trustees to see that moneys are not deposited in a depository in excess of the depository bond. Such section, in so far as is material to your inquiry, read:

> "No bank or depository shall receive a larger deposit of such funds than the amount of such bond and in no event to exceed three hundred thousand dollars. The trustees of the township shall see that a greater sum than that contained in the bond is not deposited in such bank or banks, and such trustees and their bondsmen shall be liable for any loss occasioned by deposits in excess of such bonds."

It might be urged that no deposits were made in a depository in excess of the bond since at the time the deposits were made a bond was in existence in an amount equal to the amount of such deposits. Assuming such contention to be sound, I am unable to find any provision of law which would authorize such board to permit such funds to be outside of their official custody other than in a depository created pursuant to the statutes above referred to. Such depository agreement having terminated by reason of the terms thereof, the bank would then have to act as an implied trustee or agent for the board of trustees.

The legislature, in Section 3326, General Code, has specifically provided that:

> "On failure of the trustees of any township to provide a depository according to law the trustees and their bondsmen shall be liable for any loss occasioned by their failure to provide such depository * * * "

It is therefore my opinion that when a board of township trustees permits funds to remain in a former depository bank after the expiration of the term of the depository agreement, and if during the time when such funds are so on deposit after the termination of such agreement such bank is taken over by the Superintendent of Banks for liquidation by reason of its insolvency, and loss to the township is suffered thereby, such township trustees and their bondsmen are liable to the township to the extent of such loss. (Section 3326, General Code.)

Respectfully,
JOHN W. BRICKER,
Attorney General.

2657.

MOTOR VEHICLE—PURPOSES OF SWORN STATEMENT OF OWNERSHIP—DUPLICATE BILL OF SALE ACCEPTABLE FOR FILING WITH CLERK OF COURTS WHEN—

SYLLABUS:

1. *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, *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. (Opinions of Attorney General for* 1927, *Vol. III, page* 2093, *affirmed and followed.)*

2. *The clerk of courts is without authority to accept for filing the duplicate bill of sale of a used motor vehicle unless one copy of all other bills of sale back to and including the original bill of sale or back to and including the sworn statement or certified copies thereof are presented to him properly executed and marked. (Opinions of Attorney General for* 1927, *Vol. II, page* 1096, *affirmed and followed.)*

COLUMBUS, OHIO, May 12, 1934.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

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

> "The Clerk of Courts of this County of Seneca has asked that an opinion be obtained from you relative to the accepting for filing of sworn statements and bills of sale for motor vehicles.
>
> It seems that in other counties bills of sale are accepted for filing where the prior bills of sale in the chain of title in the case of a used motor vehicle are not presented with the last bill of sale transferring title, which the purchaser seeks to file, and also sworn statements of ownership are accepted in other counties which do not set forth the reasons for making such sworn statement, such as repossession, loss of prior bill of sale, etc. Our clerk has been insisting that all prior bills of sale must be presented, or in lieu thereof a sworn statement to the effect that they have been lost, or some other valid reason for failure to produce them, but it has been called to his attention that such is not required in other counties.
>
> Will you please let me have your opinion upon these questions, so that he may know just what procedure to follow?"

In your request, you assume the legality of the use of a sworn statement of ownership in case of (1) repossession or (2) loss of prior bills of sale. Because of this, I wish to call your attention to former opinions of my predecessors in office.

In Opinions of the Attorney General for 1927, Vol. II, page 1096, it was held as disclosed by the first and third branches of the syllabus:

> "1. It is unlawful for a corporation, partnership, association, or person, to sell, convey, give away, transfer, exchange, purchase or obtain a 'used motor vehicle' as defined in Section 6310-3, General Code, without having in his possession the bill of sale executed in duplicate, as provided in Section 6310-5, General Code, and verified, as provided

in Section 6310-9, General Code, and one copy of all duly executed, verified and filed, bills of sale or certified copies thereof, back to and including the original bill of sale or back to and including the sworn statement, and without delivering the same to the corporation, partnership, association or person receiving or obtaining such 'used motor vehicle.'

3. The Clerk of Courts is without authority to accept for filing the duplicate bill of sale of a used motor vehicle unless one copy of all other bills of sale back to and including the original bill of sale or back to and including the sworn statement or certified copies thereof are presented to him properly executed and marked."

I also wish to call your attention to Opinions of the Attorney General for 1927, Vol. III, page 2093, which held as disclosed by the fourth and fifth branches of the syllabus:

"4. Mortgagees, lessees or vendees on conditional sale contracts, who repossess motor vehicles or used motor vehicles upon default in the performance of the terms of the contract of mortgage, lease or conditional sale, are required, upon the subsequent transfer of the ownership of such motor vehicles or used motor vehicles, to execute a bill of sale therefor as provided by law and deliver such bill of sale to the transferee together with all former bills of sale or sworn statements of ownership as required by Section 6310-8, General Code.

5. 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, 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 been 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."

Two of the questions submitted for consideration in that opinion were:

"Question 1: When a finance company is compelled to take back a motor vehicle, how can it give a title to the dealer again?

Question 2: How should the transaction be handled, where a dealer takes back a motor vehicle on which he had a mortgage?"

It was said at page 2100:

"I am advised that considerable difficulty is being experienced on account of so-called repossessed cars by mortgagees, who insist that in such cases the filing of a sworn statement of ownership entitles the repossessor of the car to have the car registered in his name.

I find no exemptions in the law in favor of mortgagees. The law in Section 6310-7 says:

'Each corporation, partnership, association, or person, in *all* sales, conveyances, transfers, gifts, exchanges of, or transactions in which *title to* a *"used motor vehicle" passes,* * * *'

Simi'ar language is used in the other statutes pertaining to the subject.

Mortgagees come into possession of cars after the conditions of the mortgage have been broken, either with the consent of the mortgagor or by reason of foreclosure or replevin proceedings. If the mortgagor consents, he surely would execute a bill of sale. If he refuses to execute the bill of sale he could hardly be said to have consented. If he is willing to execute a bill of sale and can not furnish all other copies of bills of sale or sworn statements of ownership, as the case may be, the record of his acquiring title to the car will disclose where certified copies of prior evidence of the title may be procured and the mortgagee is in no different position than any one else who desires to purchase a car. If the mortgagor's record of ownership is not regular there might be some suspicion that his acquiring title was irregular. Surely a mortgagee should not loan money on a car without first having satisfied himself that the car had not been stolen and that the person who claimed title to it really had a good title. The best evidence upon which such a conclusion could be based is the record on file in the office of the clerk of courts where the last transfer was made, or the authorized bills of sale and sworn statement of ownership in possession of the owner.

I am informed that it has been the practice in many counties to permit mortgagees who have repossessed cars, to register their cars by filing a sworn statement of ownership, and thus begin a new chain of title without looking back of the mortgagee's title. It would seem to me that, if anything would be defeating the purpose of the law and opening the door for the doing of the very thing the law intended to prevent, a practice of that kind would be it. It has even been suggested that because the forms kept by county clerks contain the notation that they had been approved by the attorney general, their use for that purpose was justified. Such a contention is too obviously fallacious to merit contradiction. It is true that county clerks keep on hand a supply of sworn statements of ownership which have been approved by the attorney general for the purpose for which sworn statements of ownership may be used, but not for any purpose other than is permitted by law.

It has also been contended and apparently with seriousness that because the statutes in several places use the expressions 'bills of sale' or 'sworn statements of ownerhip' the law contemplates that in lieu of a bill of sale a statement of ownership or sworn statement may be furnished. If such be the case, why the provision with reference to bills of sale at all?

Sworn statements of ownership are a sufficient compliance with the law and are proper beginnings of a chain of title to a used motor vehicle when there are no previous instruments of title in existence as I have stated above, but they can not be used interchangeably as and for a bill of sale, when the law specifically requires a

'bill of sale' or 'all bills of sale.' The 'sworn statements' contemplated by the provisions of Section 6310-13, supra, can never be anything other than the first link of a chain of title to a used motor car in this state, unless the car having been once owned in this state is taken out of the state and while out of the state has been transferred by sale or otherwise and then brought back into the state, in which event a sworn statement of ownership might be filed for the purpose of having it registered in this state, but even then, if again transferred after being brought into the state, the bill of sale then executed should be accompanied by the former bills of sale executed in this state as well as the sworn statements of ownership made when brought into the state."

In Opinions of the Attorney General for 1928, Vol. I, page 224, it was held as disclosed by the syllabus:

"A certificate, issued by the clerk with respect to a bill of sale for a motor vehicle filed with such clerk, may be properly used by the owner of the vehicle, demanding and receiving such certificate, in making application for the registration of such motor vehicle, although the retained copy of the bill of sale filed with such clerk be at the time held by the dealer or a finance company."

The last opinion on the subject is to be found in Opinions of the Attorney General for 1930, Vol. I, page 197, which held as disclosed by the syllabus:

"1. A mortgagee, that repossesses a motor vehicle after the conditions of the mortgage have been broken and does not have copies of all former bills of sale, cannot lawfully give a bill of sale to a subsequent purchaser setting forth the special facts with reference to the manner of obtaining title to such automobile, but must execute a bill of sale therefor in the same way that any other association or person is required to do, that is by delivering to the purchaser a properly verified bill of sale, together with all bills of sale or certified copies thereof, back to and including the original bill of sale or back to and including the sworn statement.

2. The clerk of courts may make certified copies of bills of sale for a mortagee who has repossessed an automobile after the conditions of the mortgage have been broken, when such mortgagee files an affidavit setting forth such facts and the further fact that he is unable to obtain copies of the bills of sale from the mortgagor."

I am in substantial agreement with the reasoning and conclusions of the above quoted opinions and take this opportunity to reaffirm them.

With respect to where there is a loss of a prior bill of sale in the chain of title, I call your attention to Section 6310-13a, which provides inter alia:

"In case a copy of the bill of sale or sworn statement which has been filed according to the provisions of this chapter shall be lost, stolen or destroyed, a certified copy thereof may be procured from the clerk of courts upon presentation of an affidavit showing that such bill of sale or sworn statement of ownership has been lost, stolen or destroyed and on the payment of a fee of twenty-five cents. * * *."

Under this section any person who is the owner of an automobile is entitled to bills of sale to complete evidence of his chain of title if he does not have possession of them by reason of the fact that they have been lost, stolen, or destroyed and in such case he could obtain a copy from the clerk of court's office in which such had been filed.

Consequently, it is my opinion that a sworn statement of ownership in lieu of the copy of such lost, stolen or destroyed bills of sale would not be a compliance with the above quoted statute.

I now come to the gist of your inquiry which involves the proper use of sworn statements in lieu of bills of sale. This question has been answered in former opinions of this office. Your attention is directed to the fifth branch of the syllabus of an opinion found in Opinions of the Attorney General for 1927, Vol. III, page 2093, reading:

> "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, 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."

As to the procedure for your clerk of courts to follow, I call your attention to Opinions of the Attorney General for 1927, Vol. II, page 1096, which held as disclosed by the third branch of the syllabus:

> "The Clerk of Courts is without authority to accept for filing the duplicate bill of sale of a used motor vehicle unless one copy of all other bills of sale back to and including the original bill of sale or back to and including the sworn statement or certified copies thereof are presented to him properly executed and marked."

I also call your attention to Opinions of the Attorney General for 1927, Vol. III, page 2118, which held as disclosed by the second branch of the syllabus:

> "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."

Specifically answering your request, it is my opinion that:

1. 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, 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. (Opinions of Attorney General for 1927, Vol. III, page 2093, affirmed and followed).

2. The clerk of cours is without authority to accept for filing the duplicate bill of sale of a used motor vehicle unless one copy of all other bills of sale back to and including the original bill of sale or back to and incuding the sworn statement or certified copies thereof are presented to him properly executed and marked. (Opinions of Attorney General for 1927, Vol. II, page 1096, affirmed and followed).

Respectfully,
JOHN W. BRICKER,
Attorney General.

2658.

MOTOR VEHICLE—CLERK OF COURTS UNAUTHORIZED TO ACCEPT SWORN STATEMENT OF OWNERSHIP IN LIEU OF PROPERLY EXECUTED BILL OF SALE.

SYLLABUS:

When the vendor of a motor vehicle does not execute a bill of sale or where he neglects to have his signature verified on the bill of sale, although title to such motor vehicle may pass to the purchaser, still the clerk of courts is not authorized to accept a sworn statement of ownership from such purchaser in lieu of a properly executed bill of sale.

COLUMBUS, OHIO, May 12, 1934.

HON. FRANK A. ROBERTS, *Prosecuting Attorney, Batavia, Ohio.*

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

"The Clerk of Courts of this County has had several instances in which purchasers of automobiles have been unable to obtain bills of sale for them from the sellers.