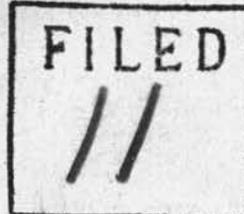


MOTOR VEHICLES:  
CRIMINAL LAW:

Failure to deliver certificate of title upon sale of motor vehicle misdemeanor punishable by fine and jail sentence.

March 9, 1950

3/13/50



Honorable Edwin F. Brady  
Prosecuting Attorney  
Benton County  
Warsaw, Missouri

Dear Sir:

This office is in receipt of your recent request for an official opinion. You thus state your request:

"The subject named section, (Section 8382, R.S. Mo. 1939) pertaining to transfer and sale of registered vehicles (as amended Laws 1947, page 380) provides among other things that '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, . . .'. The section further provides that such sales without assignment of the certificate shall be fraudulent and void.

"Does the violation of the provisions of this section by a dealer in selling and delivering an automobile, collecting the price and then failing, neglecting and refusing to deliver a properly assigned certificate of title to the car constitute a misdemeanor? If so, what is the penalty? Inasmuch as such sales are declared by this section to be fraudulent, would the appropriate action be under the criminal statutes on fraud, such as section 4487, obtaining money, goods, by false pretenses?"

Section 8382, R. S. Mo. 1939, Article 1, of the Motor Vehicle Act, states in part:

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"\* \* \*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. \* \* \*"

This section was repealed by the Laws of Missouri 1947, Vol. 1, page 380, and a new section was enacted which was substantially similar to the section repealed, and which reenacted in precisely the same language that part of Section 8382 quoted above.

Section 8404(d) Mo. R. S. A. 1939, Article 1, of the Motor Vehicle Act, states:

"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 years, or by both such fine and imprisonment."

This penalty section would apply to the 1947 law referred to above, enacted in lieu of Section 8382 which was repealed.

In the case of Personal Finance Co. of Missouri v. Lewis Inv. Co., 138 S. W. (2d) 655, the court stated:

"Section 7786(d), (now Sec. 8404) Mo. St. Ann. Secs. 77-86(d), p. 5240, provides that any person who violates this provision of the statute shall, upon conviction thereof, be punished by a fine of not less than five or more than five hundred dollars, or by imprisonment in the county jail for a term not exceeding two years, or by both such fine and imprisonment. So that it thus appears that the sale of a motor vehicle without passing the certificate of ownership with the assignment endorsed thereon at the time of the delivery of the motor vehicle is not only unlawful, fraudulent, and void, but is a criminal act. It passes no title whatever to the motor vehicle, not even an insurable interest. State

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ex rel Connecticut Fire Ins. Co. v. Cox,  
306 Mo. 537, 268 S.W. 87, 37 A.L.R. 1456;  
Universal Credit Co. v. Story, Mo. App.,  
128 S.W. (2d) 654; Mathes v. Westchester  
Fire Ins. Co., Mo. App., 6 S.W. (2d) 66;  
Quinn v. Gehlert, Mo. App., 291, S.W. 138."

In the case of Pearl v. Interstate Securities Co., 206 S.W.  
(2d) 975, the court stated:

"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, Secs. 52-53; 1 C.J.S. Acknowledgments. Secs. 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. \* \* \* #

(Underscoring ours)

#### CONCLUSION

It is the conclusion of this department that the violation of Section 8382 (d), Laws of Missouri 1947, page 389, constitute a misdemeanor; that the penalty for this violation is that any person who is convicted of violating it shall be punished by a fine of not

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less than five dollars or more than five hundred dollars or by imprisonment in the county jail for a term not exceeding two years or by both such fine and imprisonment.

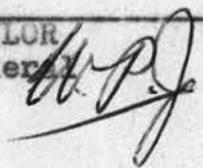
Respectfully submitted,

HUGH P. WILLIAMSON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General



HPW:hr