

OPINION 25

OFFICIAL OPINION NO. 25

October 21, 1975

Honorable Phillip E. Gutman
President Pro Tem, Indiana
State Senate
2840 Club Terrace
Fort Wayne, Indiana 46804

Dear Senator Gutman:

This is in response to your request for my official opinion in answer to the following question:

“May the bureau of motor vehicles lawfully issue a certificate of title to the seller of a motor vehicle under a conditional sales contract and note, pending satisfaction of the contract and note?”

ANALYSIS

Indiana Code of 1971, Section 9-1-2-1 prescribes to whom the Bureau of Motor Vehicles may issue a certificate of title, and in applicable part reads as follows:

“The application for certificate of title shall be made upon a form to be furnished by the commissioner and shall be acknowledged before a notary public or other officer empowered to administer oaths, and shall contain a full description of such vehicle, together with a statement of the applicant’s title, and of any liens or encumbrance upon such vehicle, and such other information as the commissioner may require. . . .”

* * *

“The department shall use reasonable diligence in ascertaining whether or not the facts stated in said application for certificate of title are true, and if satisfied that the applicant is the *lawful owner* of such vehicle, or is otherwise entitled to have the same registered in his name, the department may thereupon issue an appropriate certificate of title over the sig-

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nature of the commissioner, and sealed with the seal of the department.” (My emphasis)

* * *

“The certificate of title shall be delivered to the owner in the event no lien or encumbrances appears thereon. Otherwise the certificate of title shall be delivered to the person named to receive the same in the application for such certificate.”

Code Section 9-1-2-1 specifically contemplates issuance of a certificate of title to one other than the “owner”.

The term “owner” as used in Code Section 9-1-2-1 is defined in Code Section 9-1-1-2(o) as follows:

“A person who holds the legal title of a motor vehicle or any person renting or leasing a vehicle and having exclusive use thereof for a period longer than thirty [30] days, or in the event a vehicle is the subject of an agreement for the conditional sale or lease vested in the conditional vendee or lessee, or in the event the mortgagor thereof, with the right of purchase upon the performance of the conditions stated in the agreement and with an immediate right of possession of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed to be the owner for the purposes of this act.”

Therefore, although a conditional vendee, as “owner” is eligible to obtain a certificate of title, the vendor as a lienholder may—by agreement of the parties—be entitled to registration in his name.

CONCLUSION

It is, therefore, my Official Opinion that the Bureau of Motor Vehicles may issue a certificate of title to a conditional vendor, provided such arrangement is part of the conditional sales agreement.