



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

March 11, 1975

Opinion No. 75- 110

Mr. Larry D. Ehrlich
Russell County Attorney
Russell County Courthouse
Russell, Kansas 67665

Dear Mr. Ehrlich:

We have your letter of March 6. I enclose a copy of a recent opinion of the Attorney General, No. 75-43, and a copy of an earlier opinion by Attorney General Ferguson, No. 61-27, which discuss the right of the county attorney to additional compensation. In appeals and other litigation before the State Board of Tax Appeals, which necessarily involve representation outside the county, the county attorney is not required by the statutes defining his official duties to provide representation. If he does do so, he is entitled to reasonable compensation for his services. I also enclose a copy of an opinion dated March 25, 1969, addressed to your predecessor in office, Michael Holland.

You inquire, also, concerning K.S.A. 1974 Supp. 8-1754. Thereunder, no motor vehicle subject to registration under the laws of this state may be sold at retail or registered in this state for the first time

"unless a valid certificate of approval has been issued for such motor vehicle not more than thirty (30) days prior to the date of sale or to the date of application for such initial registration, as the case may be."

Concerning the responsibility for obtaining the certificate, it provides further thus:

Mr. Larry D. Ehrlich
Page Two
March 11, 1975

"If no such certificate has been issued for any such motor vehicle, it shall be the responsibility of the seller to obtain a valid certificate of approval for the motor vehicle in accordance with the provisions of this act"

You advise that a question has been raised whether the responsibility of assuring that a motor vehicle passes the inspection and is issued a certificate may be shifted from the seller to the buyer by mutual agreement. We agree fully with you that under the cited language, this responsibility rests solely with the seller, regardless of any mutual agreements entered into between the buyer and the seller. The duty of the seller is further clarified by K.S.A. 1974 Supp. 8-1758(a) (6) which provides that it shall be unlawful for any person

"to sell at retail within this state any motor vehicle unless a valid certificate of approval has been issued for such vehicle within thirty (30) days of the time of sale; and in addition to the penalties prescribed, any person violating the provisions of this subsection shall be liable to the purchaser in damages for all costs involved in obtaining a valid certificate of approval for such vehicle."

The responsibility for obtaining a certificate of approval rests with the seller, and it is, indeed, a duty imposed by law. The parties to a transaction of sale of a motor vehicle subject to registration may not alter that law by private contract to transfer that duty to any other person than the seller, upon whom the duty is imposed by statute.

The duty of the seller to obtain a certificate of approval for a vehicle subject to registration prior to sale is not a duty which runs personally to the purchaser alone. Motor vehicle inspection is required in the interests of highway safety. In adopting inspection requirements, the Legislature chose at the outset not to require inspection of all vehicles, but to introduce the requirement on a limited basis, vehicles becoming subject thereto

Mr. Larry D. Ehrlich
Page Three
March 11, 1975

at the time of sale or first registration. The duty of the seller to provide the necessary certificate of approval is not a personal right of the purchaser which the latter may waive by contract, for, as indicated above, it is an absolute duty imposed by law.

Yours very truly,

A handwritten signature in cursive script that reads "Curt Schneider". The signature is written in dark ink and is positioned above the typed name.

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj