

Opinion No. 433**Motor Vehicles—Registration and Re-Registration—Delinquent Taxes—Delinquent License.**

HELD: A county treasurer may not accept an application for the registration or re-registration of a motor vehicle for the year 1934 without payment of delinquent property taxes on such vehicle which are not a lien upon real estate.

Where applicant for registration shows good certificate of title to a motor vehicle, and where said motor vehicle was operated in Montana during the year 1933 or previous years and was subject to registration or re-registration but was not so registered or re-registered in Montana, the county treasurer may accept application for registration without collecting delinquent license tax.

The application for registration need not be a sworn or verified application.

January 31, 1934.

Your request for an opinion is as follows:

"1. If a motor vehicle were subject to taxation in Montana for the year 1933 or previous years, and the taxes on said motor vehicle were not paid and are not a lien upon real estate, can the County Treasurer accept an application for the registration or re-registration of said motor vehicle for the year 1934 without paying such delinquent tax?

"2. Under the provisions of Senate Bill No. 7, now Chapter 13 of the 1933 Special Session Laws, if a motor vehicle were operated in Montana during the year 1933 or previous years and were subject to registration or re-registration in Montana, but was not so registered or re-registered for all or part of such time as it was subject to such registration can the County Treasurer accept the application for registration or re-registration of such motor vehicle for the year 1934 without collecting any or all of the delinquent fees due for registration, provided the applicant has an authentic and regularly issued certificate of title to such motor vehicle?

"3. A sentence of the above Chapter 13 reads: 'Provided that no application for registration or re-registra-

tion of any motor vehicle hereafter need be verified'. Does this mean that applications for registration and re-registration of motor vehicles do not have to be sworn to and acknowledged before a proper official?

"There seems to be some question as to the meaning of the above chapter."

The Supreme Court in the case of *Vennekolt v. Lutey*, 96 Mont. 72, held that those provisions of Chapter 158, Laws of 1933, which related to the taxation of motor vehicles were invalid. It further held in the same case that a repealing clause in a statute of which a portion is unconstitutional is applicable only to laws inconsistent with the operative provisions of such statute. Under this rule, the attempted repeal of sections 1, 2 and 3, Chapter 171, Laws of 1929, by Chapter 158 is, in our judgment, so far ineffective as to justify us in answering your first question in the negative.

Section 1, Chapter 13, Laws of the Twenty-third Legislative Assembly in Extraordinary Session, provides, among other things, that "upon application for registration or re-registration of motor vehicles upon which license has not been paid prior to January 1st, 1934, that if the applicant in possession of any motor vehicle shall present, with his application for license, an authentic and regularly issued certificate of title to any motor vehicle for which applicant desires to obtain a license, showing good title in applicant, and no license was obtained for such motor vehicle for the last preceding year, the county treasurer shall accept payment for the license for such motor vehicle for the current year and a license shall be issued to such applicant." In view of the language just quoted, we are constrained to answer your second question in the affirmative in a case where the certificate of title to the motor vehicle shows a good title in the applicant and no license fee was paid thereon for the year 1933.

Formerly the owner of a motor vehicle was required to file a sworn application for registration or re-registration, but this is no longer necessary as the proviso at the end of section 1 of said Chapter 13 permits the filing of an unverified application. Our answer to your third question is, therefore, in the affirmative.