

No other defects in said partial abstract have been noted, and it is believed that, subject to the possible encumbrances above noted and the tax liens hereinafter pointed out, the title to said premises is shown to be in the name of James M. McIntosh, Trustee. According to the abstract these premises were conveyed to said trustee by the receiver of the Union National Bank of Marion county, Indiana. In the event that you should purchase said premises it is believed it would be advisable to obtain from said trustee, before accepting a conveyance, evidence showing his authority to convey as such trustee.

The taxes for 1920 and penalty thereon, amounting to \$3.35, are unpaid and a lien. Previous taxes and penalties, totaling \$15.10, are a lien. The taxes for 1921, the amount of which is undetermined, are also unpaid and a lien.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

2127.

AUTOMOBILES—NO AUTHORITY TO REFUND FEE PAID FOR CANCELED REGISTRATION CERTIFICATE WHICH IS IN EXCESS OF FEE CHARGED FOR NEW CERTIFICATE APPLIED FOR.

Section 6294-1 G. C. does not authorize the payment of refunds or rebates by the state automobile department in cases where the fee paid for the canceled registration certificate is in excess of the fee charged for the new certificate applied for.

COLUMBUS, OHIO, May 28, 1921.

HON. HARVEY C. SMITH, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent letter, which reads:

“The secretary of state, automobile department, will appreciate a ruling from your office on the following questions (section 6294-1 G. C.):

(1) Transferring license plates from one vehicle to another. The above section provides that transfer may be made on a new application by the owner on payment of a fee of one dollar and paying the tax thereon less the amount of the tax that would be collected on account of the vehicle transferred on the date of such application. For example, Jones sells his Ford car, \$8.00 horse power fee, takes off and cancels his license number on that car; later he buys a Hudson, \$12.00 horse power fee, makes a new application, pays the difference of \$4.00 and a transfer fee of \$1.00, totaling \$5.00. The question causing so much controversy with the public is, can the department make a refund with the conditions reversed as follows: He sells his Hudson, \$12.00 horse power fee, and transfers to a new Ford, \$8.00 horse power fee.

(2) Jones registers a Packard Twin Six, paying \$20.00; sells it and buys a Ford, makes a transfer with \$1.00 fee, sells the Ford and buys a Packard Twin Six; additional fee \$12.00, transfer \$1.00; total, \$13.00; goes through the same operation four times, at the end of which he

has his license on a Ford car and has paid \$56.00 aside from the transfer fees of \$4.00 for licensing the same. The department to date has followed the above plan; shall it continue?

Section 6294-1 of the General Code is cited as being pertinent to the questions contained in your inquiry. It is as follows:

“Upon the transfer of ownership of a motor vehicle its registration shall expire, and it shall be the duty of the original owner to immediately notify the secretary of state of the name and address of the new owner and return to the secretary of state the registration certificate for cancellation. The original owner shall also remove number plates from a motor vehicle upon transfer of ownership of such vehicle. Should the original owner make application for the registration of another motor vehicle within thirty days after such cancellation, he may file a new application accompanied by a fee of one dollar, and pay the tax thereon, less the amount of the tax that would be collected on account of the vehicle transferred, on the date of such application.”

It seems apparent by the provisions of the above section that the law does not contemplate or provide for a refund of any of the fees required by this section to be paid by the owners of motor vehicles, upon the transferring of registration certificates as provided for in said section. It may be noted on the contrary, however, that the fees to be paid upon the transferring of registration certificates are specifically provided for. Attention in this connection is called to the paragraph in the section above quoted which is as follows: “Should the original owner make application for the registration of another motor vehicle within thirty days after such cancellation, he may file a new application accompanied by a fee of one dollar, and pay the tax thereon less the amount of the tax that would be collected on account of the vehicle transferred, on the date of such application;” or, in other words, it may be stated that the owner of a motor vehicle who has canceled his original license may, upon the payment of one dollar as a transfer fee, take out a new registration certificate, and in the payment of the fee charged for said new license or certificate he may be credited with the sum paid for the former canceled license or registration certificate. It would appear, however, that such a credit would be limited to those cases in which the license fee paid for the original license, or the canceled one, is not in excess of the fee charged for the license applied for, since otherwise there would be created a credit in favor of the applicant, for the payment of which there is no provision of law.

In question No. 1 the following example is cited: “Jones sells his Ford car, \$8.00 horse power fee, takes off and cancels his license number on that car; later he buys a Hudson \$12.00 horse power fee, makes a new application, pays the difference of \$4.00 and transfer fee of \$1.00, totaling \$5.00.” You state that “the question causing so much controversy with the public is, can the department make a refund with the conditions reversed as follows: He sells his Hudson \$12.00 horse power fee, and transfers to a new Ford \$8.00 horse power fee.” In the example cited it would seem to be evident that if full credit were allowed “Jones” on the transfer of his Hudson horse power fee of \$12.00 and full credit given him to this amount, as against the \$8.00 Ford horse power fee, plus the one dollar fee for the transfer, his new Ford license would cost him nothing, and the automobile department would be indebted to him in the sum of three dollars. However, such a condition is in no way

contemplated by the provisions of section 6294-1 G. C., since it provides in no manner for such a refund or rebate in such cases.

It may also be noted as relative in this connection, that section 6309 G. C. provides that all fees collected under this chapter shall be paid into the state treasury to the credit of a fund to be designated as the "State maintenance and repair fund," fifty per cent of such taxes being paid to the municipal corporation or county, which constitutes the district of registration, and fifty per cent of which is retained in the state treasury to the credit of the "State maintenance and repair fund." Hence, registration certificate fees, as provided for by section 6294-1 G. C. having once been paid into the state treasury, cannot be recovered from same, except upon lawful warrant, for which in the present instance there is no provision of law.

Proceeding to question No. 2 of your inquiry, and quoting from the same for convenience, the following portion is cited: "Jones registers a Packard Twin Six, paying \$20.00, sells it and buys a Ford, makes a transfer with \$1.00 fee, sells the Ford and buys a Packard Twin Six; additional fee, \$12.00; transfer, \$1.00; total, \$13.00; goes through the same operation four times, at the end of which he has his license on a Ford car, and has paid \$56.00 aside from the transfer fees of \$4.00 for licensing the same. The department to date has followed the above plan; shall it continue?"

The plan outlined as the procedure followed by your department appears to be in strict conformity with the law, and while there may be apparent hardship visited upon automobile owners who find it necessary to secure new license tags on account of transfers of their cars, the fact remains that the law provides for such a course, and this office finds no reason to criticise your plan in the slightest particular.

In view, therefore, of the considerations presented, it is the opinion of this department that section 6294-1 G. C. does not authorize the payment of refunds or rebates in cases where the fee paid for the cancelled registration certificate is in excess of the fee charged for the new license or registration certificate applied for, and there is no authority of law for the payment of such rebates by the automobile department.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2128.

APPROVAL, SALE OF CANAL LANDS IN MASSILLON, OHIO, THREE PURCHASERS.

COLUMBUS, OHIO, May 31, 1921.

HON. JOHN I. MILLER, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of May 19, 1921, transmitting in duplicate for my examination transcript of proceedings and draft of resolutions for the proposed sale of canal lands in Massillon, Ohio, to the following persons at the respective valuations indicated:

	<i>Valuation</i>
The Shaeffer-Black Company, Massillon, Ohio.....	\$910 00
Herbert A. Krisher and Anna Mang, Massillon, Ohio.....	520 00
Peter Ertle and Joseph Kammer, Massillon, Ohio.....	338 00