evidences a "transfer of ownership by operation of law" as that phrase is used in R.C. 4505.10. Opinion No. 70-117, supra. R.C. 4505.10 authorizes the issuance of certificate of title for such motor vehicles in accordance with the procedure set out in that Section. The more limited coverage of R.C. 737.331 having been repealed, the general provision of R.C. 4505.10 now applies to the sale of motor vehicles worth less than \$200.

In specific answer to your request, it is my opinion and you are so advised that certificates of title for motor vehicles ordered into storage pursuant to R.C. 737.29, whose sale is authorized by R.C. 737.32, may be issued in accordance with the procedure set out in R.C. 4505.10. (Opinion No. 70-117, Opinions of the Attorney General for 1970, approved and followed)