

In reply to your inquiry you are therefore advised that it is the opinion of this department, upon the questions involved, that:

1. In lieu of providing work in high school branches, as required of boards of education, under the provisions of section 7764-1, G. C., a board of education may transport to a high school outside the district all pupils of compulsory school age who have finished the ordinary grade school curriculum (7648 G. C.) and who live more than four miles from any high school.

2. A board of education maintaining a second grade or a third grade high school is satisfying the requirements of section 7764-1 G. C. by providing work in high school branches for those pupils who have not graduated from such second or third grade high school.

3. Where one word or a section number has been wrongly used for another and the context affords the means of construction, the proper word or section number will be deemed substituted or supplied.

In section 7764-1, where provision is made that boards of education shall provide work in high school branches, as mentioned in section 7648 G. C., an error in the section number 7648 is apparent and such section number should read 7649 G. C., the latter being the section of the General Code which defines what shall be work in high school branches in the public schools.

Respectfully,

JOHN G. PRICE,

Attorney-General.

2448.

AUTOMOBILES—AMENDED SENATE BILL NO. 3 (109 O. L. 330) CONSTRUED—NOT NECESSARY TO FILE BILL OF SALE UNLESS TRANSFER OF TITLE TO MOTOR VEHICLE HAS TAKEN PLACE—WHAT BILL OF SALE MUST CONTAIN—TIME SAME MUST BE FILED—NO REQUIREMENT TO EXECUTE SAME IN DUPLICATE.

1. *Under Amended Senate Bill No. 3, known as the "Atwood automobile anti-theft law," it is not necessary that any paper denominated a bill of sale be filed in the office of the clerk of courts of a county unless and until a transfer of title to a motor vehicle or used motor vehicle has taken place.*

2. *Under this measure the bill of sale, in cases where title has passed, must include all the terms of the instrument of conveyance by which title is passed; as well as the special matter required to be incorporated in such bill of sale by the said act; but if no such written instrument of conveyance has been given the bill of sale may be limited to the items required by the act, and if title does not pass the bill of sale, while required to be given if possession changes, need not show the contract under which possession changes and need not be filed for record until title does pass.*

3. *The time within which a bill of sale or paper conveyance must be filed in the office of clerk of courts depends upon the time when title passes.*

4. *There is no requirement that an assignment of the original bill of sale of a used motor vehicle, which is required to be made when the title to such used motor vehicle passes, shall be executed in duplicate and filed in the office of any clerk of courts.*

COLUMBUS, OHIO, October 3, 1921.

HON. JOHN R. KING, *Prosecuting Attorney, Columbus, Ohio.*

DEAR SIR:—You request the advice of this department upon the following questions:

"1. Is it necessary, under Amended S. B. No. 3, for the person to whom the vehicle is delivered to file in the office of the clerk the *contract* between himself and the transferrer, the transferrer having included in the contract the specific information required by the act, or would it be a compliance with the law if a separate paper, containing a recital that possession of the vehicle had passed from the transferrer to the transferee, without disclosing the nature of the possession and containing the information required by the act, should be executed in duplicate and delivered to the transferee and by him filed with the clerk?"

This inquiry is suggested by the fact that the method of doing business among dealers in automobiles varies. Some of them use an ordinary bill of sale, taking notes and mortgages to secure deferred payments; others use conditional sales contracts and still others use a form of lease with privilege of purchase.

Of course, in the two last mentioned cases the title to the machine does not pass at the time of delivery of possession, but is deferred until certain payments are made and other conditions complied with. Inasmuch as these various contracts are matters of private concern between the seller and the purchaser, it seems unfair that merely for the purpose of obtaining a record of certain specified information they should be required to make public the details of every transaction in which they transfer an automobile. The question therefore arises whether this can be obviated by the execution and filing of a separate paper as above suggested.

2. In view of the language of the last paragraph of section 1 of the act, the language of section 2 of the act and the somewhat conflicting language of section 3 of the act, is it required that the 'bill of sale' or paper of conveyance, in cases where title to the machine does not pass with delivery, shall be filed within three days from the time of the delivery of possession of the machine, or does the law mean that such filing shall not take place until after title to the machine has passed?"

3. Suppose a person buys an automobile in one county in the state, secures the required bill of sale and files one copy thereof in the office of the clerk of courts of the county in which the sale takes place, and then removes to another county, possibly at the extreme opposite side of the state, and there sells or transfers the automobile by assignment of the original bill of sale which he has in his possession. Must such assignment be made in duplicate, and where, if at all, should it be filed?"

In addition to the last paragraph of section 1 of the act to which you refer, the following provisions have some bearing upon the first question which you submit:

"Section 3. It shall be unlawful for a * * * person, the manufacturer of motor vehicles or the importer of motor vehicles, to *sell, convey, lease, give away, transfer or exchange* a motor vehicle, directly or through an agent or agency * * * or other person, unless such manufacturer * * * person * * * or the agent or either, shall, at or before such sale, conveyance, transfer, lease, gift, exchange or passage of title, execute, in the presence of two witnesses, a *bill of sale* in duplicate, and deliver both copies to the purchaser, buyer, transferee, or person receiving such motor

vehicle. Such bill of sale shall contain (certain specified information designed to identify the motor vehicle which is the subject of the transaction)
* * *

"Section 7. Each bill of sale shall be duly verified by the seller or other person * * * before a notary public * * * before the delivery of either to the * * * person buying, receiving or obtaining title to such motor vehicle or 'used motor vehicle,' * * *."

"Section 4. Each buyer, purchaser, transferee or person receiving or obtaining a 'motor vehicle' shall obtain from the manufacturer, or such manufacturer's agent, or the importer of such 'motor vehicle,' at or before such sale, conveyance or delivery, the bill of sale and duplicate as provided for in section 3 of this act, and verified as provided in section 7 of this act."

"Section 5. Each * * * person, in all sales, conveyances, transfers, gifts, exchanges of, or transactions in which title to a 'used motor vehicle' passes, shall execute in the presence of two witnesses a bill of sale, in duplicate, and deliver the same to the * * * person purchasing, receiving or obtaining such 'used motor vehicle,' at or before such sale, conveyance, transfer, gift, exchange or passage of title; such bill of sale shall 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 of either, and a record of each subsequent transaction, involving such used motor vehicle, down to the last owner, owners, or transferee from whom the * * * 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 postoffice 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, or the place where he may be found, with his occupation and place of business or employment, if employed by any other person or persons, and the name of such employer, and shall contain also the date and place and where the ownership of the said motor vehicle by the * * * 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, and a statement of any and all changes and alterations in the finish, design or appearance of the said used motor vehicle which had been made within the knowledge of the person making the statement."

"Section 6. Each buyer, purchaser, transferee or person receiving or obtaining a 'used motor vehicle' shall obtain from the owner, vendor, or person conveying or transferring such 'used motor vehicle,' at or before such sale, transfer, conveyance or delivery, the bill of sale in duplicate, as provided for in section 5 of this act and verified as provided for in section 7 of this act."

"Section 8. Each corporation, partnership, association or person to whom title has in any manner been passed to a motor vehicle or a 'used motor vehicle' shall file one of the copies of the duplicate bill of sale with the clerk of courts of the county in which the sale, transfer, con-

veyance, gift or passage of title is consummated within the three days immediately thereafter. It shall be the duty of the clerk of courts to refuse to accept for filing the duplicate bill of sale if such instrument is not executed and witnessed according to the provisions of this act.

The clerk of courts shall, at the time of the filing of such duplicate bill of sale, or assignment thereof, affix his official seal and the date of the filing upon each instrument, and make an alphabetical index of the grantors and grantees thereof. Any instrument purporting to be a bill of sale, which does not bear the official seal of the clerk of courts of the county where the sale, gift, transfer, conveyance or passage of title took place shall be null and void. The clerk of courts of each county shall charge a fee of twenty-five cents for filing each duplicate bill of sale and the same shall be charged for the filing and indexing of each assignment of any such bill of sale."

In your first question you inquire as to what must be filed in the office of the clerk and by whom. Section 8, as above quoted, is the only section which requires anybody to file any bill of sale in the office of the clerk of courts. The only persons, corporations, etc., to which it applies are those "to whom title has in any manner been passed." This section is on its face narrower in import than some of the other provisions of the law; for example, section 3 makes it unlawful for any manufacturer or importer directly or indirectly to *lease* a motor vehicle without executing and delivering a bill of sale in duplicate.

The first question encountered is as to whether the lessee of a motor vehicle is required to file a copy of the bill of sale, which apparently section 3 assumes that he is to receive (although because of the provisions of other sections this conclusion is not clear), with the clerk of courts. This question must be answered by determining whether or not the phrase "to whom title has in any manner been passed" includes such a lessee. In the opinion of this department such a particular construction of this phrase is impossible. While many terms are loosely used in the act as a whole, there are numerous instances in which the phrase "passing title" or "passage of title" or some such equivalent phrase is used when it is manifest that such use of the phrase is in a sense too narrow to include a transaction whereby possession is transferred without change of title. This is clearly the case in section 3, above quoted, and may be the case in the paragraph in section 1 to which you refer. See also section 5. The rule is that unless there is some clear intimation to the contrary a word or phrase which has by repeated use in an act acquired a definite meaning therein is to be given that meaning in all its subsequent uses in the same act. In this case this principle would have to be applied if there were any doubt about the meaning of the phrase "to whom title has in any manner been passed" in section 8, but it is almost inconceivable to suppose that the legislature could have intended to use this phrase in a sense so inaccurate as to contemplate a lease.

As an introduction, then, to the complete answer to your first question, you are advised that while a bill of sale seems to be required in all cases where possession changes (see sections 3 and 4, *supra*) such bill of sale need not be filed in the office of the clerk of courts unless title passes. It might also be observed, though this point is withheld and no opinion expressed thereon, that apparently the only transactions relating to "used motor vehicles" which the law touches are those in which title passes; inasmuch as section 5 uses the words "sales, conveyances, transfers, gifts, exchanges of, or

transactions in which title to a 'used motor vehicle' passes" and omit the word "leases" which is found in the corresponding provision of section 3 relating to motor vehicles.

It being understood then that only when title passes is it necessary to file a bill of sale in the office of the clerk of courts, your first question may be re-phrased as follows: Must a bill of sale to be so obtained and filed contain all stipulations of any written instrument employed by the parties for the purpose of passing title, or rather of evidencing the passing of title?

You refer to the last paragraph of section 1, which seems to answer this question clearly. The bill of sale is there defined to mean "the bill of sale or paper of conveyance issued by the * * * person selling, giving away, transferring, conveying or passing title to a motor vehicle or 'used motor vehicle.' It is the opinion of this department that every word in this context must be given full weight, and that accordingly, if the parties in any of the transactions described have employed a paper writing as a means of affording evidence of the passage of title, this paper writing and all of its contents must form a part of the bill of sale, the remainder of which must consist of the specific facts required to be incorporated therein by sections 3 and 4 respectively. There is no requirement in the law, however, that a written instrument embodying the agreement pertaining to the transfer of possession of a motor vehicle in which title does not pass shall as a whole be incorporated in the bill of sale; but it is the opinion of this department that when the transaction between the parties consists of a lease, or other arrangement whereby the rightful possession is delivered but title does not pass, the bill of sale required by section 3 need consist only of a statement of facts specifically required in that section.

The reasons for this conclusion will be briefly stated:

In the opinion of this department the definition found in the last paragraph of section 1 is not and cannot be regarded as a complete one or as the equivalent of a requirement that in all transactions to which the act applies and to which it refers by the use of the term "bill of sale" a paper of conveyance shall be issued. The definition simply says that the term shall mean the paper of conveyance that is issued. It does not require that a paper of conveyance shall be issued, but simply that if any paper of conveyance is issued that paper of conveyance shall constitute a bill of sale for the purposes of the act. Conceivably, two men might exchange automobiles without issuing any papers of conveyance at all; and there is found in the act no requirement that a paper of conveyance as such shall be issued in such cases, but sections 3 and 5 respectively provide that a paper shall be issued, which is not a paper of conveyance at all, but a paper of identification in the one case, and a paper showing abstract of title in the other case. The provisions of the act can all be harmonized, therefore, by collecting and paraphrasing them as follows:

To the instrument of conveyance, if any, there must be added the marks of identification or the information respecting title, as the case may be; but if there is no conveyance of title at all, or if title is passed without an instrument of conveyance, the law is complied with by giving a "bill of sale," which is really not a bill of sale at all, but a memorandum which serves the purposes above described.

Of course, the distinction drawn is really an immaterial one where a conveyance or transfer of title has actually taken place, as in that event it will be necessary for the bill of sale to recite that the motor vehicle is being sold, which would of itself probably be a sufficient bill of sale in the ordinary sense;

but where the transaction is a lease, it is believed that there is no requirement in the act that all the terms of the lease be incorporated in the bill of sale.

So far as conditional sales are concerned, it will be assumed that your inquiry relates to such conditional sales as are subject to the provisions of section 8568 G. C., which provides as follows:

“When personal property is sold to a person to be paid for in whole or in part in installments, or is leased, rented, hired or delivered to another on condition that it will belong to the person purchasing, leasing, renting, hiring, or receiving it, when the amount paid is a certain sum, or the value of the property, the title to it to remain in the vendor, lessor, renter, hirer or deliverer thereof, until such sum or the value of the property or any part thereof has been paid, such condition, in regard to the title so remaining until payment, shall be void as to all subsequent purchasers and mortgages (mortgagees) in good faith, and creditors unless the conditions are evidenced by writing, signed by the purchaser, lessee, renter, hirer or receiver thereof, and also a statement thereon, under oath, made by the person so selling, leasing or delivering the property, his agent or attorney, of the amount of the claim, or a true copy thereof, with an affidavit that it is a copy, be deposited with the county recorder of the county where the person signing the instrument resides at the time of its execution, if a resident of the state, and if not such resident, then with the county recorder of the county in which the property is situated at the time of the execution of the instrument.”

It will be noted that this section also applies to leases, with privileges of purchase under certain conditions.

The same two questions as above considered have to be answered here in connection with the other features of your first question, namely, is the paper writing required by section 8568 G. C. to be executed and recorded in order to render the reservation of title valid as against subsequent purchasers an “instrument of conveyance” in the meaning of the last paragraph of section 1 of the act now under consideration, and is such a transaction so evidenced one in which “title has in any manner * * * passed” within the meaning of section 8 thereof. These will be separately considered in their inverse order. It is the opinion of this department that any transaction of the kind under consideration is not one in which “title has in any manner been passed.” In this respect leases and conditional sales are on the same footing.

But it is not so clear that a conditional sale or lease of the type covered by section 8568 G. C. is not a transfer or conveyance within the meaning of the last paragraph of section 1 of the act, nor that the paper writing required to be executed and recorded by section 8568 G. C. in order to accomplish the purposes therein mentioned is not a “paper of conveyance” within the meaning of said section 1. This latter question may be reserved, however, because your inquiry relates only to papers which must be filed with the clerk of courts.

The foregoing statements cover the first question which you submit, and may be summarized as follows: That only in case title has actually passed need any paper be filed in the office of the clerk of courts; and that when title has been passed and the passage of title has been evidenced by a written instrument of any kind, the law requires that to that instrument itself be added the items of information required by sections 3 and 5 of the act.

Your second question goes to the time of the filing. Is this time to be reckoned from the time of the delivery of the machine or the date of the passage of title? It is believed that section 8 is explicit on this point, especially after the meaning of the whole phrase has previously been worked out in this opinion. The whole section relates only to cases in which title has passed. The phrase "within three days immediately thereafter" takes its connotation, therefore, from this basic aspect of the section. It is the conclusion of this department that the time within which paper must be filed dates from the consummation of the passage of title.

The next question involves whether under certain circumstances the assignment of a bill of sale must be filed, and whether or not it must be made in duplicate. You point out that the last paragraph of section 8 seems to infer that assignments are to be filed inasmuch as it prescribes the duties of the clerk of courts when an assignment of the bill of sale is offered for filing; and, indeed, it is the opinion of this department that if an assignment of a bill of sale is offered for filing it must be filed and indexed as therein provided.

But there is no requirement that an assignment be filed. Section 9, which relates exclusively to transfer of title of "used motor vehicles," provides as follows:

"In all sales, conveyances, transfers, gifts, exchanges or transactions in which the title to a 'used motor vehicle' passes, the original 'bill of sale' executed by the manufacturer or importer, or the agent or agents of either, shall be assigned by the seller, conveyer, transferrer or person giving away or passing title to such 'used motor vehicle,' to the purchaser, transferee, recipient or person obtaining title thereto; such assignment must be in writing, and witnessed by two persons and acknowledged by the seller, conveyer, transferer, person giving or passing title to such 'used motor vehicle,' before a notary public or other person authorized by law to take acknowledgments of conveyances. All such assignments shall at all times be kept and attached to the original bill of sale, provided, that in the event the said 'used motor vehicle' was purchased from the manufacturer, importer or the agent or agents of either, prior to this act becoming effective, then a bill of sale, in duplicate, as required by sections 5 and 8 of this act, shall be executed and delivered by the seller, conveyer, transferer, person giving or passing title to such used motor vehicle."

It will be observed that this section requires one assignment in writing, witnessed and acknowledged, which must be attached to the original bill of sale. So far from requiring that the assignment be filed anywhere, this section almost explicitly requires that it not be filed at all by prescribing that it shall be attached to the original bill of sale. The original bill of sale is in no case to be filed, as section 8 requires "one of the copies of the duplicate bill of sale" to be filed. To be sure, there is no clear indication in the act as to which of the duplicate bills of sale required is the "original". Two are required both by section 3 and section 5, and both must be delivered by the transferrer to the transferee prior to the delivery of possession of the motor vehicle. Then it is provided by section 8 that one of the copies shall be filed. However, this cannot be the "original" to which section 9 refers. In the first place the very use of the word "copies" in section 8 is an indication that the copy retained by the owner is to be regarded as the "original". In the second place the assignment is not exactly a separate instrument, for section 9

begins by requiring that in all subsequent transactions in which the title to used motor vehicles passes the "original bill of sale * * * shall be assigned to the purchaser." An assignment imports a manual delivery of a paper. The thing in the possession of a public officer cannot be assigned by a private person. Obviously the ninth section of the act contemplates that the seller of the used motor vehicle shall "assign" the instrument which is in his possession. This he may do by attaching an assignment to the instrument, which really becomes a part of that instrument. The law omits any requirement that a duplicate copy of such assignment be even executed, and naturally fails to provide for any filing of such duplicate assignment save by the inference arising from the second paragraph of section 8, which in the opinion of this department is not sufficient to constitute a requirement which may be made the basis of a criminal prosecution.

Your third question is therefore answered by saying that regardless of where the re-sale takes place, whether in the county in which the original bill of sale is filed and indexed or not, there is no requirement of law that the assignment provided for in section 9 shall be filed in any public office.

The provision of section 8 to the effect that "any instrument purporting to be a bill of sale which does not bear the official seal of the clerk of courts of the county where the sale, gift, conveyance or passage of title took place, shall be null and void" has not been overlooked in this connection. If this clause has any application at all, it would require the affixing of the seal to the assignment in the county where the assignment took place rather than in the county where the original bill of sale is on file. But the sentence will not bear such interpretation as to require the sealing of an assignment. Bills of sales and assignments thereof are separately treated throughout the act, and in the very paragraph in which this sentence is found. It is inconceivable to suppose that the general assembly intended that the phrase "bill of sale", which is defined once in section 1 and is used in contradistinction to an assignment thereof in section 8 itself, should in the sentence now under examination include an "assignment." Moreover, the sentence does not provide merely that an assignment of a bill of sale shall be null and void if it does not bear the official seal, but that the whole bill of sale shall be void unless it is sealed with the seal of the clerk of courts of the county where the passage of title took place. Literally then, if the sentence should be construed as applicable to an assignment, the effect, in case of assignment in another county than the one in which the duplicate bill of sale had been filed, would be to nullify the bill of sale itself.

But the place where the general assembly should and would have put its requirement that an assignment be sealed or filed is in section 9, which deals with assignments. There is, indeed, some evidence of legislative intent to keep a record of the changes of title in the form of an index in the clerk's office, but the provisions are so conflicting that in the absence of a direct requirement to that effect this department cannot advise that this is the law.

Respectfully,
JOHN G. PRICE,
Attorney-General.