



**THE ATTORNEY GENERAL
OF TEXAS**

GERALD C. MANN
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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable Homer Garrison, Jr., Director
Texas Department of Public Safety
Camp Mabry
Austin, Texas

Dear Sir:

Attention: Mr. Hill Foreman, Chief
Texas Highway Patrol

Opinion No. 0-4547

Re: The effect of the Certificate of
Title Act on delivery of registra-
tion receipts and use of dealer's
license plates in the situations
presented.

We are in receipt of your letter of April 16, 1942,
which presents several questions which we have numbered in
quoting your request as follows:

"We have been confronted a number of times
recently with the proposition of whether or not
it is a violation of law to transfer a second-
hand motor vehicle without delivering to the
transferee a license receipt for the current
year.

". . . .

"(1) The questions confronting us in some
cases have been 'would it be illegal for a
second-hand car dealer to sell a used car that
he had been demonstrating on a dealer's li-
cense for about six months, to a person with-
out delivering to such person a license re-
ceipt issued by a Tax Collector of this State
for the current year.'

"(2) 'In case of such a sale, could a cus-
tomer legally drive a used car on a paper deal-
er's license issued as provided in Article
6686 (b), such use being on local highways, pend-
ing the issuance of Certificate of Title under
Article 1436-1, or should the car be registered
before sold by the dealer as required in Arti-
cle 1434.'

"(3) What, if anything, could the used car dealer be charged with under each of the foregoing fact situations?

"The questions arising in connection with Article 1434 and Article 1436-1 are based upon whether or not any portion of Article 1434 is still valid. Please advise us which portions of this Article are still valid since the enactment of Article 1436-1."

Article 1434, Penal Code of Texas, provides as follows:

"No person, acting for himself or another, shall sell, trade, or otherwise transfer any used or second-hand vehicle required to be registered under the laws of this State unless and until said vehicle at the time of delivery has been duly registered in this State for the current year under the provisions of said laws; provided, however, that a dealer may demonstrate such motor vehicle for the purpose of sale, trade or transfer under a dealer's license plate issued for demonstration purposes. Whoever, acting for himself or another, sells, trades or otherwise transfers any such vehicle shall deliver to the transferee at the time of delivery of the vehicle the license receipt issued by a Tax Collector of this State for the registration thereof for the current year and a bill of sale in triplicate. . . ."

Article 6686, Vernon's Annotated Civil Statutes, provides as follows:

"(a) Any manufacturer of or dealer in motor vehicles in this State, may, instead of registering each vehicle he may wish to show or demonstrate on the public highways, apply for registration and secure a general distinguishing number which may be attached to any motor vehicle or motorcycle which he sends temporarily upon the road. . . . A dealer within the meaning of this Article means any person, firm or corporation engaged in the business of selling automobiles who runs them upon the public highways or streets for demonstration for the purpose of sale; and this Act shall not be construed as permitting the use of a dealer's li-

cense or number plate on any vehicle owned or used by such a dealer for any other purpose than demonstration for the purpose of sale. . .

"(b) Each dealer holding a dealer's license may issue temporary cardboard numbers using such dealer's number thereon which may be used by any person, dealer, or manufacturer purchasing a motor vehicle, trailer, or semi-trailer. Such person purchasing a motor vehicle, trailer, or semi-trailer from a manufacturer or dealer may use such cardboard number for a reasonable length of time but in no case to exceed ten (10) days after such purchase is made.

".

"(f) Any person found guilty of violating any of the provisions of this Act shall, upon conviction, be fined not less than Fifty (\$50.00) Dollars and not more than One Hundred Fifty (\$150.00) Dollars, and all costs of court."

Article 1436-1, Penal Code of Texas, (Certificate of Title Act) provides as follows:

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"Sec. 27. Before selling or disposing of any motor vehicle required to be registered or licensed in this State on any highway or public place within this State, except with dealer's metal or cardboard license number thereto attached as now provided by law, the owner shall make application to the designated agent in the county of his domicile upon form to be prescribed by the Department for a certificate of title for such motor vehicle.

".

"Sec. 31. Every designated agent in this State receiving an application for certificate of title shall, when the provisions hereof have been complied with, issue a receipt marked 'Original' to the applicant and shall note thereon the required information concerning the motor vehicle and the existence or non-existence of liens as disclosed in the appli-

cation and deliver such receipt upon payment of the required fees to the applicant; provided, however, that in the event there is a lien disclosed in the application, the said receipt shall be issued in duplicate, one of which shall be marked 'Original' and shall be mailed or delivered by every such designated agent to the first lien holder as disclosed in said application; the other said copy shall be marked 'Duplicate Original' and shall be mailed or delivered to the address of the applicant as disclosed in the said application, and such receipt pending the issuance of the certificate of title shall authorize the operation of such motor vehicle on the highways and public places within this State for a period of not to exceed ten (10) days and upon the expiration of such period of time shall cease to be effective for any purpose, but may be renewed under such reasonable rules and regulations as may be promulgated by the Department.

".

"Sec. 33. No motor vehicle may be disposed of at subsequent sale unless the owner designated in the certificate of title shall transfer the certificate of title on form to be prescribed by the Department before a Notary Public, which form shall include, among such other matters as the Department may determine, an affidavit to the effect that the signer is the owner of the motor vehicle, and that there are no liens against such motor vehicle, except such as are shown on the certificate of title and no title to any motor vehicle shall pass or vest until such transfer be so executed.

".

"Sec. 51. It shall hereafter be unlawful for any person, either by himself or through any agent, to offer for sale or to sell or to offer as security for any obligation any motor vehicle registered or licensed in this State without then and there having in his possession the proper receipt or certificate of title covering the motor vehicle so offered.

"Sec. 52. It shall hereafter be unlawful to

buy or acquire any title other than a lien in a motor vehicle registered or licensed in this State without then and there demanding of the proposed seller the registration receipt and certificate of title covering the particular motor vehicle which shall, upon consummation of the purchase, be transferred upon such form as may be provided by the Department.

"Sec. 53. All sales made in violation of this Act shall be void and no title shall pass until the provisions of this Act have been complied with.

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In answer to your first inquiry your attention is directed to the fact that the situations you present fall directly under the provisions of Article 6686, above, in that they deal solely with situations where a dealer's license or temporary cardboard numbers using such dealer's number is involved and not with situations where the car in question is required to be registered as provided in the general registration statutes. Your questions therefore concern only an automobile operated under such dealer's number which are expressly exempted from the provisions of the Certificate of Title Act insofar as this Act definitely excepts such a vehicle from being registered or licensed in this State, as Sections 27, 51 and 52 of the Certificate of Title Act use the language "required to be registered or licensed in this State."

The language of Article 1434, P. C., above, provides that "no person . . . shall sell . . . any used or second-hand vehicle required to be registered unless . . . said vehicle . . . has been duly registered . . . for the current year . . ." while Article 6686, V.A.C.S., provides that a dealer may issue temporary cardboard numbers which may be used by a purchaser for a reasonable length of time not to exceed ten (10) days. Section 27 of Article 1436-1, P. C., above, continues the use of dealer's license plates in this language, "except with dealers metal or cardboard license numbers there-to attached as now provided by law," which exception from registration seems to be continued throughout the remainder of the Certificate of Title Act by virtue of the fact that all other provisions use the language "required to be registered" A vehicle using a dealer's license or cardboard numbers would not be one which is "required to be registered" as is set out in Article 6686.

It is therefore our opinion that Article 6686, super-

sedes Article 1434 and that it, therefore, would not be illegal for a second-hand car dealer to sell a used car that he had been demonstrating on a dealers license to a person without delivering to such person a license receipt for the current year.

In answer to your second inquiry you will observe that Article 6686(b) which permits a purchaser to use a temporary cardboard number issued by a dealer under his dealer's license supersedes the provisions of Article 1434, P. C., requiring a person to register a vehicle before selling same and permits such purchaser to use the dealer's number for a period of time not to exceed ten (10) days. The use of dealer's metal or cardboard license numbers is specifically provided for in Section 27 of the Certificate of Title Act and must be continued throughout the remaining provisions in order to harmonize the statutes mentioned. We believe that the purchaser could use the temporary cardboard dealer's number plate for a period not to exceed ten (10) days after purchase of the car in question. The use of such numbers for a longer period of time would be in violation of the penal provisions of Article 6686, Section (f) above.

Your further attention is directed to the fact that Section 31 of Article 1436-1 provides for the use of a receipt for an application for certificate of title pending the issuance of the certificate itself, for a period of not to exceed ten (10) days. This period provides for the use of the receipt instead of the actual certificate. As the regular license plates are issued with this receipt no longer time other than the ten (10) days provided for the use of dealer's temporary cardboard numbers is granted by this provision for the use of such dealer's number.

In answer to your inquiry as to the criminal liability of a used car dealer under the above fact situations you are advised that we do not believe that such dealer would be guilty of any criminal offense under the facts presented.

You raise the further inquiry as to whether any portions of Article 1434 are still valid. In that connection, you are advised that under the fact situations provided by your question only no provisions of Article 1434 would control. Your attention is directed to the fact, however, that Article 1434, P. C., in requiring registration of ordinary vehicles by private individuals is continued in the language of Section 52 of Article 1436-1, P. C., (Certificate of Title Act) and could be applied in cases of sales of vehicles by the owners thereof, under the definition of the word "owners" set out in the section 4 of the latter Act.

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We trust that the above satisfactorily answers your inquiries.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/Alfred F. Herbelin
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Assistant

AFH:db:wc

APPROVED MAY 27, 1942
s/Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman