

79.

APPROVAL, BONDS OF SENECAVILLE VILLAGE SCHOOL DISTRICT,  
GUERNSEY COUNTY, TO CONSTRUCT A FIREPROOF SCHOOL  
BUILDING, \$48,000.00.

COLUMBUS, OHIO, February 15, 1923.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus,  
Ohio.*

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80.

SECRETARY OF STATE—CONTRACT FOR PRINTING AUTOMOBILE  
LISTS—CERTIFICATE OF FINANCE DIRECTOR NECESSARY—RE-  
QUIRED TO FURNISH MONTHLY LISTS.

1. *A contract entered into by the Secretary of State for the printing of automobile lists, under the provisions of section 6299, when the certificate of the Director of Finance under the provisions of sections 2288-2 has not been obtained, is invalid.*

2. *Under the provision of section 6299 as enacted in 107 O. L., it is required that the secretary of state cause lists, showing owners of all registered automobiles, in Ohio, to be furnished monthly to the auditors of the counties of the state. Whether or not extra lists are to be printed and furnished is a matter wholly within the discretion of the Secretary of State.*

3. *Whether or not the provisions of section 6294 of the General Code as enacted in 109 O. L., accomplishes the same objects and purposes of the original law and repeals the former by implication, is a question that the department cannot decide in the absence of a judicial interpretation.*

4. *The method whereby a copy of the registration certificate is furnished to the county auditor is not a strict compliance with either section 6294 or 6299. Whether such practice is a substantial compliance with the requirements of either section or both is another question, which cannot be definitely decided without a judicial interpretation.*

5. *Under section 6304 it still remains the mandatory duty of the Secretary of State to furnish monthly lists to the county clerk indicating the chauffeurs who have registered in Ohio.*

COLUMBUS, OHIO, February 15, 1923.

HON. THAD H. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—In your recent communication you request my opinion as follows:

“Information is desired at the earliest practicable date as to whether or not it is necessary for the Secretary of State, under the law as it now stands in Ohio, to have lists of automobile registrants printed.

An opinion is also desired as to the validity of the proposed contract entered into for the printing of automobile lists by my predecessor and the Bratton Letter & Printing Company. A copy of said proposed contract is herewith enclosed."

The copy of proposed contract which you enclose, in substance is a letter addressed to the State Automobile Department to the attention of the Secretary of State by a printing company and purporting to be a quotation of prices for which the company will print certain lists for 1923 (in response to an inquiry), and is signed by the manager of the printing company and the Secretary of State. The instrument is dated December 4, 1922.

For the purpose of convenience your questions will be considered in their inverse order.

Inasmuch as there has been no evidence relating to the certificate of the Director of Finance relative to there being unencumbered balances legally appropriated from which the obligation is required to be paid, it is assumed that no such certificate was given prior to the execution of the proposed contract. In view of this assumption it would seem unnecessary at this time to give further consideration to other phases of the contract relative to its form and legality.

Section 2288-2 of the General Code, as enacted in 109 O. L., page 130, provides:

"Section 2288-2. It shall be unlawful for any officer, board or commission of the state to enter into any contract, agreement or obligation involving the expenditure of money, or pass any resolution or order for the expenditure of money, unless the director of finance shall first certify that there is a balance in the appropriation pursuant to which such obligation is required to be paid, not otherwise obligated to pay precedent obligations."

It will be observed that this section was originally 2288-1a and the amendment in the administrative code adopted the same language that was previously used with the exception of the elimination of the words "Auditor of State" and the substitution therefor of the words "Director of Finance."

The former section was under consideration by the Supreme Court of Ohio in the case of State ex rel. Stafford v. Tracy, Auditor of State, 102 O. S., page 694. In that case the board of administration had entered into a contract without having acquired such certificate and the court held that compliance with the requirement of the section quoted "is a condition precedent to the authority of the board to enter into the contract referred to."

Analogically, in my opinion, there is no reason why what was said by the court in that case is not applicable to the instant case.

Therefore, without further consideration you are advised that it is the opinion of this department that the proposed contract is invalid and of no effect. However, if you should find it desirable to enter into a contract for this purpose, then upon the furnishing of the proper financial certificate negotiations may be renewed with the printing company.

In considering the first inquiry you present in view of the status of the present laws upon the subject it will be somewhat difficult to definitely dispose of your question.

The following sections of the General Code give rise to such inquiry:

"Section 6294 (109 O. L. 239). Every owner of a motor vehicle which shall be operated or driven upon the public roads or highways of this state shall before the first day of January of each year, except as herein otherwise expressly provided, cause to be filed, by mail or otherwise, in the office of the secretary of state a written application in duplicate for registration for the following year, beginning the first day of January of such year on blanks to be furnished by the secretary of state for that purpose containing the following information:

(1) A brief description of the motor vehicle to be registered, including the name of the manufacturer, the factory number of such vehicle, the year's model, the amount of motive power, if any, in figures of horsepower, according to the formula prescribed in this chapter, and in case of commercial cars, the gross weight of vehicle and load, computed according to the formula prescribed in this chapter.

(2) The name and address of the owner, and township, city, or village in which such owner resides.

(3) The district of registration which shall be determined as follows:

(a) In case the motor vehicle to be registered is used for hire or principally in connection with any established business or branch business, conducted at a particular place, the district of registration shall be the municipal corporation in which such place is located; and if not located in any municipal corporation, the county in which such place is located.

(b) In case such vehicle is not so used the district of registration shall be the municipal corporation or county in which the owner resides at the time of making application.

The duplicate copy of the application for registration above mentioned shall immediately be mailed to the county auditor of the county in which the district of registration named in the application is located."

"Section 6298 (108 O. L. Part 2, page 1081). Upon the filing of such application and the payment of the tax imposed by this chapter, the secretary of state shall assign to such motor vehicle a distinctive number, and, without expense to the applicant, issue and deliver to the owner in such manner as the secretary of state may select, a certificate of registration, in such form as the secretary of state shall prescribe, and two number plates, duplicates of each other, at the post or express office within the state of Ohio named in said application."

"Section 6299 (107 O. L. 545). The secretary of state shall thereupon file such application in his office and register such motor vehicle with the name and address of the owner thereof and the facts stated in such application in a book or index kept for that purpose under the distinctive number and identification mark assigned to such motor vehicle by the secretary of state. Such book or index shall be kept in the office of the secretary of state. A full and correct list of registered motor vehicles and their owners shall be furnished monthly by the secretary of state to the auditor of each county in the state. Such lists shall be kept as public records in the office of each county auditor. Extra lists of such motor vehicles may be prepared and printed by the secretary of state and sold to persons desiring such lists at a price not less than the cost of prepar-

ing, printing and distributing same. The money derived from the sale of such lists shall be turned into the state treasury to the credit of the general revenue fund."

In considering the history of this legislation which may properly be done in view of well known rules of statutory construction, in order to throw light upon the legislative intent, it has been observed that the original law as enacted in 99 O. L., page 538, required the secretary of state after the assignment of the numbers to issue a certificate to the applicant. It further required that the original book or index in which the motor vehicle was registered should be kept in the office of the secretary of state and be open to inspection.

It further provided:

"(99 O. L., page 539. Sec. 8). An exact, full and accurate list of registered motor vehicles and their owners, shall be furnished by the secretary of state to the clerk of every county in the state, and such lists shall be kept as public records, in books to be furnished by the secretary of state, in the office of each county clerk, and the secretary of state shall further furnish to the county clerk of each county, once each month, copies of the additional applications for registration received, which shall be entered by the county clerk on the list kept by him as hereinbefore provided."

This section was amended in 103 O. L., page 763, in which the same provision appears, although it is in somewhat different language.

Section 6299 was further given attention by the legislature in 107 O. L., page 544, when it was enacted in the form in which it now appears as heretofore quoted.

It will be seen the original law required the furnishing of a correct list monthly to the county clerk, whereas the law as it now stands requires such list to be filed with the county auditor. Just what the legislature's object to be accomplished in the change requiring the list to be furnished to the county auditor instead of the county clerk was, is a matter of speculation. Likewise, it is a question as to what was the intent with the original requirements relative to the filing in the office of the clerk.

It is believed a fair assumption to say that the original intention was to make such information available for any use of the citizens of the county. In this there might have been included the purpose of furnishing information to those who were interested in obtaining the identification of someone who violated the law while operating a motor vehicle. The title to the original act used "identification" as one of the objects of the law. The purpose of determining the jurisdiction in which the owner of a motor vehicle lived, for the purposes of a civil action might have been another purpose; and the information that such a procedure would give to the taxing officers of the county relative to the listing of personal property, perhaps is another object that was intended; but whatever the purposes may have been, it does appear definite and certain that the original law since its enactment as it now does under section 6299 expressly requires a list as therein described to be furnished monthly to the county auditor. The latter part of this section authorizes the secretary of state to *print* extra copies of the lists furnished to auditors for the purposes therein mentioned, but this is a matter that is solely in his discretion. It will further be noted that there is nothing which specifically requires the monthly list which is furnished to the county auditor to be *printed*.

However, the difficulty arises on account of the more recent enactment as found in 109 O. L. in which section 6294 was amended as heretofore quoted. This section requires the filing of the application for registration in duplicate. It further requires certain information to be designated as defined in said section. It also provides that the duplicate copy of the application should immediately be mailed to the county auditor of the county in which the district of registrant named in the application is located.

In view of this later enactment the question is presented as to whether the original requirements provided by section 6299 have been repealed by implication. It will be seen that by the requirements of this act the county auditor, if the law is complied with, will have information with reference to the owner of every automobile within his county.

It is possible that with respect to such owners the copy of the application, from a practical standpoint, would furnish more satisfactory information than the original requirement of section 6299.

If the requirements of the later enactment completely supplant the earlier provisions to the degree that there would be an exact duplication of work and the requirements of the original section would be a wholly vain and absurd procedure, then in accordance with the decisions relating to the construction of statutes, this would indicate repeal by implication.

“If a statute purports to revise the whole subject-matter of a former statute, and thereby shows that it was intended as a substitute therefor, it operates as a repeal of the former law, though it contains no express repealing clause.”

Goff v. Gates, 87 O. S., 142.

However, it must be conceded that the provisions of the original law do accomplish objects which are not accomplished by the law as amended in 109 O. L. The monthly list requires a record in every county in the state which discloses the owners of automobiles throughout the entire state.

The provisions of section 6294 as last enacted would only require a record which would inform as to the actual owners resident in a given county. If this is correct, then the theory that the law, as amended in 109 O. L., completely supplants and covers the purposes intended in the original section is exploded. It is also a general principle of Ohio jurisprudence that repeals by implications are not favored. (See 91 O. S., page 220, Murray v. The State ex rel. Nestor.)

However, it is doubtful whether the provisions of the statutes referred to expressly require such lists to disclose the number assigned in a given case. If this be true, then the question presents itself as to what purpose would be served by simply giving the auditors of each county a list showing the names of all Ohio registrants, without an identification number.

It has come to the attention of this department that the practice in the office of the secretary of state has not been to require the filing of the applications in duplicate, and such duplicate has not been mailed to the county auditor. As a substitute for this requirement, it is understood that the practice has been to send the county auditor a copy of the registration certificate, which contains information required to be given in the application and also the number assigned to such motor vehicle.

Thus, it will be seen that the method adopted by the department of state is not a strict compliance with either section 6299 or section 6294. Whether the

method adopted is a substantial compliance with either or both is a question which this department in the absence of judicial interpretation is unable to definitely answer. It is fully realized that the observations herein will not be very helpful or instructive. However, it is believed that what has been said is as much as this department may properly advise, in view of the complicated provisions of the statutes as they now exist, in the absence of a judicial interpretation or a legislative enactment clarifying the complicated and impractical provisions of the law.

Another difficulty arises in connection with the determination of the legislative intent, in view of the provisions of section 6304, which still requires the secretary of state to furnish to the county clerk monthly the list showing the registered chauffeurs.

Keeping in mind what has been said, I have no hesitation in saying that the present status of the law in my opinion is a matter of sufficient importance to engage the attention of the legislature, to the end that it may be definitely determined what the duties of the secretary of state are in this respect.

In view of the foregoing discussions and considerations, it is the opinion of this department that:

1. A contract entered into by the secretary of state for the printing of automobile lists, under the provisions of section 6299, when the certificate of the Director of Finance under the provisions of sections 2288-2 has not been obtained, is invalid.

2. Under the provisions of section 6299 as enacted in 107 O. L., it is required that the secretary of state cause lists, showing owners of all registered automobiles, in Ohio, to be furnished monthly to the auditors of the counties of the state. Whether or not extra lists are to be printed and furnished at cost, etc., is a matter wholly within the discretion of the secretary of state.

3. Whether or not the provisions of section 6294 of the General Code, as enacted in 109 O. L., accomplish the same objects and purposes of the original law and repeal the former by implication, is a question that the department cannot decide in the absence of a judicial interpretation.

4. The method whereby a copy of the registration certificate is furnished to the county auditor is not a strict compliance with either section 6294 or 6299. Whether such practice is substantial compliance with the requirements of either section or both is another question, which cannot be definitely decided without a judicial interpretation.

5. Under section 6304 it still remains the mandatory duty of the secretary of state to furnish monthly lists to the *county clerk* indicating the chauffeurs who have registered in Ohio.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*