CERTIFICATE OF TITLE:
AUTOMOBILE TITLE:
SALES:

A buyer of an automobile may, by his actions, create an agency relationship between himself and the seller of an automobile so that a valid transfer results when the dealer submits the title and the application for transfer to the Department of Revenue even though the certificate of title was never physically in the hands of the buyer.

FILED
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March 2, 1959

Honorable James G. Trimble
Representative, Clay County
Missouri House of Representatives
Capitol Building
Jefferson City, Missouri

Dear Mr. Trimble:

You recently requested an opinion from our office on the validity of certain automobile transactions as follows:

> "Please render an opinion at your earliest convenience on Section 301.210 R. S. Mo. 49, Section 4, relating to the sale and transfer of vehicles which provides 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. (8382, A. L. 1947 V. I p. 380)
>
> "At the present time it is the practice of many automobile dealers to send the Certificate of Ownership to the Department of Revenue for the purchaser instead of delivering the Certificate to the purchaser. Does

> this delivery to the Director constitute a sufficient assignment under this Section to make a valid sale?"

In a private conversation, you indicated the presence of certain other facts in these transactions. The facts are as follows:

1. An individual agrees to purchase an automobile from a dealer.

2. At the time the purchase is made the dealer assigns the certificate of title and the buyer signs an application for new title, pays the sales tax and turns the application for new title over to the dealer. The dealer then, after informing the buyer as to what he intends to do, forwards all necessary papers to Jefferson City and thereafter a title is issued in the buyer's name and returned either to the dealer or the note holder.

3. The buyer does not, at any time, have actual physical control of the certificate of title. He does, however, willingly turn over to the dealer the application for transfer of title and he does, for his own convenience, pay to the dealer the amount of tax involved, either by having this amount added to his indebtedness or by paying in cash. The buyer knows what the dealer is going to do with the title papers and further that it is the dealer's intention to have the title made out in the buyer's name and hold it until such time as the dealer or note holder is paid in full.

There has been a considerable degree of litigation involving Section 301.210, subsection 4, and its application to automobile transactions. First of all, this section applies by its terms only to motor vehicles that are registered under the laws of the State of Missouri and subsequently sold. A reading of the cases would seem to require that the seller deliver to the buyer a properly assigned certificate of title at the time of the transfer in order to properly and validly pass title to the automobile.

In Allstate v. Hartford, 311 S.W. 2d 41, l.c. 46, subsections 2 and 3, we find the following language:

> "[2, 3] Turning now to the Missouri motor vehicle law, we find that under section 301.210 RSMo 1949, V.A.M.S., it is unlawful to buy or sell any motor vehicle

> registered in this state unless 'at the time of the delivery' there shall pass between the parties a certificate of title and the sale without such assignment 'shall be fraudulent and void.' The provisions of this act are essentially a police regulation of the highest type and absolute technical compliance is necessary. Such provisions are rigidly enforced and there are no exceptions to conform to intentions. Unless and until the assignment of the certificate of title is filled in, acknowledged, and delivered to the purchaser, no title passes. And the buyer acquires no right of possession and user against the seller, who may repudiate and tender back the consideration. * * *"

This case, however, turns on the failure to assign title and not the failure to deliver a properly assigned title. The court cites Kesinger v. Burtrum, 295 S.W. 2d 605, as authority for the necessity of assignment and delivery but this case is also a case where the title was never assigned or delivered.

Mathes v. Westchester, 6 S.W. 2d 66, is also cited as authority for this proposition but in this case the title was signed and not acknowledged and kept in the seller's possession and, of course, not transferred by the state.

Robertson v. Central Manufacturers' Mutual Insurance Company, 239 Mo. App. 1169, 207 S.W. 2d 59, is also cited. In this case a Texas car dealer purchased automobiles from a Missouri car dealer and the assigned titles were attached to the draft so that when the draft was honored the Texas car dealer would then come into possession of the properly assigned titles. The court concluded on the set of facts surrounding this transaction that title had not passed because the parties had agreed that delivery would be made of the cars in Texas and that payment and delivery of the titles would be made in Texas also.

In Anderson v. Arnold-Strong Motor Company, 88 S.W. 2d 419, the title involved was neither assigned nor delivered. The Court has taken up this matter also in the case of Robinson v. Poole, 232 S.W. 2d 807, a case where "A" sells a car to "B" and before the papers are sent to Jefferson City "B" sells the car to "C" with the understanding that when the

papers are sent to and returned from Jefferson City "B" will assign the title to "C" and then re-submit for proper titling in "C's" name. This situation also in essence is one of sale without assignment or delivery. The court, however, in each of these cases and in all of the cases that were found on this subject recites the need for assignment and delivery of the certificate of title and further of the need of strict compliance with the statute. The reason for such a statute is discussed in Robinson v. Poole, 232 S.W. 2d 807, l.c. 812, where the court says as follows:

> "***The requirement that a sale of a motor vehicle registered in this state must be accompanied by an assignment of the certificate of ownership is absolute and mandatory because the statute provides that any such sale without such assignment is 'fraudulent and void.' Compliance with the statutes protects not only the parties to a particular sale or transfer but also protects the public generally by enabling the State to keep an up to date registry of all automobiles registered in this State and their ownership, thereby making traffic in stolen automobiles as difficult as possible."

Under the facts as given, the title papers would be submitted immediately by the dealer to the state and a proper title issued and returned by the state in the buyer's name to be held by the note holder or seller. The purpose of this law as stated above is fulfilled under the facts of this transaction since the state's records are kept complete and accurate through the proper assignment of title in this case. The buyer in this instance is treated fairly and protected in that the automobile which he purchased is properly transferred to his name and the seller is protected by this transfer and the payment of the necessary tax since the title is returned to him in proper form and he is assured that the transfer is made as the law requires and that he may repossess the car since the car is properly in the buyer's name.

In other words, all parties in this transaction, insofar as the records show, are exactly where they properly should be. There is no question that Missouri courts in the herein cited cases and others have stated frequently that assignment and delivery are both needed to complete a transaction of this nature. These statements were made, however, in every instance when in fact there had been no proper assignment or where the

agreement between the parties was that the transaction was not to become complete until delivery of the title. No case was found directly in point on this factual situation.

Some question might arise as to the propriety of this transaction since the title is not ultimately in the buyer's hands but in the hands of the note holder or seller. In Wilson Motor Company v. Jenkins, 284 S.W. 190, the court had occasion to pass on such a situation and the holding was that where there was ample evidence to prove a proper certificate of title was duly transferred and thereupon, with the knowledge and consent of the buyer, turned over to the note holder, the procedure was proper. We feel, therefore, that in this case the fact that title is ultimately to be delivered to the mortgage holder or seller does not work to void this transaction.

We must then determine what effect the failure to physically deliver the title has in a situation where all the rest of the transaction is regular on its face and where there is no taint of unfair dealing by any party. We feel that a court faced with such a situation would be inclined to uphold such a transaction if such a decision were possible under the laws of the state. We feel further that the parties by their action have created an agency relationship in which the dealer acts as the agent of the buyer, in sending the necessary papers to Jefferson City and in securing a proper title in the buyer's name. The agency relationship does not need to be intentionally or explicitly created in order to function under the law. The Supreme Court has used the citation from American Jurisprudence in defining agency under Missouri law. This citation is found in 260 S.W. 2d 504, in the case of Leidy v. Taliaferro, l.c. 505, and reads as follows:

> "***'Agency is the relationship which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.' Restatement, Agency, §1. The parties may not have intended to create the legal relationship or to have subjected themselves to the liabilities which the law imposes as a result of it, nevertheless, the relationship exists 'if there has been a manifestation by the principal to the agent that the agent may act on his account, and consent by the agent so to act.' ***"

It is our feeling that the buyer, in handing the application for transfer and in paying to the dealer or in becoming obligated to the dealer to pay the tax on this transaction with

the understanding that the dealer is to send the papers to Jefferson City and secure title in the buyer's name, appoints the dealer as his agent for the procurement of this title and, therefore, the transaction is not fraudulent and void under the terms of Section 301.210, RSMo 1949, subsection 4.

CONCLUSION

A buyer of an automobile may, by his actions, create an agency relationship between himself and the seller of an automobile so that a valid transfer results when the dealer submits the title and the application for transfer to the Department of Revenue even though the certificate of title was never physically in the hands of the buyer.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James E. Conway.

Yours very truly,

JOHN M. DALTON
Attorney General

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