

a complete unit, or certified copies thereof, even though he has purchased such car as junk.

These questions were considered in Opinion No. 327 of this department rendered on April 14, 1927, addressed to the Commissioner of Motor Vehicles, a copy of which I am enclosing herewith.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

1190.

BILLS OF SALE FOR USED MOTOR VEHICLES, DISCUSSED.

SYLLABUS:

1. *Upon the transfer of ownership of a used motor vehicle the transferor is required to execute a bill of sale in duplicate as provided by Section 6310-7, General Code, and deliver the same to the transferee, together with all former bills of sale and a sworn statement of ownership if one has theretofore been filed for such motor vehicle, or duly certified copies thereof.*

2. *Persons acquiring title to a used motor vehicle are required to obtain from the person from whom title is being obtained at the time or before title to such used motor vehicle shall be obtained, a bill of sale therefor in duplicate, together with all prior bills of sale and the sworn statement, if a sworn statement has prior thereto been filed for such motor vehicle, or certified copies thereof, and thereafter present to the clerk of courts of the county in which passage of title is consummated, within three days immediately thereafter, such duplicate bills of sale together with all prior bills of sale and sworn statements, if any, or certified copies thereof, which he is required to obtain.*

3. *Section 6310-11a, General Code, requires persons who acquire title to used motor vehicles to present to the clerk of courts the bill of sale therefor within three days after acquiring such title. If such transferee fails to present such bills of sale for filing within three days after acquiring title to a used motor vehicle for which the bills of sale had been executed, he may do so later, although presentation of such bills of sale at a later date will not, as a matter of law, absolve the transferee from the penalties provided for failure to observe the law.*

4. *Clerks of courts are without authority to accept for filing a bill of sale of a used motor vehicle unless the same is properly executed and marked.*

COLUMBUS, OHIO, October 22, 1927.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—This will acknowledge receipt of your inquiry which reads as follows:

“The Clerk of Court of Common Pleas of this county has called my attention to certain questions relative to the law dealing with bills of sale for used vehicles.

He has recently received a circular from the Inspector's office at Columbus, advising him at some length with regard to this matter.

However, it seems that said circular does not cover a state of facts which has been put to him recently by several dealers and car owners in this county.

The particular state of facts which has been put to him is set forth on the enclosed paper, and I would like your opinion as to the questions asked therein.

Also kindly advise me relative to a case where one assembled a car from parts taken from junk automobiles. How is such a person to comply with this law?"

The enclosed paper to which you refer reads as follows:

"In reference to your Circular No. 623, would like to know if the owner of a Ford Car made in 1924 can file with the Clerk of Courts of the county in which his residence is established a sworn statement of ownership for such car under this date, then sell said car, give to the purchaser a copy of such sworn statement, and a used bill of sale and thus pass title; or even if a sworn statement of ownership for such car has been filed by said owner with said Clerk of Courts in the year 1926, can such owner give a duplicate copy of such sworn statement and a used bill of sale to a purchaser and thus pass title?

What is the last date that a Clerk of Courts can file a sworn statement of ownership for a car purchased since the bill of sale law became effective?

Unless Clerks of Courts are permitted to file sworn statements of ownership for used motor vehicles, purchased since August, 1921, where there is no taint of any stealing, but whose chain of title is impossible to be made out by bills of sales, a great many of the dealers and owners of such used motor vehicles in this county will be put to a great loss by being compelled to junk cars of considerable value.

Clerks should be permitted to file sworn statements for such cars and the chain of title start from such sworn statement of ownership."

The first act of the General Assembly requiring the execution of a bill of sale upon the transfer of title to a motor vehicle or used motor vehicle was passed in 1921 and became effective August 16, 1921 (109 O. L. 330). The title of this act was as follows:

"To prevent traffic in stolen cars, require registration and bill of sale to be given in event of sale or change in ownership of motor vehicles."

This act was strengthened by amendments made in 1923 and again in 1925. The purport of these amendments serves more effectually to safeguard the purpose for which the law was enacted and more efficiently to carry out the intent of the law. In the original act it was provided that in all cases where transfers of title to motor vehicles, or used motor vehicles were made, the transferor should execute a bill of sale as defined and directed in the act, and the transferee should obtain such a bill of sale. To fail to do so was, by the terms of the act, made a penal offense. The act further provided in the section which was codified as Section 6310-13, General Code, and which has not since been amended, that:

"No person residing in this state shall drive, use or operate, a motor vehicle or 'used motor vehicle' upon the public highways thereof, without having a 'bill of sale' for the motor vehicle as defined in this act, or without having first filed, with the clerk of courts, of the county in which his residence is established, a sworn statement containing the name, residence of each and every bona fide owner or owners of the 'used motor vehicle,' the name of the manufacturer or make, the manufacturer's number, the engine or motor number, as well as any other numbers thereon, the horse power of such 'used motor vehicle,' and a general description of the body thereof, and obtain from said clerk, a certified copy of such statement."

As enacted in 1923 (110 O. L. 399), Sections 6310-11 and 6310-11a, General Code, provide that it shall be unlawful for a seller to sell a "used motor vehicle" without having in his possession one copy of all former bills of sale or sworn statements of ownership, if any, or certified copies thereof, pertaining to the car sold, and without delivering the same to the purchaser, and that the purchaser should when purchasing a used motor vehicle obtain from the seller one copy of all bills of sale and the sworn statement, if a sworn statement has prior thereto been filed for such used motor vehicle.

In an Opinion, No. 1185, rendered by this department under even date herewith, to the Bureau of Inspection and Supervision of Public Offices, it was held:

"Sworn statements of ownership of motor vehicles or 'used motor vehicles' authorized by Section 6310-13, General Code, can serve only one of three purposes; either as the first link of the chain of title of a motor vehicle owned and operated on the highways of this State on or prior to August 16, 1921, or as the first link of a chain of title of a car brought from outside the State of Ohio into the State of Ohio, which car had never before been operated on the highways of the State of Ohio or had the title thereto transferred within the State of Ohio, or as a link of the chain of title of a car which had been broken, by reason of its having once been registered within the State of Ohio, then taken out of the state and transferred at least once while so out of the state, and then returned to the State of Ohio."

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 could not be one of the links in the chain of ownership of a Ford car manufactured in 1924, unless the car had either been first sold at some point outside the State of Ohio, or unless the car having been sold by the manufacturer or his agent to a person in Ohio had later been taken out of the state and transferred at least once while so outside of the state and then later brought back into the state.

If the car had first been sold in this state the manufacturer or his agent should have given a bill of sale therefor as provided by Section 6310-5, General Code, and at the time of each subsequent transfer a bill of sale should have been executed in duplicate, and it together with all former bills of sale, or certified copies thereof, should have been delivered to the transferee as provided by Section 6310-7, General Code, which bills of sale or certified copies the transferee, within three days immediately after such transfer, should have presented to the clerk of courts of the county where the passage of title was consummated, as provided by Section 6310-11a, General Code.

In this connection it should be pointed out that Section 6310-11a, General Code, requires persons who acquire title to used motor vehicles to present to the Clerk of Courts the bill of sale therefor within three days after acquiring such title. If such transferee fails to present such bills of sale for filing within three days after acquiring title to a used motor vehicle for which the bills of sale had been executed he may do so later, although presentation of such bills of sale at a later date will not, as a matter of law, absolve the transferee from the penalties provided for failure to observe the law.

If these bills of sale had been properly executed, each one will contain:

"\* \* \* the name or names and residence or residences of each and every bona fide owner or owners of such used motor vehicle, beginning with the original or first purchaser of such used motor vehicle from the manufacturer or importer, or the direct agent or agents or either, and a record of each subsequent transaction, involving such used motor vehicle, down to the last owner, owners, or transferee from whom the corporation, partnership, association or person, selling, conveying, giving away or transferring

derived title thereto; the residence or residences, so stated, shall be by city, village, township, county and state, together with the street and number or post office address, if any, of such former owner or owners, or, if there be no such addresses then by such description, designation, or information as may reasonably fix the place or places, residence or residences of such former owner or owners, and shall contain also the date and place where the ownership of said motor vehicle by the corporation, partnership, association or person selling, conveying, giving away or transferring the same began, and whether he acquired title thereto by purchase from such last owner or owners, or in what manner such title was acquired, \* \* \*

as provided by Section 6310-7, General Code.

If the bill of sale had not been properly executed the clerk of courts had no authority to file the same, as it is only when these bills are properly executed and marked that the clerk of courts has authority to file them. See Section 6310-11a, General Code.

You state in your communication:

“Unless Clerks of Courts are permitted to file sworn statements of ownership for used motor vehicles, purchased since August, 1921, where there is no taint of any stealing; but whose chain of title is impossible to be made out by bills of sales, a great many of the dealers and owners of such used motor vehicles, in this county, will be put to a great loss, by being compelled to junk cars of considerable value.”

Who is to determine whether or not there is any taint of stealing? The record of the chain of title to a motor vehicle as shown by the bills of sale on file and in possession of the owner speaks for itself. A county clerk is vested with no authority to determine whether there is any taint of stealing or to determine anything else in connection with the matter other than whether or not the instruments of title are properly executed and marked. When he has determined that these instruments are properly executed and marked, his duties thereafter are purely ministerial.

It is apparent from the provisions of Section 6310-7, General Code, quoted above, that an examination of the last bill of sale will disclose how and where certified copies of prior bills of sale and sworn statements of ownership may be obtained, if any of these have been lost. It is equally apparent that unless there has been a flagrant violation of the law there could be no case where a “chain of title is impossible to be made out by bills of sales” as you suggest. It might in some instances entail some expense and take some little time, but that does not serve to suspend the law. In any event, a wrong-doer is never permitted to profit by his violation of the law.

I appreciate the fact that buyers and sellers of cars in the past have not in all cases been complying with the law, and I am informed that clerks of courts and other administrative officers have been in some cases ignoring the plain provisions of the statutes, and permitting the transfer of cars and their registration for the purpose of issuing licenses by the filing of a mere sworn statement of ownership, when the law specifically and plainly requires bills of sale and all former bills of sale, or certified copies thereof, to be presented, as required by Sections 6310-3 et seq. of the General Code and Section 6294, General Code.

By so doing such officers may have led people who were not familiar with the law and who depended on the officer's knowledge thereof, not only to become possessors of cars which they may have difficulty in selling if they are required strictly to comply with the law, but to become subject to the penal provisions of the law as well. On

the other hand, the laxity of these administrative officers has in many instances enabled persons to do the very thing the law seeks to prevent.

If the evils which the law seeks to remedy are to be met, there must be a start made some time to have the law properly complied with, and the longer it is deferred the more well intentioned persons will be its victims. If owners of cars who have failed, when acquiring the title thereto, to get the necessary evidence of title, are now to be permitted to transfer their cars without furnishing the proper evidences of title the purchaser will be in the same position when he undertakes to transfer the car that his immediate preceding title holder had been; and if inconvenience is an excuse for one it may well be for the other.

With respect to the instances you mention, the owner of the 1924 Ford, if he undertakes to sell the car without having in his possession one copy of all duly executed, verified and filed prior bills of sale, or duly certified copies thereof, and without delivering the same to the purchaser, will be guilty of a violation of the plain provisions of Section 6310-11, General Code, and subject to a fine as provided by Section 6310-14, General Code. In addition, such a transferee is not entitled to have the car registered and obtain a license therefor as provided by Section 6294, General Code, which provides that before a license can be issued for a car the owner must present for inspection proper bills of sale as provided by the statutes.

Your second question is answered in Opinion No 1189, rendered by this department under even date herewith to the Prosecuting Attorney of Carroll County, a copy of which I enclose herewith, and in Opinion No. 327, rendered under date of April 14, 1927, to the Commissioner of Motor Vehicles.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

1191.

APPROVAL, BONDS OF THE CITY OF ASHLAND, ASHLAND COUNTY  
OHIO—\$5,000.00.

COLUMBUS, OHIO, October 23, 1927.

*Industrial Commission of Ohio, Columbus, Ohio.*

1192.

APPROVAL, BONDS OF MAPLE HEIGHTS VILLAGE SCHOOL DISTRICT,  
CUYAHOGA COUNTY, OHIO—\$21,000.00.

COLUMBUS, OHIO, October 22, 1927.

*Industrial Commission of Ohio, Columbus, Ohio.*