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SYLLABUS:

1. A person who gives valuable consideration for a motor vehicle, executes a proper application for a certificate of title and takes delivery of said vehicle from a dealer is a "purchaser" within the meaning of Section 4505.06, Revised Code, and his death does not alter his position in this respect.

2. The clerk of courts has no authority under Section 4505.06, Revised Code, to refuse to issue a certificate of title in the name of a "purchaser" upon presentation of an application in the proper form by a dealer, the tax required by said section having been paid on the grounds that the applicant has died since filling out his application.

Columbus, Ohio, January 25, 1963

Hon. David R. Mainwaring

Registrar

Bureau of Motor Vehicles

275 S. Fourth Street

Columbus 16, Ohio

Dear Sir:

I have before me a request for opinion, submitted by the prior Registrar of Motor Vehicles, which reads as follows:

“Reference is made to Attorney General Opinion No. 676, dated July 14, 1959, and your opinion is respectfully requested on the following question:

“‘Can the clerk of court refuse to issue a certificate of title in the following instance - -

“‘Licensed dealer sells a motor vehicle October 11, 1962, title is assigned and application executed October 11, 1962. On October 15, 1962 the purchaser becomes deceased. On October 22, 1962 the application for certificate of title together with the mortgage papers are presented to the clerk of court in order that title be issued to the purchaser and bank’s mortgage noted on the certificate of title, however, the clerk of court is aware that the purchaser of the vehicle is now deceased, thus, refusing to issue a certificate of title contending that title can not be issued in the name of a deceased person.’

“If the answer to the above is negative, would the clerk of court be correct in refusing to issue a certificate of title in the name of the deceased person if the vehicle was purchased at retail?

“Also, advise if a repossession certificate of title can be issued after the person as mentioned as owner in the certificate of title becomes deceased, other than by proper court order?”

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. Such application shall be otherwise provided in sections 4505.01 to 4505.09 of the Revised Code; and if a certificate of title has previously been issued for the motor vehicle in this state, it shall be accompanied by said certificate of title duly assigned, unless otherwise provided in sections 4501.01 to 4501.19, inclusive, of the Revised Code. If a certificate of title has not previously been issued for such motor vehicle in this state, said application, unless otherwise provided in such sections, shall be accompanied by a manufacturer's or importer's certificate; or by a proper bill of sale or sworn statement of ownership, the originals of which have been filed with the clerk, or a certified copy thereof; or by a certificate of title, bill of sale, or other evidence of ownership required by the law of another state from which such motor vehicle was brought into this state. The clerk shall retain the evidence of title presented by the applicant and on which the certificate of title is issued. The clerk shall use reasonable diligence in ascertaining whether or not the facts in said application are true by checking the application and documents accompanying it with the records of motor vehicles in his office; if satisfied that the applicant is the owner of such motor vehicle and that the application is in the proper form, the clerk shall issue a certificate of title over his signature and sealed with his seal.

“In the case of the sale of a motor vehicle by a dealer to a general purchaser or user, the certificate of title shall be obtained in the name of the purchaser by the dealer upon application signed by the purchaser. In all other cases such certificates shall be obtained by the purchaser. In all cases of transfer of motor vehicles, the application for certificate of title shall be filed within three days after the delivery of such motor vehicle.

“The clerk, except as provided in this section, shall refuse to accept for filing any application for a certificate of title and shall refuse to issue a certificate of title unless the dealer or the applicant, in cases in which the certificate shall be obtained by the purchaser, submits with the application, payment of the tax levied by section 5739.02 of the Revised Code by cash, certified check, draft, or money order payable to the clerk who shall issue a receipt in the form prescribed by the tax commissioner, or a receipt issued by the commissioner showing the payment of the tax.

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Your question requires that I determine whether the clerk of court may refuse to issue a certificate of title upon presentation of purchaser's application by a dealer when he has personal knowledge that the purchaser has died since signing the application.

Although the facts set forth in your request do not specifically so indicate, I will assume that the purchaser had acquired possession of the vehicle and paid the dealer the purchase price by virtue of a loan from the bank, and that the transaction was thus in essence complete except for the final transfer of title. The Supreme Court of Ohio in *Brewer v. Decant*, 167 Ohio St., 411, ruled that title to a motor vehicle does not pass until the final issuance of the certificate of title; therefore, it must be assumed that the purchaser at the time of his death had no more than the right created by the contract of sale and the payment of consideration. This contractual right was not terminated by the death of the purchaser since the personal representative of the deceased acquires these rights and obligations under the law. 17 Ohio Jurisprudence 2d, 545, Descent and Distribution, Section 213.

It might appear in light of the transfer of these rights to the estate of the deceased that the clerk of courts might properly refuse to issue the title in the name of the deceased. On the other hand, Section 4505.06, *supra*, provides that the dealer shall obtain "title in the name of the purchaser." Thus it must be determined whether the death of the buyer altered his position so that he is no longer considered the "purchaser" as that term is used in Section 4505.06, *supra*.

The generally accepted meaning of the word "purchaser" is "one who for valuable present consideration, acquires property or an interest in property." *Beaver v. Bates*, 109 Ohio App., 164. Thus, an individual who pays for an automobile, acquires possession from the dealer, and executes an application for title, although he does not immediately obtain title, is a "purchaser." The transaction as to the buyer is complete and the dealer is then required by law to obtain title in the name of said "purchaser." This requirement is not affected by the death of the "purchaser" since this relationship was established prior to death, and the law does not permit or require

the issuance of the title in the name of any other person.

Section 4505.06, *supra*, provides that the clerk of courts shall issue the title if the application is in proper form and the tax has been paid, although the section also provides that the clerk shall determine whether the applicant is the owner of the motor vehicle. This determination as to ownership would appear to apply only where the motor vehicle involved was acquired by the applicant in another state. Section 4505.06, Revised Code, does not require the clerk of courts to determine the legal status of the applicant in a situation such as here presented.

It further appears that Section 4505.06, Revised Code, places the duty to acquire title upon the dealer, to insure the issuance of title, thus eliminating dispute over titles which might result if it were left to the purchaser. The legislature evidently cast this responsibility upon the dealer not only to insure prompt transfer of title, but also to protect the dealer from the very situation presented by your request. If the dealer is required to acquire the title upon proper application in the "purchaser's" name within three days of the delivery of the motor vehicle, in spite of the fact that the applicant may have died during the three-day period, then the possibility as to confusion over the title to the motor vehicle is avoided. An opposite interpretation would obviously result in controversy over title to the motor vehicle among the personal representative of the deceased, the dealer, and the lienholder, and I am reluctant to adopt such a view.

You have directed my attention to the opinion which I rendered on July 14, 1959, Opinion No. 676, Opinions of the Attorney General for 1959, which relates to the meaning of the word "owner" as that term is defined in Section 4509.01, (D) Revised Code. Opinion No. 676. *supra*, has no application in this instance since it is limited to the motorist financial responsibility law.

In conclusion, it is my opinion and you are advised:

1. A person who gives valuable consideration for a motor vehicle, executes a proper application for a certificate of title and takes delivery of said vehicle from a dealer is a "purchaser" within the meaning of Section 4505.06, Revised Code, and his death does

not alter his position in this respect.

2. The clerk of courts has no authority under Section 4505.06, Revised Code, to refuse to issue a certificate of title in the name of a "purchaser" upon presentation of an application in proper form by a dealer, the tax required by said section having been paid, on the grounds that the applicant has died since filling out his application.

Respectfully,

WILLIAM B. SAXBE

Attorney General