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REGISTRATION:

(1) A change from individual to joint ownership of a motor vehicle or trailer in which the original owner is one of the joint tenants or tenants by the entirety terminates the right to use the registration plate issued for such vehicle and necessitates the purchase of a new registration plate for the motor vehicle or trailer.

(2) A change from joint ownership to individual ownership by one of the joint tenants or tenants by the entirety does not invalidate the continued use of the original registration plate or require the purchase of a new registration plate for the motor vehicle or trailer.

OPINION NO. 128

August 22, 1968



Honorable Thomas A. David, Director
Department of Revenue
State of Missouri
Jefferson City, Missouri 65101

Dear Mr. David:

You have requested the opinion of this office on the following questions involving the interpretation of Section 301.140 RSMo, 1959:

"May an individual transfer motor vehicle or trailer registration plates into a joint ownership when the individual will be one of the joint owners without the necessity of purchasing new registration plates?"

"May a registration plate on a motor vehicle or trailer now owned jointly be transferred out of the joint ownership without the necessity of purchasing a new plate when the individual owner was one of the joint owners?"

"I would like to have the above questions answered in regard to family transfers and also when the persons involved are not related. We call your attention to your opinion number 21 issued November 2, 1967."

Honorable Thomas A. David

Section 301.140, Supra, provides in part that upon the "transfer of ownership" of any motor vehicle or trailer the right to use the registration plates shall expire and the plates shall be removed by the "owner" at the time of the "transfer of possession." The statute expressly declares it to be unlawful for any person other than the person to whom such number plates were originally issued to have the same in his or her possession whether in use or not. The statute further provides that in case of a transfer of ownership, the "original owner" of the motor vehicle or trailer may register another motor vehicle under the same number upon payment of a fee of two dollars.

It is thus apparent that in determining the applicability of Section 301.140, Supra, to any given factual situation, two questions are involved: (1) Has there been a "transfer of ownership" by the "original owner" within the meaning of the statute? and (2) Has there been a "transfer of possession" of the motor vehicle or trailer as contemplated by the statute, so that the person in possession of the plates is a person "other than the person to whom such number plates were originally issued?" The term "owner," as used in Chapter 301, RSMo, means "any person who holds the legal title of a vehicle." Section 301.010 (19) RSMo, 1959; Transport Rentals, Inc. v. Carpenter, Mo., 325 S.W. 2d 745, 749.

The opinion to which you directed our attention ruled that when a motor vehicle is registered in the name of an individual, such owner may not validly transfer his license plate to another individual (except for the period of 15 days following the sale of the vehicle), irrespective of the relationship between the parties. In the factual situation there ruled, every vestige of legal ownership as well as of possession has been transferred by the original owner of the motor vehicle, and the transferee is clearly a "person other than the person to whom such number plates were originally issued."

Your first question relates to a change from individual ownership to joint ownership between the original owner and another. We assume that by the term "joint ownership" you have reference to either a joint tenancy or a tenancy by the entirety. In either situation, the "original owner" retains an ownership interest as well as a possessory right.

"A joint tenancy is based on the theory that together the joint tenants have but one estate; they hold per my et per tout -- by the moiety or half and by the whole; the essential elements are the four unities of interest, title, time and possession. The leading and distinctive characteristic of an estate in joint tenancy is, of course, the right of survivorship." In re Gerling's Estate, Mo., 303 S.W.2d 915, 917.

In *Osterloh's Estate v. Carpenter, Mo.*, 337 S.W.2d 942, the Supreme Court held that within the meaning of our inheritance tax laws, a transaction of this nature creating a joint tenancy is not a transfer of a property interest. The Court stressed the uncertainty and contingency at the time of the conveyance as to whether the new co-tenant would ever attain absolute ownership of the property and the accompanying right to exclusive possession. This decision was very carefully limited to the language of our "existing inheritance tax statutes." We have concluded, after a careful study of Section 301.140, *Supra*, that the rationale of *Osterloh's Estate* is not applicable in determining the legislative intent as to motor vehicle registration.

As stated above, one of the essential elements of a joint estate is unity of possession, that is, that the tenants have the same undivided possession. *Feltz v. Pavlik, Mo. App.*, 257 S.W.2d 214, 218; 48 C.J.S., *Joint Tenancy*, §53c, page 916. *Osterloh's Estate* recognizes (337 S.W.2d, l.c. 946) that although neither joint tenant can hold exclusive possession against his co-tenant, each joint tenant does have the same right to possession. Such right of possession could be acquired by the new joint tenant only as an incident to the creation of the joint tenancy by the original owner. More importantly, the statute here for consideration makes it unlawful for any person other than the person to whom the number plate was originally issued to have the same in his or her possession. This prohibition evidences the legislative intent to include within the terms "transfer of ownership" and "transfer of possession" a transaction creating a joint tenancy between the "original owner" of a motor vehicle and another person. Since such other person cannot legally have the original number plate in his or her possession, because such person is a "person other than the person to whom such number plates were originally issued," it follows that a new registration plate must be obtained for the jointly owned motor vehicle. In our opinion, therefore, the "original owner" of a motor vehicle or trailer who creates a joint tenancy therein with another person has thereby effected a "transfer of ownership" of a kind terminating the right to further use the registration plate upon such motor vehicle or trailer.

As between husband and wife, the presumption would be that the joint owners of the motor vehicle are tenants by the entirety. Section 301.195 RSMo. Each tenant by the entirety is the owner of the entire estate, so that "(u)pon the death of one, the survivor continues to hold the whole title." *Linders v. Linders*, 356 Mo. 852, 204 S.W.2d 229, 232; See also *Murawski v. Murawski*, 240 Mo. App. 533; 209 S.W.2d 262, 264. And one of the unities characterizing such an estate is unity of possession. *Stewart v. Shelton, Mo.*, 201 S.W.2d 395, 398. Hence, even though the individual spouse who originally owned the title to the motor vehicle would continue to do so after he created the tenancy by the entirety, the necessary present effect of such change in ownership is to transfer the entire title (together with possession) to his spouse so that such spouse as well as the "original owner" will own and be in possession of the motor vehicle.

Since such spouse is not a person to whom the number plate was "originally issued" and hence may not lawfully have the same in his or her possession, it is our opinion that the original number plate cannot validly continue to be used and a new registration plate must be purchased for the motor vehicle.

In answer to your first question, therefore, it is the opinion of this office that a transfer from individual ownership to joint ownership between the original owner and either his spouse or another person constitutes a "transfer of ownership" and possession within the meaning of Section 301.140, Supra, necessitating the purchase of a new registration plate for the motor vehicle or trailer.

Your second question involves the reverse situation. As for motor vehicles held by the entirety, we have noted that each spouse owns the entire estate, neither having a separate or joint interest. Since each spouse already is the owner of the entire title, it follows that when the interest of the other spouse is eliminated, whether by death or otherwise, the title of the remaining spouse continues unchanged. And since each spouse already has the full right of possession of the motor vehicle together with the right to use the original number plate, the change to individual ownership by one of the spouses does not affect the existing right of possession other than to enhance it. In our opinion, the elimination of the interest of one spouse does not operate as a "transfer of possession" to the other spouse within the intent of the statute. Hence, the remaining spouse may continue to use the original number plate.

We believe the same result follows in the case of a joint tenancy. In the event of the death of one joint tenant, the survivor whose title is thereby enhanced does not take a new title, but instead continues to hold the whole title by virtue of the original transaction which created the joint tenancy. In re Gerling's Estate, Mo., 303 S.W.2d 915, 917; Osterloh's Estate v. Carpenter, Mo., 337 S.W.2d 942, 946. Of major importance is the fact that prior to the elimination of the interest of one co-tenant, the other co-tenant had the lawful right to possess and use the original registration plate. Although the elimination of his co-tenant's interest enables the remaining co-tenant to come into complete and exclusive possession of the motor vehicle, the result is merely to "enhance" his existing possessory right. One cannot "transfer" possession to a person who already has possession. Since the remaining co-tenant is one of the persons to whom the number plate was originally issued, he may continue to use the same on the motor vehicle with respect to which the plate was issued after the termination of the ownership and possessory interest of the other co-tenant.

CONCLUSION

It is the opinion of this office that:

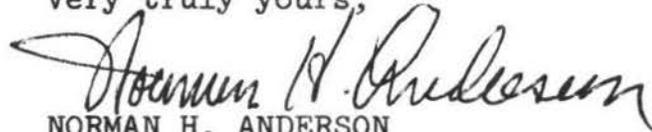
Honorable Thomas A. David

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This opinion which I hereby approve was prepared by my assistant Mr. Thomas J. Downey.

Very truly yours,



NORMAN H. ANDERSON
Attorney General