

statements, if any, or certified copies thereof, which he is required to obtain."

Specifically answering your request, it is my opinion that:

1. Sworn statements of ownership of motor vehicles or used motor vehicles authorized by Section 6310-13, General Code, can serve only one of three purposes, either as the first link of the chain of title of a motor vehicle owned and operated on the highways of this state on or prior to August 16, 1921, as the first link of a chain of title of a car brought from outside the State of Ohio, into the State of Ohio, which car had never before been operated on the highways of the State of Ohio or had the title thereto transferred within the State of Ohio, or as a link of the chain of title of a car which had been broken, by reason of its having once been registered within the State of Ohio, then taken out of the state and transferred at least once while so out of the state, and then returned to the State of Ohio. (Opinions of Attorney General for 1927, Vol. III, page 2093, affirmed and followed).

2. 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. (Opinions of Attorney General for 1927, Vol. II, page 1096, affirmed and followed).

Respectfully,
JOHN W. BRICKER,
Attorney General.

2658.

MOTOR VEHICLE—CLERK OF COURTS UNAUTHORIZED TO ACCEPT SWORN STATEMENT OF OWNERSHIP IN LIEU OF PROPERLY EXECUTED BILL OF SALE.

SYLLABUS:

When the vendor of a motor vehicle does not execute a bill of sale or where he neglects to have his signature verified on the bill of sale, although title to such motor vehicle may pass to the purchaser, still the clerk of courts is not authorized to accept a sworn statement of ownership from such purchaser in lieu of a properly executed bill of sale.

COLUMBUS, OHIO, May 12, 1934.

HON. FRANK A. ROBERTS, *Prosecuting Attorney, Batavia, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

"The Clerk of Courts of this County has had several instances in which purchasers of automobiles have been unable to obtain bills of sale for them from the sellers.

In one particular instance the seller of the car signed a bill of sale in blank but neglected to have his signature verified. Subsequently he refused to execute a proper bill of sale and later disappeared to parts unknown.

The buyer is confronted with the problem of having possession of an automobile, the title to which is clearly in him, but having no indicia of ownership he is unable to obtain license plates therefor.

Under these circumstances the Clerk of Courts is desirous of knowing whether he may accept a sworn statement of ownership and if so, what form of statement should be required by him."

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

Section 6310-4, General Code, 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, General Code, is a penal section applicable to the entire Bill of Sale Act (Sections 6310-3 to 6310-14, inclusive, General Code), and it states in part:

"Whoever violates any provision of this act, 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; * * *"

The above sections apply to the seller and the buyer. The penal section applies to the seller, the buyer and the clerk of courts.

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, General Code, 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 the same to the buyer.

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

Section 6310-8, General Code, 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.

Section 6310-11a, General Code, among other things, defines the duty of the clerk of courts in regard to the filing of bills of sale and sworn statements for "used motor vehicles." It provides in part:

"Each ** person to whom title shall in any manner within this state be passed to a 'used motor vehicle' shall obtain from the *** 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 * * * person shall thereupon present to the clerk of courts of the county in which passage of title was consummated, within three days immediately thereafter, such duplicate bill 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 been filed, to the sworn statement of ownership kept in his file and return all other instruments properly stamped to the persons presenting such instrument 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 ***."

For an answer to the question you propound, it is necessary for me to review former opinions of my predecessors in office. It was held in Opinions of the Attorney General for 1927, Vol. III, page 2093, as disclosed by the syllabus:

"1. Motor vehicles or used motor vehicles purchased outside the State of Ohio, and brought into this state, must first be registered before they may be operated on the highways of this state. If the car had never before been operated on the highways of this state or if the title thereto had never before been transferred within the State of Ohio, registration may be made by the filing by the owner of a sworn statement as authorized by Section 6310-13, General Code.

2. In all cases where title is transferred to a motor vehicle or used motor vehicle within the State of Ohio a bill of sale should be executed and filed according to law.

3. Motor vehicles or used motor vehicles brought into this state, for which licenses have not theretofore been granted in the state from which they are brought should be registered as provided by the laws of this state and if the car had never been operated on the highways of this state or if the title thereto had never been transferred in this state registration should be made by the filing of a sworn statement as provided by Section 6310-13, General Code.

4. Mortgagees, lessees or vendees on conditional sale contracts, who repossess motor vehicles or used motor vehicles upon default in the performance of the terms of the contract of mortgage, lease or con-

ditional sale, are required, upon the subsequent transfer of the ownership of such motor vehicles or used motor vehicles, to execute a bill of sale therefor as provided by law and deliver such bill of sale to the transferee together with all former bills of sale or sworn statements of ownership as required by Section 6310-8, General Code.

5. *Sworn statements of ownership of motor vehicles or used motor vehicles authorized by Section 6310-13, General Code, can serve only one of three purposes, either as the first link of the chain of title of a motor vehicle owned and operated on the highways of this state on or prior to August 16, 1921, as the first link of a chain of title of a car brought from outside the State of Ohio, into the State of Ohio, which car had never before been operated on the highways of the State of Ohio or had the title thereto transferred within the State of Ohio, or as a link of the chain of title of a car which had been broken, by reason of its having once been registered within the State of Ohio, then taken out of the state and transferred at least once while so out of the state, and then returned to the State of Ohio.*" (Italics the writer's.)

At page 2101, it is stated:

"It has also been contended and apparently with seriousness that because the statutes in several places use the expression 'bills of sale' or 'sworn statements of ownership' the law contemplates that in lieu of a bill of sale a statement of ownership or sworn statement may be furnished. If such be the case, why the provision with reference to bills of sale at all?

Sworn statements of ownership are a sufficient compliance with the law and are proper beginnings of a chain of title to a used motor vehicle when there are no previous instruments of title in existence as I have stated above, but they can not be used interchangeably as and for a bill of sale, when the law specifically requires a 'bill of sale' or 'all bills of sale.' The 'sworn statements' contemplated by the provisions of Section 6310-13, *supra*, can never be anything other than the first link of a chain of title to a used motor car in this state, unless the car having been once owned in this state is taken out of the state and while out of the state has been transferred by sale or otherwise and then brought back into the state, in which event a sworn statement of ownership might be filed for the purpose of having it registered in this state, but even then, if again transferred after being brought into the state, the bill of sale then executed should be accompanied by the former bills of sale executed in this state as well as the sworn statements of ownership made when brought into the state."

In Opinions of the Attorney General for 1927, Vol. III, page 2118, it was held as disclosed by the syllabus:

"1. Upon the transfer of ownership of a used motor vehicle the transferor is required to execute a bill of sale in duplicate as provided by Section 6310-7, General Code, and deliver the same to the transferee, together with all former bills of sale and a sworn statement of

ownership if one has theretofore been filed for such motor vehicle, or duly certified copies thereof.

2. Persons acquiring title to a used motor vehicle are required to obtain from the person from whom title is being obtained at the time or before title to such used motor vehicle shall be obtained, a bill of sale therefor in duplicate, together with all prior bills of sale and the sworn statement, if a sworn statement has prior thereto been filed for such motor vehicle, or certified copies thereof, and thereafter present to the clerk of courts of the county in which passage of title is consummated, within three days immediately thereafter, such duplicate bills of sale together with all prior bills of sale and sworn statements, if any, or certified copies thereof, which he is required to obtain.

3. Section 6310-11a, General Code, requires persons who acquire title to used motor vehicles to present to the clerk of courts the bill of sale therefor within three days after acquiring such title. If such transferee fails to present such bills of sale for filing within three days after acquiring title to a used motor vehicle for which the bills of sale had been executed, he may do so later, although presentation of such bills of sale at a later date will not, as a matter of law, absolve the transferee from the penalties provided for failure to observe the law.

4. *Clerks of courts are without authority to accept for filing a bill of sale of a used motor vehicle unless the same is properly executed and marked.*" (Italics the writer's).

In Opinions of the Attorney General for 1928, Vol. I, page 60, it was held:

"The provisions of Section 6310-8, General Code, in so far as they require a sheriff, bailiff or other like officer selling an automobile on order of court, to deliver to the transferee 'all former bills of sale or statements of ownership' with the bill of sale executed by such officer, do not apply where such officer, in the exercise of the utmost diligence to obtain such former bills of sale or statements of ownership or certified copies thereof, is unable to do so. In such case the bill of sale executed by such officer should contain a full and complete statement of facts showing such impossibility as a part of the 'special facts in the premises' provided for in said section of the General Code."

A related opinion is found in Opinions of the Attorney General for 1930, Vol. II, page 902, which held as disclosed by the syllabus:

"Where a motor vehicle is sold on execution issued by a justice of the peace the bill of sale should be issued to the purchaser by the constable conducting the sale."

With reference to the party who should execute the bill of sale on the death of the owner of a motor vehicle, it was held in Opinions of the Attorney General for 1928, Vol. I, page 268, the syllabus stating:

"The devolution of the title to an automobile belonging to the estate of a deceased person to a distributee of such estate, can be had only through proceedings in the administration of such estate. Upon such devolution of title the distributee is entitled to receive from the administrator or executor a bill of sale of such automobile, as provided for in Section 6310-8, General Code."

There is a reaffirmance of the first opinion I mentioned (1927 O. A. G. Vol. III, page 2093) in Opinions of the Attorney General for 1928, Vol. II, page 1546. The syllabus of this opinion states:

"A sworn statement of ownership of a used motor vehicle cannot be made to accomplish the purpose of a bill of sale of such used motor vehicle."

It was held by me in Opinions of the Attorney General for 1933, Vol. III, page 1748, as disclosed by the syllabus:

"Even though a motor vehicle was originally purchased outside the state of Ohio, if such motor vehicle is later sold within the state of Ohio, a bill of sale is required from such vendor to the vendee, and the clerk of courts is without authority to accept for filing a mere sworn statement of ownership without such bill of sale."

The Supreme Court of Ohio in *Commercial Credit Co. vs. Schreyer*, 120 O. S. 568, in expressly overruling *Ohio Farmers' Ins. Co. vs. Todino*, 111 O. S. 274 and *Helwig vs. Warren State Bank*, 115 O. S. 182, held that titles to motor vehicles may be passed without a bill of sale, but I do not believe this case is at variance with the former opinions of my predecessors referred to supra, nor my opinion the syllabus of which is quoted above. The syllabus of this case states:

"1. Sections 6310-3 to 6310-14, inclusive, General Code, are penal statutes and those statutes are also in derogation of the common law and should be construed according to their exact and technical meaning, and their application should be limited to cases clearly described within the words used.

2. Those sections declare it to be unlawful to sell or give away a motor vehicle unless at or before such sale or gift the seller shall execute and deliver a bill of sale therefor, and prescribe other procedure in perfecting transfer of title. They do not declare the contract itself to be unlawful if executed in a manner other than that prescribed.

3. Any assignment or transfer of a motor vehicle (not violative of the uniform sales laws of this state), which is not executed and delivered in compliance with Sections 6310-3 to 6310-14, General Code, but which is accompanied by delivery of possession, is nevertheless a valid contract between the parties thereto.

4. A note secured by a chattel mortgage upon a motor vehicle in the possession of the mortgagor at the time of the execution of the mortgage, though the mortgagor had at the time no bill of sale therefor executed in compliance with Sections 6310-3 to 6310-14, General Code,

is nevertheless a valid mortgage between the parties, and, if and when said mortgage is filed with the county recorder of the county where the mortgagor resides, it has priority over subsequent purchasers and mortgages in good faith. (*Ohio Farmers' Ins. Co. vs. Todino*, 111 Ohio St., 274, and *Helwig vs. Warren State Bank*, 115 Ohio St., 182, overruled.)"

You mention in your request that the seller of the car signed a bill of sale in blank but neglected to have his signature verified. It was stated at page 587 of the above case:

"Section 6310-9 provides: 'Any bill of sale not verified before delivery as hereinbefore provided shall be null and void and of no effect in law.' This is the only provision in the Automobile Registration Act which affects the validity of the transaction. That portion of the statute being very specific, it must be held that the bill of sale, as it existed at the time of the levy of execution, *was wholly invalid, and the transaction stood as though no bill of sale had been executed or delivered.*" (Italics the writer's.)

Specifically answering your inquiry, it is my opinion that when the vendor of a motor vehicle does not execute a bill of sale or where he neglects to have his signature verified on the bill of sale, although title to such motor vehicle may pass to the purchaser, still the clerk of courts is not authorized to accept a sworn statement of ownership from such purchaser in lieu of a properly executed bill of sale.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2659.

CONTRACT—BETWEEN BOARD OF EDUCATION AND TEACHERS NOT
FIXING DEFINITE SALARY IS INVALID.

SYLLABUS:

1. *An agreement between a board of education and a teacher in the public schools, whereby it is agreed to employ said teacher to teach in the schools of the district, which agreement does not fix a definite salary for the services of the teacher is not a valid and binding contract.*

2. *Where such an agreement is entered into and the board later, by resolution fixes a definite salary, the terms of which resolution are accepted by the teacher, a valid and binding contract arises, and both parties are bound in accordance with its terms.*

COLUMBUS, OHIO, May 12, 1934.

HON. JAMES V. WILL, *Prosecuting Attorney, Richland County, Mansfield, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion with reference to the following matter: