

OPINION NO. 1197**Syllabus:**

A purchaser of a motor vehicle at a sale by a decedent's administrator or executor is required to file his application for a certificate of title in the county of his residence as provided in Section 4505.06, Revised Code, (Opinion No. 2681, Opinions of the Attorney General for 1940 approved and followed.)

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To: Dennis J. Callahan, Lawrence County Pros. Atty., Ironton, Ohio
By: William B. Saxbe, Attorney General, July 8, 1964

I have before me your request for my opinion which reads in essence as follows:

"/s/ the certificate of title making the transfer of ownership of a motor vehicle of a deceased person, which has been sold by operation of law by the administrator of the estate of the deceased in the Probate Court, to be issued by the Clerk of the Court of Common Pleas of the County where the purchaser of the motor vehicle resides, or is the cer-

tificate of title to be issued by the Clerk of the Court of Common Pleas in the County where the last title was issued in the name of the deceased."

Section 4505.06, Revised Code, provides in part:

"Application for a certificate of title shall be made upon a form prescribed by section 4505.07 of the Revised Code, and shall be sworn to before a notary public or other officer empowered to administer oaths. Such application shall be filed with the clerk of the court of common pleas of the county in which the applicant resides if the applicant is a resident of this state or, if not a resident, in the county in which the transaction is consummated. * * *

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Section 4505.10, Revised Code, provides in part:

"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. * * *"

In Opinion No. 2681, Opinions of the Attorney General for 1940, a predecessor concluded as disclosed by the syllabus:

"Where an administrator sells a motor vehicle which was owned by his decedent, the purchaser thereof is required to file his application for a certificate of title in the county of his residence as provided in Section 6290-5, General Code."

It was stated in the text of the opinion at page 820:

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"From the above it is apparent that in all cases except where the ownership of a motor vehicle is transferred by operation of law, or when such transfer is in connection with any of the situations enumerated in Section 6290-10, General Code, the application for a certificate of title must be filed in the county where the applicant resides.

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At the time this opinion was rendered Section 6290-10, General Code, (Section 4505.10, Revised Code) provided to the extent material:

"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, * * *"

It will be noted that the General Code section had no comma after the word "law" and no comma after the word "inheritance," unlike the Revised Code version of this statute.

From a reading of the whole opinion it is apparent that my predecessor read the provision under consideration as "In the event of the transfer of ownership of a motor vehicle by operation of law as upon inheritance devise or bequest, (by) order in bankruptcy, (by) insolvency, (by) replevin or (by) execution sale, * * *." As presently punctuated I think the conclusion could easily be reached that the description of the term "operation of law" contained in this statute includes such activities as transfers through insolvency and by execution sale (and by analogy might logically include sales of motor vehicles by administrators or executors). However, I am constrained to agree with the conclusion reached by my predecessor in 1940, for at least two reasons. The first is that the opinion has been in existence for almost twenty-five years without being contradicted either by the courts or the legislature. And the second is that the insertion of the two commas -- which to me suggests a conclusion different from that reached by my predecessor -- was not by way of legislative amendment but occurred at the time of the Code Revision. As proclaimed in Section 1.24, Revised Code, the revision was not intended to change the law as contained in the General Code but merely to restate it.

Accordingly, and in specific answer to your question, it is my opinion that a purchaser of a motor vehicle at a sale by a decedent's administrator or executor is required to file his application for a certificate of title in the county of his residence as provided in Section 4505.06, Revised Code, (Opinion No. 2681, Opinions of the Attorney General for 1940 approved and followed.)