

MOTOR VEHICLES: Automobile dealer who takes assignment in blank
HIGHWAY PATROL: of title may not fill in name as assignee of
his transferee.

July 29, 1949

8/23/49

Col. David E. Harrison
Superintendent
Missouri State Highway Patrol
Jefferson City, Missouri

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Dear Sir:

This is in answer to your letter of recent date requesting an official opinion of this office, reading in part as follows:

"It has been called to the attention of this department that a number of automobile dealers are not completing the endorsement on Certificates of Title on all automobiles which they handle.

"In some cases where an automobile is purchased from a private individual, either through cash or trade, the dealer will merely ask the previous owner to sign in the proper place on the back of the certificate. The remainder of the information is not completed and upon resale of the car to another owner by the dealer, the assignment is so made up as to indicate that the car passed from one private owner to another and the name of the dealer does not enter into the transaction.

"Some of the prosecuting attorneys have placed different interpretations upon Section 8382 of the Motor Vehicle Law and the opinion of your department is requested as to whether the transaction as described above is in compliance with this section of law."

Subsection (d) of Section 8382, Mo. R. S. A., found Laws of Missouri, 1947, page 389, reads in part as follows:

" * * * In the event of a sale or transfer of ownership of a motor vehicle or trailer for which a certificate of ownership has

been issued the holder of such certificate shall endorse on the same an assignment thereof, with warranty of title in form printed thereon, and prescribed by the Director of Revenue, with a statement of all liens or encumbrances on said motor vehicle or trailer, and deliver the same to the buyer at the time of the delivery to him of said motor vehicle or trailer. The buyer shall then present such certificate, assigned as aforesaid, to the Director of Revenue, at the time of making application for the registration of such motor vehicle or trailer, whereupon a new certificate of ownership shall be issued to the buyer, the fee therefor being \$1.00. If such motor vehicle or trailer is sold to a resident of another state or country, or if such motor vehicle or trailer is destroyed or dismantled the owner thereof shall immediately notify the Director of Revenue. Certificates when so signed and returned to the Director of Revenue shall be retained by the Director of Revenue and all certificates shall be appropriately indexed so that at all times it will be possible for him to expeditiously trace the ownership of the motor vehicle or trailer designated therein. It shall be unlawful for any person to buy or sell in this state any motor vehicle or trailer registered under the laws of this state, unless at the time of the delivery thereof, there shall pass between the parties such certificate of ownership with an assignment thereof, as herein provided, and the sale of any motor vehicle or trailer registered under the laws of this state, without the assignment of such certificate of ownership, shall be fraudulent and void. * * * "

As provided for by this section, every transfer of ownership of a motor vehicle or trailer for which a certificate of ownership has been issued must be accompanied by a transfer of such certificate and an assignment thereof. The assignment must be by the transferrer to his transferee. In the case

presented, the transferrer merely completes the assignment in blank, unacknowledged, which assignment is retained by the transferee dealer, who later enters therein as assignee the name of the purchaser of the motor vehicle from said dealer. The only authority which the dealer has is to complete the assignment by filling in his own name. Filling in the name of any other person would be a violation of subsection (d) of Section 8382, supra.

In the case of Pearl vs. Interstate Securities Co., 357 Mo. 160, 206 S.W. (2d) 975, the plaintiff, a used-car dealer, purchased two used cars. The assignment of ownership of each was signed by the owner, but no name of a transferee was written therein nor was either assignment acknowledged. At l.c. 978, the court said:

"Plaintiff did obtain the title certificates with assignments thereon signed by each owner at the time the cars described therein were delivered to him as Section 8382 required. However, plaintiff did not fully comply with the statute because he did not have the assignment of the certificates to him by the holders completed in the form prescribed by the Commissioner which included an acknowledgment before a notary. He had only an unacknowledged assignment, and this was not sufficient to vest the legal title in him. Although he was a notary he had no authority to take an acknowledgment on an assignment to himself as he said he intended to do. 1 Am. Jur. 334-335, Sections 52-53; 1 C.J.S. Acknowledgements, Sections 52-53. Nor would he or anyone else have had the right to fill in the name of Security as assignee from the holders because he was the buyer and Section 8382 required the assignment to be made to him. To do so would be a misdemeanor. Sec. 8404(d), R. S. 1939, Mo. R.S.A. Nevertheless, he had implied authority to fill in his own name because it was the intention of the parties that the same be made to him. National Bond & Investment Co. v. Mound City Finance Co., Mo. App., 161 S.W. 2d 664. Since a notary would not always be immediately available when an agreement for a sale is made, surely the buyer should have a reasonable time to complete the assignment by obtaining the seller's acknowledgment."

Therefore, the transferee who takes an assignment in blank of a certificate of ownership not only has no right to insert therein the name of any other party than himself, but to do so would also constitute a misdemeanor under subsection (d) of Section 8404, R. S. Mo. 1939, which subsection reads as follows:

"(d) Any person who violates any of the other provisions of this article shall, upon conviction thereof, be punished by a fine of not less than five dollars (\$5.00) or more than five hundred dollars (\$500.00) or by imprisonment in the county jail for a term not exceeding two year, or by both such fine and imprisonment."

CONCLUSION

Therefore, it is the opinion of this department that an automobile dealer who takes an assignment in blank of a certificate of ownership at the time of a transfer of an automobile to him, and later fills in as assignee the name of the person to whom he transfers said automobile, violates subsection (d) of Section 8382, Mo. R. S. A., Laws of Missouri, 1947, Volume I, page 389, and is guilty of a misdemeanor as provided for in subsection (d) of Section 8404, R. S. Mo. 1939.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General

RHV:VLM