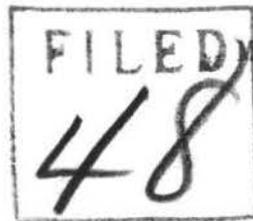


MOTOR VEHICLES:
PROBATE COURTS:

✓
Creditor who obtains refusal of letters on estate of decedent in accordance with Section 461.120, RSMo 1949, entitled to transfer of motor vehicle but must show Director of Revenue authority from proper court if director requires.

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JOHN M. DALTON



March 6, 1953

XXXXXXX

J. C. Johnsen

Honorable H. A. Kelso
Judge
Magistrate and Probate Court
Vernon County
Nevada, Missouri

Dear Mr. Kelso:

This is in reply to your recent request for an opinion in which you state as follows:

"In my official capacity as Probate Judge of Vernon County, Missouri, I wish to request an official opinion from your department on the following set of facts. In the event an opinion has already been prepared, I would appreciate receiving a copy of the same.

"In answer to a letter which I had written to the Motor Registration Department concerning this same set of facts, which response was both prompt and courteous, I was advised that 'There is no circumstances whatever under which an automobile of a deceased person might be transferred to a first class claimant without the appointment of an administrator.'

"My facts are briefly as follows (and unfortunately this same set of facts arises again and again and for this reason the question assumes some importance). One Majors died leaving no widow, no minor heirs and no assets except an automobile valued at less than \$100.00. My question is whether a first class claimant might not have this automobile transferred to him in payment of his claim

without the expense and trouble incident to a formal administration.

"Under Section 261.120, Revised Statutes of 1949, it is provided 'Proof may be allowed by or in behalf of . . . creditor . . . that the estate does not exceed \$100.00, when application is made by a creditor the Court or Judge may order no letters of administration be issued on such estate unless upon the application of other creditors or parties interested, the existence of other or further property be shown.'

"The statute goes on to say 'and after making such order and until such time as the same may be revoked . . . creditor . . . shall be authorized to collect and sue for personal property belonging to such estate; in the same manner and with the same effect as if he or she had been appointed and qualified as Executor or Executrix of such estate . . . and the creditor shall apply the proceeds thereof to the debts of the estate.'"

We understand that your reference was intended to be to Section 461.120, RSMo 1949, from the context of these sections.

A title to personal property certainly will vest in one who takes or purchases under the proper administration of the above section. As we see it, Section 461.120 places the widower, widow, minor child or creditor in the position of a representative of the deceased in making a transfer of a certificate of ownership.

In regard to application for a certificate of ownership for a motor vehicle, the duties of the Director of Revenue are prescribed by the first part of paragraph 2 of Section 301.190, RSMo 1949, as follows:

"2. The director of revenue shall use reasonable diligence in ascertaining whether the facts stated in such application are true, and, if satisfied that the applicant is the lawful owner of such motor vehicle or trailer, or otherwise

entitled to have the same registered in his name, shall, thereupon issue an appropriate certificate over his signature and sealed with the seal of his office, procured and used for such purpose. * * *."

It is this section that has caused the Director of Revenue to require evidence of ownership and leaves a duty with the Director to determine the truth of the matter stated in the application. In the matter of Hoshaw vs. Fenton, 110 S.W. (2d) 1140, the Springfield Court of Appeals considered a certificate of ownership transferred by an executor of an estate, at l.c. 1143, as follows:

"* * * Replevin is primarily an action for possession of personal property, but, incidentally, the question of title may become involved, and in such cases, plaintiff must recover, if at all, upon the strength of his own title and not because of defects in the title of defendant. Leete v. State Bank of St. Louis, 141 Mo. 584, 42 S.W. 927. The evidence discloses that John E. Hoshaw was the registered owner of the car, his certificate of title being dated September 18, 1935; that he died October 13, 1935; that Wm. O. Hoshaw thereafter qualified as executor of the estate of deceased, whereupon, no legal impediments intervening, he became entitled, as such executor, to the possession of all the personal property of deceased, including the Dodge car. Since plaintiff claims title, and the evidence discloses that he has title to the car, and defendant in her answer admits that he has the legal title thereto, he is therefore entitled to the possession of the car."

The Court in further regard to this transfer stated:

"Section 7774, R.S.Mo. 1929 (Mo. St. Ann. § 7774, p. 5193), sets forth clearly and unequivocally the steps to be taken in order to transfer title to a registered motor vehicle. * * *."

It is provided in paragraph 4 of Section 301.210, RSMo 1949, for the sale or transfer of vehicles as follows:

"4. 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."

The transfer of a motor vehicle by an executor in *Hoshaw vs. Fenton*, supra, has passed the approval of the Appellate Court. The provisions in Section 7774, R.S.Mo 1929, confirming transfer of motor vehicles, are now found in Section 301.210, R.S.Mo. 1949. We feel that a transfer by an executor or an administrator or a creditor under Section 461.120, R.S.Mo. 1949, is a valid transfer when the provisions of Section 301.190, R.S.Mo. 1949, are complied with.

But it is still directed by statute that the director be satisfied that the applicant is the lawful owner.

It has been held by our courts that the then Commissioner of Motor Vehicles had authority to require a certificate of acknowledgement by a notary public upon a transfer of title to a motor vehicle.

In *State v. Wilson*, 207 S.W. (2d) 785, 1.c. 790, it was said in part:

"The statute leaves the form of the assignment to be prescribed by the Commissioner. The form the Commissioner did prescribe, and which is printed thereon, includes a certificate of acknowledgment by a Notary Public. This was a proper requirement and the assignment would not be complete or effective without it. The Commissioner could have prescribed any other form for the proof to him of the genuineness of the assignment, such as requiring that the signature of the vendor be attested by one or more witnesses, or that the vendor make oath to the assignment, but what the Commissioner did do was make a requirement that the assignment be acknowledged. It would be an open gate to fraud and forgery for the law to require the Commissioner to accept an assignment of a certificate of

ownership without proof that it was genuine. * * *

Since the statutes require satisfaction on behalf of lawful ownership and he is charged with "reasonable diligence" to ascertain the truth of statements we believe that the Director of Revenue has authority under the statutes in regard to motor vehicle registration to require proof of the right of any one other than the holder of a certificate to assign it either under refusal of letters, appointment as administrator or as an executor. When the above right stems from an order of a court of proper jurisdiction, in view of the quoted statutes and the court decisions on them, we think the director will be within his authority in requesting a copy of that order.

Our answer then to the first question presented by your inquiry is that a creditor may under proper letters of refusal of the probate court transfer the certificate of ownership to a motor vehicle. As to the method of proof necessary for such transfer of ownership the Director of Revenue may require evidence of the transaction which placed the creditor in the position to make a bona fide transfer and he may call upon the applicant for authenticated records of the action of the proper court to prove "lawful ownership."

CONCLUSION

Therefore, it is the opinion of this office that a creditor may under proper letters of refusal of the probate court transfer the certificate of ownership to a motor vehicle when letters of refusal have been granted to him under Section 461.120, RSMo. 1949. It is further the opinion of this office that the Director of Revenue may require submission of authenticated records of a proper court showing the authority of the transferor to make such transfer on behalf of deceased.

This opinion, which I hereby approve, was prepared by my Assistant, James W. Faris.

Very truly yours,

JOHN M. DALTON
Attorney General