certificate of ownership in order to transfer title and the signature of "A" only or "B" only will not be sufficient to transfer title.

May 29, 1951.

Mr. Edward Gill
Deputy Registrar of Motor Vehicles
Deer Lodge, Montana

Dear Mr. Gill:

You have requested my opinion on the following question:

> "When a motor vehicle title is registered in the name of "A and/or B", can that title be transferred when the signature of "A" only or "B" only appears on the purported transfer."

In answering this question it is necessary to discuss generally some of the elementary concepts of property law. The legal title to real or personal property may be held by one person alone, or by two or more persons jointly. If property is owned jointly, the owners may be either joint tenants or tenants in common. The distinguishing feature of the two estates is that a joint tenancy carries with it the right of survivorship, and if one of the joint tenants dies the interest of the deceased person passes to the other joint tenants and not to the heirs of the deceased. On the other hand, in a tenancy in common the interest of the deceased passes to the estate of the deceased and not to the surviving tenants in common. In the early common law joint tenancies were favored because of the feudal system and the reluctance to split the feudal tenures. However, today many states have abolished joint tenancies altogether, and those that have not, require that the intention to create a joint tenancy be clearly manifested, as the presumption will be that a tenancy in common rather than a joint tenancy was intended. (48 C. J. S. 917)

Opinion No. 20

Motor Vehicles—Registrar of Motor Vehicles—Transfer of Motor Vehicle Titles.

Held: If title to a motor vehicle is registered in the name of "A and B". "A or B" or "A and/or B", both co-owners must sign the

Consequently, if the title to a motor vehicle is held in the names of "A and B" without more, the law will presume that the parties hold as tenants in common rather than joint tenants with right of survivorship. The modern theory is that the law will presume that a man intends to leave his property to his heirs rather than to

strangers upon his death. If title is held by "H and W", that is husband and wife, the law will then presume that a joint tenancy was intended because of the close relationship of the parties and the natural inclination to leave one's property to the mate. However, the intention of the parties will control if that intent is clearly manifested. Therefore, if a husband and wife, or any other persons, wish to create a joint tenancy the title should be registered in the following manner:

> "A and B, as joint tenants with right of survivorship and not as tenants in common."

If the title is so registered the intent of the parties is made clear and the legal presumption in favor of tenancies in common is overcome. (48 C. J. S. 918)

Title to property cannot be held in the names of "A or B". The reason for this rule is that title must be in either A, or title must be in B, or title must be in A and B. You cannot have a title suspended in mid-air, and that is the effect when one says that the title is in "A or B". The courts generally construe "A or B" as meaning A **and** B. Titles held in "A and/or B" therefore can only mean "A and B", and the disjunctive "or" is surplusage.

Much of the confusion in regard to this problem has been caused by the way joint bank accounts and U. S. War Bonds are handled. When two parties open a joint bank account they must sign a contract with the bank that the bank shall not be liable if one of the parties withdraws the whole account, and the bank agrees that it will honor checks or withdrawals made by one of the parties only. The following is a typical example of the agreement made by joint depositors with a bank:

> "To cause the above named account, subject to your rules and regulations, to be entered jointly in our names as shown by the signatures below. We agree, each with each of the others and with the Bank, that the balance of this account is to be payable on the order of any one of us, that upon the death of any one of us the balance shall be held by the survivors, if more than one, as joint tenants with the right of survivorship, and if only one shall survive, shall be the sole property of such survivor and shall be payable to the order of such sole survivor or his legal representative. All checks, drafts, notes, etc., in favor of any one or more of us may be endorsed by any one or more of us and deposited to the credit of the joint account."

The bank insists upon such a contract so as to save the bank harmless in the event one of the parties appropriates the whole account. The depositors may have any agreement they wish among themselves as to how the proceeds of the account may be withdrawn. Thus, if they agree that both of the parties shall be entitled to withdraw an equal amount, and if one of the parties withdraws the whole amount, the defrauded party may still sue his co-depositor for his share of the account, but it is a matter purely between the co-depositors and none of the bank's concern.

When Congress authorized the Secretary of the Treasury to sell U. S. War Bonds, the Congress provided that the Secretary of the Treasury could set up regulations concerning the manner in which War Bonds could be sold. (U. S. C. A. 31 Section 764)

> "During the lives of both co-owners the bond will be paid to either co-owner upon his separate request without requiring the signature of the other co-owner; and upon payment to either co-owner, the other person shall cease to have any interest in the bond. The bond will also be paid to both co-owners upon their joint request in which case payment will be made by a check drawn to the order of both co-owners." (Title 31 U. S. C. A., Section 757c. Subpart L, Sec. 315.45)

The Courts have held that it is within the power of Congress to delegate such authority to the Secretary of the Treasury and have also held that the regulation, above quoted is permissible even though it violates the ordinary property concepts. (In re Myers' Estate 359 Pa. 577, 60 Atl. (2nd) 50. The reason for the regulation is again to protect the U. S. Government. Since bonds are negotiable instruments, and since the Treasury Department does not want to become involved in lawsuits growing out of co-ownership of bonds,

nor to clutter up its files with probate proceedings of every person who dies owning War Bonds, the Treasury has provided that either co-owner may negotiate the bond.

A further reason why bonds and bank accounts are handled differently is that they are negotiable instruments, and pass freely as money. An elementary principle of law is that one may not transfer any better title than he himself has, but this rule is suspended in the case of money and negotiable instruments. One need not ask if "A" has good title to a five dollar bill, although A may in fact have stolen it from B. On the other hand, one must ask if A has good title to his automobile because if A stole the automobile from B, B will be able to get it back from the vendee of A. Therefore, it is apparent why bonds and bank accounts are treated differently from automobiles and other personal property.

With regard to the transfer of a motor vehicle title, Section 53-109, Revised Codes of Montana, 1947, provides in part as follows:

> "Upon a transfer of any title or interest of an owner or owner in or to a motor vehicle registered under the provisions of this act as hereinbefore required, **the person or persons whose title or interest is to be transferred shall write their signatures with pen and ink upon the certificate of ownership issued** for such vehicle, in the appropriate space provided upon the reverse side of such certificate, and such signature shall be acknowledged before a notary public . . . ." (Emphasis supplied)

In view of the explicit wording of the above statute it follows that both co-owners must sign the certificate of ownership in order to evidence their intent to divest themselves of any interest in the vehicle. It is therefore my opinion that if title to a motor vehicle is registered in the name of "A and B", "A or B" or "A and/or B", both co-owners must sign the certificate of ownership in order to transfer title and the signature of "A" only or "B" only will not be sufficient to transfer title.

Very truly yours,
ARNOLD H. OLSEN
Attorney General