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MOTOR VEHICLE—LICENSING—OPERATION OF BY NON-RESIDENTS
DISCUSSED.*SYLLABUS:*

Discussion of the right of a non-resident to operate a motor vehicle in Ohio under authority of Section 6306, General Code.

COLUMBUS, OHIO, December 19, 1928.

HON. JAMES W. CAMMACK, *Attorney General, Frankfort, Ky.*

DEAR SIR:—This will acknowledge your letter of December 6th as follows:

“I enclose herewith a copy of letter which has been submitted to me by the Kentucky State Tax Commission for an opinion.

You will note that the substance of the question is whether a person whose voting place and legal domicile is in Ohio, but who is engaged in business in Kentucky, and spends practically all of his time in Kentucky, and who keeps and uses his automobile in Kentucky practically all of the time, is required to register his automobile in Kentucky. The answer to this question depends on what is the rule in Ohio where the facts are reversed, and the person has his voting place and legal domicile in Kentucky but works in Ohio and spends most of his time in Ohio and keeps and uses his car in Ohio most of the time.

Section 2739g-5, Kentucky Statutes, Baldwins 1928 Supplement thereto provides that:

‘A non-resident owner who has complied with the laws of the state, province, or district of his residence relating to registration of automobiles or motor vehicles, and who displays the requisite plates and holds the requisite receipt or certificate of registration as required by his resident state, province or district, if such state, province or district does not require registration of non-resident owners temporarily therein, shall be exempt from registration in this state for the same period of time as is granted to non-resident owners of his state, province or district by the laws and regulations thereof. Provided that non-residents shall observe and obey all traffic regulations of this state, and provided further, that registration in any other state, province or district shall not in any wise relieve any owner, resident in this State, from the penalties hereinafter provided for violations of this Act.’

Will you be kind enough to furnish me with an opinion as to whether or not under the reversed state of facts above given that Ohio would require an automobile to be registered in Ohio.”

The provisions of law in Ohio governing the rights of non-residents of this state to operate motor vehicles here are Sections 6306 and 6306-1, General Code. Those sections are as follows:

Sec. 6306. “The foregoing sections of this chapter, and the penal statutes relating thereto, shall not apply to motor vehicles owned by non-

residents of this state, provided the owner thereof has complied with the provisions of law in regard to motor vehicles in the state of his residence and complies with such provisions while operating and driving a motor vehicle upon the public roads or highways of this state, and further provided that such sections and statutes are substantially in force as law in the state of his residence."

Sec. 6306-1. "The secretary of state, the director of highways and public works and a member of the public utilities commission, designated by the commission for that purpose, are hereby authorized and empowered to enter into such reciprocal contracts and agreements as they may deem proper or expedient with the proper authorities of adjoining states, regulating the use, on the roads and highways of this State, of trucks and automobiles and any other motor vehicles owned in such adjoining states, and duly licensed under the law thereof.

They are likewise authorized and empowered to confer and advise with the proper officers and legislative bodies of this and other states, and the District of Columbia with a view to promoting and to promote reciprocal agreements under which the registration of vehicles owned in this state, and the licenses of chauffeurs residing in this state, shall be recognized by such other states and federal districts."

I am advised by the office of the secretary of state that no reciprocal agreement, as authorized by Section 6306-1, supra, has been entered into between the State of Ohio and the State of Kentucky. Consequently, the rights of non-residents of this state are controlled by Section 6306, supra. You will observe that this section contains no time limitation upon the use by a non-resident of a motor vehicle in this state. In order that he may have the benefit of this section, he need only be actually a non-resident and have complied with the provisions of law in regard to motor vehicles in the state of his residence, which provisions are substantially the same as those relating to the registration of motor vehicles. I am assuming that the provisions of law of Kentucky may be regarded as substantially the same as the laws of Ohio relating to the registration of motor vehicles.

The sole question remaining, therefore, is whether or not the particular individual is a non-resident. We have not as yet had the benefit of any judicial interpretation of this word and this department has not rendered any opinion thereon. Consequently, I can cite you to no definite authority to serve as a guide and assist you in the determination of the reciprocal rights granted by your statute. In my opinion, however, the word should not be too strictly construed. Legal residence from the standpoint of voting would certainly be a material fact in the determination of the question. The further fact that the car itself is returned in Ohio for taxation would also have some bearing upon the question, but, after all, the question is one of mixed law and fact to be determined upon the evidence in each case. The expressed intention of the person would have considerable importance in determining the question.

It is probable that, were the question presented to the courts, a rule similar to that adopted in connection with the determination of the residence of a person for the purpose of taxation would be employed. In this state questions with respect to taxation have arisen on numerous occasions. Thus, in the case of *Grant vs. Jones*, 39 O. S. 506, the following is stated by the court on page 515:

“ * * * What constitutes a person a resident of Ohio, for the purpose of voting, of admission to the public schools and benevolent institutions of the state, for the administration of estates and in other cases, has been a frequent matter for consideration in the courts. There is no substantial difference between the words residence and domicile in regard to these matters, though they are not always synonymous. For business purposes and perhaps for purposes of taxation, a man may have more than one residence, but he can have but one domicile.

Thus in *State vs. Ross*, 3 Zab. 517, the domicile of one Potter was in Georgia, where he lived most of the year and exercised the rights of a citizen, but resided during part of the year in New Jersey, in his own house. It was held that his real estate and tangible property in New Jersey were taxable there, but bonds, stocks, etc., owned by him have the *situs* of his domicile in Georgia, and could not be taxed in New Jersey.

That case is instructive both as to the power of the state, and the policy of taxing persons on things in action, at any other place than the domicile of the owner. The policy of this state, as declared in the statutes, is clearly expressed, and is founded in wisdom. If we concede the power of the state to tax things in action held by persons not residing within its jurisdiction, which is denied by the supreme court of the United States, yet no attempt has been made to exercise such power. The policy of the state has always been to encourage, rather than repel such investments of non-resident owners, and hence the statute provides, that such credits are taxable at the residence of the owner, if he is a resident, or where they are held within the state by a guardian, trustee, or agent of the owner, if they hold them within the jurisdiction of the state, but if the owner does not reside within the state, and such credits are not held within the state by an agent, guardian, or trustee of such owner, the residence of the owner fixes the *situs* of the credits. * * *

There the question was as to the residence or non-residence of a peddler who originally had been a British subject and who traveled continuously without having any definite home. He visited the City of Middletown, but always merely temporarily, although he loaned money there and took mortgage security for the loans. The court reached the conclusion that he was clearly not a resident of this state and so his personal property was not subject to taxation.

There are similar cases along the same line, which, however, are not, of course, dispositive of the meaning of the word “non-resident” as used in Section 6306 of the Code.

Because of the reciprocal character of the Kentucky and Ohio laws, however, I believe that prime importance should be given to the administrative interpretation of the exemption provisions. I am informed by the commissioner of motor vehicles that it has been the policy of this state to construe the word “non-resident” very liberally and, accordingly, to permit persons having legal residence in other states and complying with the registration laws of such state to operate their motor vehicles in Ohio for an indefinite period. This interpretation is made with a view to having a satisfactory system of identification, and it is the thought of the department that the registration of the motor vehicles should show the actual legal residence of the owner. This, of course, leaves open the question of just what legal residence is, but the commissioner assures me that legal voting residence

coupled with the payment of the Kentucky registration fees and property tax upon a motor vehicle would be sufficient, under the policy of the department, to permit indefinite operation in Ohio under the Kentucky license. As I understand the facts, there are a number of instances where great liberality in interpretation has been had; for instance, in Cincinnati, where many who are employed and earn their livelihood in Ohio are legally resident in Kentucky.

All of the foregoing discussion has been predicated upon the assumption that the car in question is a personal car, since this is my understanding of the facts presented to you by your Tax Commission. A different rule would apply in this state were the car one which is used purely or primarily for business purposes and the business were located in this state. Thus, if a resident of Kentucky has a definite place of business in Ohio, and, as an incident to that business, is using trucks or cars, then these motor vehicles would, in my opinion, acquire a taxable situs in this State separate and apart from the domicile of the owner. I am led to this conclusion by the provisions of Section 6294, General Code of Ohio, dealing with the registration of motor vehicles. In setting forth the information which shall be furnished to the commissioner of motor vehicles in the application for registration, the section provides, among other things, the following:

“(3) The district of registration, which shall be determined as follows:

(a) In case the motor vehicle to be registered is used for hire or principally in connection with any established business or branch business, conducted at a particular place, the district of registration shall be the municipal corporation in which such place is located; and if not located in any municipal corporation, the county and township in which such place is located.

(b) In case such vehicle is not so used, the district of registration shall be the municipal corporation or county in which the owner resides at the time of making application.”

The clear intention is indicated in the portion of the section quoted above, to fix the taxable situs of a vehicle used principally in connection with an established business as the district in which the business itself is located rather than the residence of the owner. Of course, it would be a question of fact in each instance as to whether the car was used principally in connection with the business or primarily for personal purposes.

Since, however, in the specific case concerning which you inquire, the car was apparently not used in any way in connection with business, no consideration need be given to this portion of the statute.

In view of the liberal practical construction placed upon the reciprocal section of Ohio laws with respect to cars used for personal use, I feel that you would be justified in making a similar liberal construction of your statute until such time as the courts announce rules restrictive of the reciprocal right or until the administration policy in this state has been changed.

Respectfully,
EDWARD C. TURNER,
Attorney General.