

2763.

DEALERS' LICENSE—SECTION 6301 G. C., CONSTRUED.

SYLLABUS:

Section 6301 relating to the use of dealers' license discussed.

COLUMBUS, OHIO, Sept. 8, 1925.

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

DEAR SIR:—Hon. Chalmers R. Wilson, commissioner of motor vehicles, has requested the opinion of this department upon a question presented to him by attorneys representing interested parties, which he transmits to this department.

The specific question presented in the communication submitted is whether or not the use of a dealers' license placed by automobile manufacturers on new cars manufactured by them prior to sale, and while the same are being tested, is a proper and lawful use. The attorneys referred to take issue with an opinion of the attorney general interpreting section 6301 of the General Code, found in Reports of Attorney General for the year 1921, page 636. This opinion held, as disclosed by the syllabus that:

“A manufacturers' or dealers' license, as provided in section 6301 G. C., shall be used only when the use of the motor vehicle is for the purpose of sale, lease or other like disposition.”

The letter transmitted to this department contains the following comment in reference to that opinion:

“The attorney general apparently holds that the propriety of the use of dealers' license plates is dependent entirely upon the particular use that is being made of the automobile to which such tags are attached, and this regardless of the purpose for which the automobile is owned by the dealer. The attorney general, however, had before him only the question as to the use of dealers' license plates upon automobiles that are used exclusively by manufacturer or dealer in connection with his business such as service cars, automobile trucks used in hauling materials to and from the plant, etc. The clear language of section 6301 specifically prohibits the use of dealers' license plates on this last mentioned class of automobiles and for that reason the attorney general, it seems to us, went entirely beyond the question before him in giving as his opinion that dealers license plates could only properly be used on automobiles when the automobile in question 'was being used for the purpose of sale, lease or other like disposition.' ”

After consideration, I cannot agree with the opinion of the attorneys suggested; that is, as to the principle laid down in the Opinion of the Attorney General referred to. Section 6301 expressly provides that a manufacturer of or dealer in motor vehicles shall make application for a license for each place in this state at which the business of manufacturing or dealing is carried on and show in the application the make or makes so manufactured or dealt in, that upon the filing of such application and the payment of the tax, the secretary of state shall assign a distinctive number “which must be carried and displayed by each motor vehicle of such make in like manner as provided in this chapter while it is operated on the public highway until it is sold or let for hire.”

The section further provides that nothing therein shall be construed as to exempt any manufacturer or dealer from registration in respect to any other motor vehicle of which he is the owner, for any purpose other than sale, lease or other like disposition. Considering the section as a whole, it would seem to be clear that it is the intent of the legislature that a dealers' license shall protect the dealer while he is operating a motor vehicle on the public highway for the purpose of sale.

The former part of the section might justify the conclusion of the letter submitted if it were not for the remaining part of the section, which clearly requires a registration of an automobile which is used for a purpose other than sale, lease, etc. Therefore, we cannot take a part of the section and construe it so as to suit our convenience and ignore the other provision which is of equal importance.

However, in this connection it may be pointed out that any necessary use of an automobile which is incidental to the sale of the same, of course, is permitted under the very terms of the statute. To illustrate: It has come to the attention of this department that certain dealers being duly authorized and registered, have obtained the possession of automobiles in Michigan which they desire to transport to their place of business. If such cars are purchased for the purpose of sale, unquestionably a dealers' license would properly protect them in the operation of such cars from the state line to their place of business. Such a use is an essential incident in the carrying out of the main purpose of a sale. In the case presented, in the event a dealer has obtained an automobile and he desires to test the same before demonstrating it to a purchaser, would likewise be such an incidental use as to be included within the purpose of sale. In this respect I agree with the counsel who have presented the question. Such an act on the part of a dealer is legal but as will be observed, I reach this conclusion upon wholly different grounds. In other words, it is my conclusion that such practice is a necessary incident in connection with the sale, whereas counsel contend that it is permissive because a dealer until he has made a sale, may use the automobile for any purpose. I do not concur in the reasons they assign attempting to justify such use. It might be pointed out, however, that it would seem that a delivery of a car to the purchaser would be an occurrence that could properly be regarded as an incidental use.

It may further be pointed out that no definite rule can be declared that will govern each case. It would seem to be a question of fact as to what is a proper use of a car in connection with the sale. So long as a dealer, in good faith, uses a car in a manner that ordinarily can be regarded as a necessary incident to the sale thereof, he is within the authority granted him by his license. On the other hand, the moment that the car is used by him for any other purpose than that of sale or an incident thereto, he comes within the latter provision of the act which would require him to have the car registered.

In arriving at the conclusions that have been reached herein, no violence is done to the opinion referred to.

Respectfully,
C. C. CRABBE,
Attorney General.