1188.

BILL OF SALE—CLERK OF COURT—CANNOT LAWFULLY FILE BILL OF SALE UNLESS ACCOMPANIED BY PROPER EVIDENCE OF TITLE.

SYLLABUS:

Under no circumstances is a clerk of courts justified in permitting the filing of a bill of sale for a "used motor vehicle" or a "motor vehicle" unless it be accompanied by the proper evidence of title as provided by law.

COLUMBUS, OHIO, October 22, 1927.

HON. JOHN H. HOUSTON, *Prosecuting Attorney, Georgetown, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication as follows:

> "The clerk of courts of Brown County, Ohio, has called to my attention your Opinion No. 648, under date of June 21, 1927, rendered to the Commissioner of Motor Vehicles, in which you held, in part three of the syllabus:
>
> '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.'
>
> Seemingly, the clerk of courts is having a great deal of difficulty with those desiring to file bills of sales in trying to live up to the spirit of this opinion, which has never been done heretofore.
>
> He has asked me if he accepts a bill of sale, accompanied by the sworn statement of the seller as to his ownership, if this would be sufficient compliance with your opinion.
>
> I am rather doubtful of this proposition and would like the advice of your office, not by opinion but merely by letter as to whether you construe said opinion in this manner. You doubtless realize that many bills of sales are lost and mislaid, and seemingly it has raised a storm of protest among the general public, and especially automobile dealers in trying to enforce the provisions of your opinion, unless such as I have suggested above be the case."

You refer to my Opinion No. 648, rendered under date of June 21, 1927, to the Commissioner of Motor Vehicles, in which the holding is made as quoted in your letter and ask the specific question whether or not,

> "he (meaning the clerk of courts) accepts a bill of sale accompanied by the sworn statement of the seller as to his ownership, if this would be sufficient compliance with the opinion."

It is not a question of whether or not my opinion be complied with, because the opinion simply properly interprets the law, the question being whether or not the procedure in question would be sufficient compliance with the law as enacted by the legislature.

When a person seeks to sell a motor vehicle he should have in his possession the evidences of title which the law requires him to have. If he has these, there is no

necessity for his filing a mere statement of ownership at that time. If he does not have in his possession these evidences of title, there might some suspicion arise as to how he came into possession of the vehicle. If the car had previous to this time been operated on the highways of this state, the owner must necessarily have had a license therefor, and to procure this license, if the officials had properly performed their duty, he must necessarily have presented for inspection proper bills of sale, or a sworn statement of ownership, or both, as provided by Section 6294, General Code, which reads in part as follows:

> "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 commissioner of motor vehicles or a deputy commissioner, a written application in triplicate for registration for the following year, beginning the first day of January of such year, on blanks to be furnished by the commissioner of motor vehicles for that purpose, containing the following information: * * *
>
> At the time of making such application the applicant shall present for inspection proper bills of sale or sworn statement of ownership, the originals of which have been duly filed with the clerk of courts, or a certificate or certificates of the clerk of courts certifying that such bills of sale or sworn statement of ownership have been duly filed with such clerk, showing title to the motor vehicle to be registered in such application. If such application is not in proper form, or if the applicant owned the motor vehicle on the preceding tax listing day and it was not listed for personal property taxes, or if proper bills of sale or sworn statement of ownership or proper certificate thereof, does not accompany the application, the license shall be refused. * * *"

Of course, if the car had never been operated on the highways of this state, or had never had the title thereto transferred in this state, or was owned by the seller on August 16, 1921, the effective date of the original bill of sale act, the owner would then be permitted to file a sworn statement of ownership and thus start a chain of title before executing and filing a bill of sale. But these are the only circumstances under which a clerk of courts would be justified in accepting a bill of sale accompanied by a sworn statement of the seller as to his ownership, except where a motor vehicle is taken from the State of Ohio and title transferred in another state and subsequently returned to this state, in which case a sworn statement of ownership may be filed together with the prior bill of sale or certified copies thereof.

If clerks of courts have heretofore been permitting bills of sale to be filed in violation of the plain provisions of the law, it is time to start to require the filing to be made in accordance with law. To permit such a procedure as you state would be opening the door for the doing of the very thing the law seeks to prevent.

An extended discussion pertaining to the transfer of title to motor vehicles is contained in Opinion No. 1185, this day rendered to the Bureau of Inspection and Supervision of Public Offices, a copy of which I am enclosing herewith.

It should be borne in mind that "sworn statement" as spoken of in Section 6310-13, General Code, generally referred to as "sworn statements of ownership" can be used only to serve one of three purposes, that is, to start a chain of title where the car was owned on August 16, 1921, the effective date of the first act of the General Assembly requiring the execution of bills of sale when the title to motor vehicles is transferred; as the first link of a chain of title of a motor vehicle brought from outside the State of Ohio into the State of Ohio, which motor vehicle had never before been operated on the highways of the State of Ohio or had title thereto transferred within the State of

Ohio; or to start a new chain of title where it had been broken by reason of a car having been taken out of the state after once having been owned in this state, then transferred while out of the state at least once and again returned to the state and operated on the highways of the state, or sold or transferred within the state;

In specific answer to your question, I am of the opinion that under no circumstances is a clerk of courts justified in permitting the filing of the bill of sale for a "used motor vehicle" or a "motor vehicle" unless it be accompanied by the proper evidences of title as provided by law.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1189.

BILL OF SALE—JUNK DEALER—WHEN SELLING "USED MOTOR VEHICLE" OR A REBUILT CAR MUST EXECUTE A BILL OF SALE.

SYLLABUS:

1. *A junk dealer, who buys a "used motor vehicle", even though he intends at the time to junk the car, should secure a bill of sale therefor, the same as though he had bought it for resale.*

2. *A junk dealer who purchases a "used motor vehicle" and who later replaces the motor or other substantial part of the car with a motor or other substantial part of another car or cars is required when transferring title of such rebuilt car to make and execute a bill of sale therefor, setting forth the changes and alterations in the finish, design or appearance of the car, and deliver the same to the purchaser, together with all former bills of sale and sworn statements, or certified copies thereof, for each one of the cars, substantial parts of which have become a part of the rebuilt car.*

3. *A junk dealer selling parts of junked cars is not required to accompany such sales with bills of sale.*

4. *If a junk dealer sells a car as a complete unit, that is, a car capable of being propelled or drawn by power other than muscular power (Section 6290, General Code), he is required to execute a bill of sale therefor and deliver the same to the purchaser together with all former bills of sale which had theretofore been issued for the car as a complete unit, or certified copies thereof, even though he has purchased such car as junk.*

COLUMBUS, OHIO, October 22, 1927.

HON. FRANK P. COPE, *Prosecuting Attorney, Carrollton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication which reads as follows:

> "Under date of June 21, 1927, I note that you rendered opinion No. 648 to the commissioners of motor vehicles on the question of the transfer and exchange of used motor vehicles as defined in Section 6310-3.
>
> The question now arises as to just how far the term 'used motor vehicles' is applicable to worn out or dilapidated cars. For instance, a junk dealer buys a junk car for $10.00 or $15.00, replaces the motor and other parts from