

646.

APPROVAL, NOTES OF SCHOOL DISTRICTS IN CARROLL AND
COSHOCOTON COUNTIES.

COLUMBUS, OHIO, June 20, 1927.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.

647.

APPROVAL, BONDS OF MIAMI CONSERVANCY DISTRICT, \$7,000.00.

COLUMBUS, OHIO, June 20, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

648.

BILL OF SALE—DUTY OF BUYER OF USED MOTOR VEHICLE—
DUTY OF SELLER—DUTY OF CLERK OF COURTS.

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."

2. It is unlawful for any corporation, partnership, association or person to whom title shall in any manner be passed to a "used motor vehicle" to receive or obtain said vehicle without obtaining the instruments enumerated in the paragraph above, and without presenting the same within three days immediately thereafter to the Clerk of Courts of the county in which passage of title was consummated.

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.

COLUMBUS, OHIO, June 21, 1927.

HON. CHALMERS R. WILSON, *Commissioner of Motor Vehicles, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication of June 17, 1927, reading as follows:

"I am in receipt of a letter involving a matter of such general interest throughout the state that I am transmitting same to you with the request that you render a written opinion upon the question involved. This letter reads as follows:

"We are desirous of obtaining certain information regarding Bills of Sale on used automobiles.

This office fully complies with the statute requiring any person or persons, etc., to produce the copies of each and every Bill of Sale on a used car back to the original purchaser before we will accept a recent Bill of Sale for filing.

We have been doing this since 1923, when the old law governing the Bill of Sale on cars was amended.

There is considerable confusion among the surrounding County Clerks of Court in that some declare that it is not necessary to have these original Bills of Sale or certified copies thereof, and it is making it very difficult for us and other counties that are complying with the statutory requirements to get those that transfer cars to produce the original Bills of Sale.

Is it possible for you to get an opinion on this matter, thereby notifying County Clerks of Court of the various counties of this state as to the proper and lawful procedure in handling the Bills of Sale on used cars?"

We will appreciate anything that you may do to assist in clearing up this question."

The original act requiring registration of automobiles and the making and filing of bills of sale therefor, Sections 6310-3 to 6310-14, inclusive, General Code, was enacted in 1921. (109 v. 330). The title of this act read as follows:

"To prevent traffic in stolen cars, require registration and bill of sale to be given in event of sale or change in ownership of motor vehicles."

Several sections of the above act were amended in 1923 and two supplemental sections were added. (110 v. 399) Changes were also made in 1925. (111 v. 460) These amendments and supplements were to further the purpose set out in the title of the act as originally enacted.

The inquiry contained in the above letter is confined to the procedure in handling bills of sale on "used motor vehicles". I shall consider only those sections of the law pertinent thereto.

Section 6310-3, General Code, defines "used motor vehicle."

Section 6310-4, which was Section 2 of the act as originally passed (109 v. 330, 331) reads as follows:

"It shall be unlawful to sell, convey, give away, transfer, exchange, receive, purchase or obtain any 'motor vehicle' or 'used motor vehicle' within this state, except in the manner and subject to the conditions hereinafter provided."

Section 6310-14 is the penal section applicable to the entire act (Sections 6310-3 to 6310-14, inclusive, General Code), and reads as follows:

"Whoever violates any provision of this act (G. C. Sections 6310-3 to 6310-14), except provisions of Section 6310-12 of the General Code, shall upon conviction be subject to a fine of not less than twenty-five dollars nor more than five thousand dollars; and whoever violates any provision of Section 6310-12 of the General Code, shall upon conviction be fined not less than fifty dollars nor more than five thousand dollars or imprisoned not more than five years or both."

The above sections apply both to the seller and the buyer.

The law governing the seller of a "used motor vehicle" is set forth in Sections 6310-7, 6310-9, 6310-11 and 6310-12, General Code, these sections prescribing what the seller must do when selling a used motor vehicle.

Section 6310-7 makes it the duty of the seller to execute in duplicate in the presence of two witnesses a bill of sale according to the provisions of said section, which fixes the contents of such bill of sale, and deliver same to the buyer.

Section 6310-9 makes it the duty of the seller to have the bill of sale executed in duplicate duly verified.

Section 6310-11, making it unlawful to sell a "used motor vehicle" without possession of all bills of sale, provides as follows:

"It shall be unlawful for a corporation, partnership, association or person to sell, convey, lease, give away, transfer or exchange, directly or through an agent, a 'used motor vehicle' within this state without having in his possession and attached together one copy of all duly executed, verified and filed bills of sale, and of the sworn statement, if a sworn statement has before been filed for such 'used motor vehicle' or duly certified copies thereof, and without delivering the same to the corporation, partnership, association or person receiving or obtaining such 'used motor vehicle.'"

Section 6310-12 makes it unlawful for the seller to misrepresent certain facts in the bill of sale or sworn statement.

The law governing the buyer of a "used motor vehicle" is set forth in Sections 6310-8 and 6310-11a, *infra*, of the General Code, Section 6310-8 having been amended subsequent to its passage as a part of the original bill (111 v. 468) and Section 6310-11a having been enacted as a supplemental section on April 5, 1923. (110 v. 399)

Section 6310-8 provides that the buyer shall obtain from the seller a verified bill of sale in duplicate as provided for in Section 6310-7, General Code, and Section 6310-11a provides that the buyer shall obtain from the seller the documents provided for in Section 6310-11. Section 6310-11a further provides that the buyer shall present to the Clerk of Courts of the county in which passage of title was consummated, within three days immediately thereafter, all documents required by the bill of sale act.

The duty of the Clerks of Court in regard to the filing of bills of sale and sworn statements for "used motor vehicles" is set forth in Section 6310-11a, General Code. This section reads as follows:

"Each corporation, partnership, association or person to whom title shall in any manner within this state be passed to a 'used motor vehicle' shall obtain from the corporation, partnership, association or person from whom title shall have been obtained, at the time or before title to such 'used motor vehicle' shall be obtained, *one copy of all bills of sale and the sworn statement, if a sworn statement has prior thereto been filed, for such 'used motor vehicle' or certified copies thereof,* and the bills of sale in duplicate required in Section 6310-7 of the General Code, verified as provided in Section 6310-9 of the General Code, and sign on such duplicate bill of sale the name of such buyer, purchaser, transferee or person receiving title to such 'used motor vehicle'.

Such corporation, partnership, association or person shall thereafter present to the clerk of courts of the county in which passage of title was consummated, within three days immediately thereafter, such duplicate bills of sale and the copy of all bills of sale and sworn statements required to be obtained in this section.

The clerk of courts shall, if such instruments are properly executed and marked, affix his seal and the date of filing to the duplicate bill of sale, and make an alphabetical index of the grantors and grantees and of the motor vehicles according to make, type and model. The clerk of courts shall thereafter, if the preceding bill of sale or, in case no bill of sale has before been filed, the sworn statement was filed in his county, attach one copy of the duplicate bill of sale to the copy of the last bill of sale, or if no bill of sale has before been filed, to the sworn statement of ownership kept in his file and return all other instruments properly stamped to the person presenting such instruments to him. If the preceding bill of sale or, in case no bill of sale has before been filed, the sworn statement purports to have been filed in another county, the clerk of courts shall make a copy of all bills of sale and of the sworn statement, if one has before been filed, for his file to which one copy of the duplicate bill of sale presented to him shall be attached, and return all other instruments properly stamped to the person presenting such instruments to him. The clerk shall also report in writing to the clerk of courts of the county in which the last instrument purported to have been filed, notifying him of the sale and such clerk shall report back in case of any irregularity."

Such is a brief summary of the statutes relating to bills of sale on "used motor vehicles." You will note that the seller and buyer must conform strictly to the procedure outlined in this act. Section 6310-14 includes the clerks of court in its provisions.

Section 6310-11a, supra, clearly provides that the buyer of a "used motor vehicle" shall present to the clerk of courts of the county in which passage of title was consummated, within three days immediately thereafter, a copy of all bills of sale back to and including the original bill of sale or back to and including the sworn statement, or certified copies thereof. This section further provides that the clerk of courts shall examine all of these documents in order to see if they are properly executed and marked and shall stamp all of said documents before returning those not belonging to his file to the buyer of the "used motor vehicle."

While Section 6310-11a, *supra*, does not specifically say that it shall be the duty of the clerk of courts to refuse to accept for filing the duplicate bill of sale if all other bills of sale or sworn statements are not presented or if presented are not properly executed and marked, yet from the provisions of this section and other sections of the bill of sale act it is clear that the clerk is without authority to receive a duplicate bill of sale unless it is so accompanied.

The provisions of the bill of sale act are clear and unambiguous. Ample provision is made therein for the issuance of bills of sale and sworn statements or the replacement of same, if lost or destroyed, at a nominal cost and the provisions of this act must be strictly complied with.

In answer to the inquiry submitted I make the following *resume* of the provisions of the sections of the General Code above referred to:

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."

2. It is unlawful for any corporation, partnership, association or person to whom title shall in any manner be passed to a "used motor vehicle" to receive or obtain said vehicle without obtaining the instruments enumerated in the paragraph above, and without presenting the same within three days immediately thereafter to the clerk of courts of the county in which passage of title was consummated.

3. The clerk of court 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.

Respectfully,
EDWARD C. TURNER,
Attorney General.

649.

COUNTY SURVEYOR—AUTHORITY UNDER SECTION 7198, GENERAL CODE—FORCE ACCOUNT WORK—DUTIES OF SURVEYOR AND COUNTY COMMISSIONERS.

SYLLABUS:

1. *A county surveyor is not authorized by the terms of Section 7198, General Code, or otherwise, to enter into a contract with a bridge company for the construction of a bridge in which the company is to employ all necessary labor, purchase and transport all material not furnished by the county, furnish the services of the various departments of such company, furnish a foreman, protect the county against all claims for infringement of any patent on any device or process used in the structure and guarantee the work for one year after completion, for which the company is to*