

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated sufficient to cover the obligations of the contract. You have also submitted a personal contract bond in a sum sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans and specifications were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
EDWARD C. TURNER,
Attorney General.

748.

CLERK OF COURTS—CANNOT LAWFULLY EXPEND MONEY FOR BILLS OF SALE FOR OTHER THAN APPROVED FORMS—MAY ACCEPT FOR FILING OTHER FORMS.

SYLLABUS:

1. *The clerk of courts cannot lawfully expend money for bills of sale for motor vehicles or used motor vehicles for free distribution, as provided in Section 6310-13a, General Code, unless the form thereof has been approved by the Attorney General.*

2. *Such clerk may accept for filing any form of bill of sale for "motor vehicles" or "used motor vehicles" which contains all the information required in the form approved by the Attorney General, even though such instrument may contain additional matter in connection with the actual transaction by which the right of possession of such vehicle is transferred.*

COLUMBUS, OHIO, July 19, 1927.

HON. OTHO L. MCKINNEY, *Prosecuting Attorney, Springfield, Ohio.*

DEAR SIR:—Permit me to acknowledge receipt of your request for my opinion as follows:

"The clerk of courts of this county has requested an opinion as to whether he shall keep on hand and furnish free, a supply of blank forms of bills of sale other than the forms approved by the Attorney General.

Section 6310-13a of the General Code, in the last paragraph says:

'The clerk of courts shall keep on hand a sufficient supply of blank forms of bills of sale and sworn statements of ownership which shall be drawn in accordance with the forms approved from time to time by the attorney general—shall, on request—be distributed by the clerk of court without charge.'

The only forms for such bills of sale that have been specifically approved by the Attorney General that I have been able to find are indicated in the Opinion of Attorney General for 1923 at page 452. On page 459 of that opinion the Attorney General indicates that nothing therein contained was intended to disapprove any other form which might be used, so long as the substituted form contained the substance of the approved form. The opinion

further indicates that forms used other than the approved form might be accepted when presented to the clerk for record but intimates that the clerk should distribute forms only in accordance with the approval of the Attorney General.

I am enclosing a form of bill of sale that the clerk of this court desires to use and to furnish to the dealers free. It is different from the approved form in that it conveys title containing habendum clause, covenants and warranty.

The specific point of this query is whether a county would be authorized to pay for such a form as enclosed for free distribution by the clerk of courts, under the provision of Section 6310-13a."

Your specific question is whether the clerk of courts would be authorized to expend public moneys to obtain bills of sale for the purpose of distribution, different in form from those approved by the Attorney General.

In your communication you refer to the opinion found in Opinions of Attorney General for 1923, p. 452. You will note that it is pointed out in that opinion that

"It was the legislative intent that such bill of sale should be a paper of identification, evidencing the fact of the transfer of the possession rather than a 'bill of sale' as the term is generally understood. In support of this view it may be pointed out that the law requires everyone who 'obtains' an automobile to get a 'bill of sale.' It is conceivable that in many instances machines will be 'leased', 'loaned' or 'obtained' under circumstances in which the title, as the term is usually understood, will not pass. However, the burden is upon the person who 'obtains' or receives a 'motor vehicle' or a 'used motor vehicle' to obtain a 'bill of sale'. If one is bound to acquire such, irrespective of the nature of the contract under which he obtains possession of the machine, then it would seem logical to conclude that such a 'bill of sale' relates only to the right of possession and need not contain the actual transaction. If such is not the case, then it would be necessary for a chattel mortgage to be filed with the Clerk of Courts and such an instrument would have to conform to the form approved by the Attorney General."

It is also stated in said opinion:

"It may be pointed out that nothing herein is intended to disapprove any other form which may be used and which may vary in some details but which contains the substance of the approved form. In other words, every form used should have all the information required in the approved forms *and the clerk should distribute forms in accordance with this approval.* However, in the event that a bill of sale should be presented to the Clerk of Court which contains more explanatory details in reference to the consideration, etc., and the nature of the agreement, including warranties, etc., and used for the purpose of showing the actual transactions, but which otherwise contains all of the matters required in the approved form, there would be no reason why such a bill of sale should not be accepted when presented to the Clerk of Court, the same as a form which has been approved by the Attorney General and distributed by the clerk." (Italics the writer's.)

Inasmuch as Section 6310-13a of the General Code, the pertinent part of which you quote in your communication, only authorizes the clerk of courts to keep on hand "a sufficient supply of blank forms of bills of sale and sworn statements of ownership which shall be drawn in accordance with the forms approved from time to time by

the Attorney General", I am of the opinion that the clerk has no authority to expend public moneys for the purpose of obtaining any other forms for free distribution. That is, he is not authorized to pay for the purchasing or printing of any forms save those approved by the Attorney General.

For this reason and in accordance with the holding of the opinion above quoted, it is my opinion that:

1. The clerk of courts can not lawfully expend money for bills of sale for motor vehicles or used motor vehicles for free distribution as provided in Section 6310-13a, General Code, unless the form thereof has been approved by the Attorney General.

2. Such clerk may accept for filing any form of bill of sale for "motor vehicles" or "used motor vehicles" which contains all the information required in the forms approved by the Attorney General, even though such instrument may contain additional matter in connection with the actual transaction by which the right of possession to such vehicle is transferred.

Respectfully,
EDWARD C. TURNER,
Attorney General.

749.

COUNTY AUDITOR—AS DEPUTY COMMISSIONER OF MOTOR VEHICLES MAY NOT DISTRIBUTE LICENSE TAGS EXCEPT AT HIS OFFICE AT THE COUNTY SEAT OF JUSTICE.

SYLLABUS:

The county auditor as deputy commissioner of motor vehicles may not distribute license tags except at his office at the seat of justice in the county.

COLUMBUS, OHIO, July 19, 1927.

HON. OSCAR A. HUNSICKER, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—Permit me to acknowledge the receipt of your request for my opinion as follows:

"Under Section 6291-1 provision is made whereby the commissioner of motor vehicles may designate the County Auditor and one or more persons in each county to act as deputy commissioners for the issuing of licenses.

Under Section 6291-1, has the Auditor any authority to delegate to his deputies, power to issue licenses outside of the Auditor's office at the Court House? For example, some of the larger rubber companies and some of the automobile clubs and various other concerns have asked to be allowed to issue these licenses to relieve the extremely crowded conditions at the Court House. We are wondering if there is any authority for the Auditor to parcel out these licenses.

We are asking this for the following reason: in case a robbery occurs or moneys are embezzled when the licenses are being issued away from the Court House, the bonding companies who bonded the deputy auditors would have the defense that they were engaged in illegal acts and therefore the bond would be void."