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Vehicular Registration in Kentucky: A Remnant of the Horse and Buggy Age

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Vehicular Registration in Kentucky: A Remnant of the Horse and Buggy Age

INTRODUCTION

In 1973, Maine became the forty-ninth state to enact a motor vehicle certificate of title law.¹ The lone remaining state without such a law is Kentucky. This Note will examine Kentucky's present system of regulation and registration of motor vehicles² and will explore the history of proposed certificate of title legislation in this state. Concluding that Kentucky would benefit from the passage of a title law, this Note will discuss the relative strengths and weaknesses of various title laws and will make recommendations concerning what type of title law the Commonwealth should adopt.

As a preliminary matter, it must be understood what is meant by a certificate of title law. Unfortunately, there is no rigid definition.³ This is evidenced by the wide variations among the many such laws throughout the country.⁴ A short history of title laws, however, will provide an adequate basis for understanding the concept involved.

In the early 1900's all states enacted motor vehicle registration laws requiring the owners to pay a fee for the privilege of operating their vehicles.⁵ As proof of payment, the owner would receive a registration certificate.⁶ Although these statutes were originally enacted solely for the purpose of raising revenue,⁷ soon thereafter many were redrafted to provide mo-

¹ ME. REV. STAT. ANN. tit. 29, §§ 2350-447 (1973).

² KY. REV. STAT. §§ 186.005-.992 (Supp. 1978) [hereinafter cited as KRS].

³ To a degree, a certificate of title law is any bill the legislature passes and calls a certificate of title law.

⁴ The National Conference of Commissioners on Uniform State Laws drafted the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act in 1955. This act has been adopted in 10 states and is the closest thing to a standard certificate of title law. See text accompanying notes 106-15 *infra* for a more detailed look at the Uniform Act.

⁵ 1 G. GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY 552 (1965).

⁶ *Id.*

⁷ Comment, *Certificate of Title Legislation and The Uniform Commercial Code*,

tor vehicle anti-theft protection as well.⁸ These new statutes elevated the status of the registration receipt to a "species of title document . . . which came to be known in most states as a certificate of title."⁹ Although there was no uniformity in the provisions of these new title laws, they did follow a very loose pattern. Each required a certificate of title in addition to the registration receipt as documentary evidence of ownership of the vehicle.¹⁰ Furthermore, upon sale of the vehicle, each required that certain procedures be followed in order to validly transfer the certificate of title.¹¹

I. KENTUCKY'S PRESENT MOTOR VEHICLE REGULATION AND REGISTRATION SYSTEM

Kentucky's present system of regulation and registration of motor vehicles is governed by Chapter 186 of the Kentucky Revised Statutes (KRS). The specific registration requirements are set forth in KRS section 186.020 and KRS section 186.040.

Under these statutory provisions, an owner cannot operate a motor vehicle in Kentucky or permit its operation until he has applied for registration with the county clerk of the county in which he resides.¹² This application must be accompanied by a bill of sale and a manufacturer's certificate of origin if a new motor vehicle is involved, by the owner's previous registration receipt if the vehicle was last registered in the Commonwealth, or by a certificate of title if it was last registered in another state.¹³ Upon receiving a proper application and fee,¹⁴ the county clerk issues a certificate of registration.¹⁵ This document consists of the original and five copies. The original is issued to the owner. The first copy is forwarded by

24 S.D. L. REV. 395, 397 (1979).

⁸ H. LUSK, EFFECT OF REGISTRATION AND CERTIFICATE OF TITLE ACT ON THE OWNERSHIP OF MOTOR VEHICLES 13 n.22 (1941).

⁹ 1 G. GILMORE, *supra* note 5, at 552.

¹⁰ *Id.*

¹¹ H. LUSK, *supra* note 8, at 13.

¹² KRS § 186.020(1) (Supp. 1978).

¹³ *Id.*

¹⁴ KRS § 186.050 (Supp. 1978).

¹⁵ KRS § 186.040 (Supp. 1978).

the county clerk to the Department of Transportation in Frankfort. The Department of Transportation remits its copy to the Auto Theft Section of the Kentucky State Police, which files it by county and number for law enforcement purposes.¹⁶ The information in this file is sent to a computer service in Cincinnati which prepares the information for placement in the Law Information Network of Kentucky (LINK) computer.¹⁷ The second copy of the certificate of registration is mailed by the county clerk to the Department of Revenue in Frankfort. This copy is ultimately used for taxation purposes. The third copy is retained by the clerk for his numerical file. The county property valuation administrator receives the fourth copy which is used for county tax purposes. The final copy is entered in the county clerk's alphabetical file.

Registration is on an annual basis¹⁸ with a registration renewal period lasting one month.¹⁹ The date of the vehicle's purchase establishes the month for registration renewal.²⁰ Upon registration and payment of the proper fee,²¹ the owner receives a license plate or renewal sticker from the county clerk²² in addition to the certificate of registration. If a lien exists on the vehicle at this time, it must be noted on the cer-

¹⁶ Interview with Lt. Richard D. McQuown, Commander of the Kentucky State Police Auto Theft Unit (July 11, 1980).

¹⁷ All major police departments in the state have terminals hooked in to the LINK computer, which is maintained by the Kentucky State Police. Smaller police departments may utilize this system via terminals housed in local headquarters of the State Police.

¹⁸ KRS § 186.005(2) (Supp. 1978).

¹⁹ KRS § 186.051(1) (Supp. 1978).

²⁰ The stated purpose of KRS § 186.051(1) is "to distribute the work load as uniformly as practicable within the various offices of the county clerks, as well as the department, on a year-round basis." *Id.* Given this purpose, it would seem more logical to establish the owner's birth month as the month of registration renewal. Such a system would more evenly distribute the county clerks' work load and would provide an easier means for owners to remember their renewal month. This method has been advocated by the press. *Louisville Times*, Mar. 6, 1980, § A, at 14, col. 1. *See also* S.236, Ky. Gen. Assem., Reg. Sess. § 5 (1980). The reasons for the present system are unknown since the persons responsible for the current method of renewal are no longer with the Department of Transportation. Interview with Elmer E. Smith, Assistant Director of the Division of Motor Vehicle Tax, Department of Transportation (July 18, 1980).

²¹ KRS § 186.050 (Supp. 1978).

²² KRS § 186.040 (1978).

tificate by the clerk,²³ and the clerk receives an additional fee²⁴ for this service. The Kentucky Supreme Court has ruled that one must also file a financing statement with the clerk to perfect a security interest in a motor vehicle.²⁵ Thus, one must comply with both legislative and judicial mandates to effectively assure perfection.²⁶

In 1976, the General Assembly enacted legislation that directed the Department of Transportation to develop an automated motor vehicle registration system.²⁷ As a result, nineteen counties²⁸ began to use computer terminals for storing vehicle registration information. These terminals are connected with the state's main computer, which in turn is directly connected to the LINK computer system.²⁹ This computerization eliminates several steps in the process of getting vehicle registration information into the LINK computer network.³⁰ The result is increased efficiency and a reduced chance of clerical error.

II. ABUSES AND INADEQUACIES OF KENTUCKY'S PRESENT SYSTEM

Kentucky's present system of regulation and registration of motor vehicles has allowed the Commonwealth to become a

²³ KRS § 186.045(2) (Supp. 1978).

²⁴ KRS § 64.012 (Supp. 1978).

²⁵ *Lincoln Bank & Trust Co. v. Queenan*, 344 S.W.2d 383 (Ky. 1961). See generally Fitzgerald, *The Crazy Quilt of Commercial Law: A Study in Legislative Patchwork*, 54 Ky. L.J. 85 (1965); Whiteside, *Amending the Uniform Commercial Code*, 51 Ky. L.J. 3 (1962); Comment, *Security Interests in Motor Vehicles: A Conflict in Kentucky Law*, 66 Ky. L.J. 924 (1977-78).

²⁶ See *General Motors Acceptance Corp. v. Hodge*, 485 S.W.2d 894 (Ky. 1972), in which the Court held that the failure of the clerk to note a lien on the registration receipt rendered the lien unenforceable against one who purchased without notice.

²⁷ KRS § 186A.010 (1978).

²⁸ Anderson, Boone, Bracken, Bullitt, Campbell, Carroll, Franklin, Hardin, Harrison, Henry, Jefferson, Kenton, Oldham, Owen, Pendleton, Robertson, Shelby, Spencer and Trimble counties have made use of this legislation. Interview with Elmer E. Smith, Assistant Director of the Division of Motor Vehicle Tax, Department of Transportation (July 18, 1980).

²⁹ This computer network is called the Automated Vehicle Information System (AVIS).

³⁰ See notes 16-17 *supra* and accompanying text for a discussion of the process of getting vehicle registration information into the police computer system.

major operating center for car thieves. Moreover, this system has proven to be categorically inefficient and has caused million dollar losses annually in personal property tax revenue.

A. *Motor Vehicle Theft*

Car thieves take advantage of Kentucky's lack of a title law in numerous ways. One frequent scenario is triggered by an auto theft in another state. The thief then brings the car into the Commonwealth and by fraudulently filling in a stolen or counterfeit registration blank obtains a registration certificate to the stolen car which appears valid.³¹ The thief can then sell the "registered" car in Kentucky or in yet another state.³² There are primarily two reasons why this occurs repeatedly. First, blank certificates of registration are stored under varying degrees of security in the 120 county clerks' offices.³³ These blanks are easily stolen, and accordingly a thriving underground business has developed in them and in counterfeit blanks as well.³⁴ Second, there is no substantial effort made nor means available to verify that a vehicle is not stolen at the time the application for a certificate of registration is made.³⁵ Upon surrender of the old certificate and payment of the proper fee, a new certificate is issued without further investigation.³⁶

Another popular play fostered by the present system is known as "salvage switch." This entails obtaining the certificate of registration (or certificate of title as the case may be) from a salvaged vehicle.³⁷ The identifying documents of the wrecked vehicle are then switched to a stolen vehicle of like

³¹ M. DiMICELI & H. BECKER, GUIDELINES MANUAL VEHICLE THEFT COUNTERMEASURES IN THE ISSUANCE OF CERTIFICATES OF VEHICLE TITLE II-5 (1977).

³² KENTUCKY MONTHLY, June 1980, at 15. The recurrence of this process has earned the Commonwealth recognition as a "dumping ground" for car thieves.

³³ A.A.A. AUTOMOBILE BULLETIN, Jan. 1978, at 1.

³⁴ Louisville Times, March 6, 1980, § A, at 14, col. 1.

³⁵ Interview with Charles Baesler, Jr., County Clerk of Fayette County (July 11, 1980).

³⁶ KRS § 186.020(1) (Supp. 1978).

³⁷ A salvaged vehicle is a motor vehicle which is substantially wrecked or damaged to the extent that it is a total loss and no longer fit for highway operation. THE GOVERNOR'S TASK FORCE ON AUTOMOBILE THEFT, AUTO THEFT IN MASSACHUSETTS—AN EXECUTIVE RESPONSE 67 (1980).

make and model. The thief can then "legally" sell the stolen vehicle or obtain a "valid" certificate of registration from a county clerk upon renewal.³⁸

In addition to facilitating these devices, the current system is functionally useless in deterring "chop shop" operations. A "chop shop" is an auto butcher shop. The operator of the shop will pay a thief to steal a particular type of car. Upon receipt of the car, the operator uses an acetylene torch to dismember the vehicle, and the car parts obtained are sold to innocent purchasers. The present registration system provides no efficient means for determining whether many car parts which have identification numbers are stolen.³⁹ Furthermore, the information that does get into the LINK computer system often takes as long as six months after registration to get there.⁴⁰

Not only does the present system encourage the illegal operations of car thieves, but it also hinders and frustrates the anti-theft operations of law enforcement agencies. Police officers lack rapid access to a reliable, current, and centralized source of vehicle registration information. Given this handicap, it is virtually impossible for policemen to determine if a vehicle is stolen or to trace a vehicle used in a crime.⁴¹ A prompt and accurate source of vehicle registration information "could enhance the chances of catching a felon and thereby save lives, property or money."⁴²

B. *Inefficiency of the Present System*

The present system of registration employed in Kentucky is highly inefficient. This inefficiency results from the voluminous amount of clerical work required from the lengthy delay involved in getting registration information into the LINK computer system, and from the confusing method employed

³⁸ It should be remembered that these types of car theft operations have two innocent victims: the true owner of the vehicle and the innocent purchaser.

³⁹ KENTUCKY MONTHLY, June 1980, at 16.

⁴⁰ Lexington Herald, March 26, 1980, § A, at 10, col. 1.

⁴¹ *Id.*

⁴² Press Release of Kentucky Attorney General Robert F. Stephens (Feb. 28, 1978).

for assuring lien perfection.

As mentioned earlier, the certificate of registration document presently in use consists of an original and five copies. In this year alone approximately three million motor vehicles will be registered in Kentucky.⁴³ Simple multiplication yields a total of eighteen million forms which must be processed. Add to that figure another six million forms resulting from vehicle transfers, and the grand total becomes twenty-four million.⁴⁴ Naturally, the process of filling out these forms manually involves a significant amount of time and money.⁴⁵ Furthermore, the handling of this mountain of forms by hundreds of clerks⁴⁶ has produced incorrect, incomplete, or duplicate serial numbers on fifteen to twenty percent of all registration forms.⁴⁷ These errors are repeated each time the vehicle is transferred or the registration renewed.⁴⁸

As has been previously discussed, law enforcement agencies are greatly hampered by a lack of rapid access to a current source of vehicle registration information.⁴⁹ The present system is so inefficient that often there will be a six-month lag between the issuance of the certificate and compilation of the information by the LINK central computer in Frankfort.⁵⁰

Kentucky requires both filing in compliance with the Uniform Commercial Code (UCC)⁵¹ and notation of liens on the

⁴³ In 1978 there were 2,672,728 motor vehicles registered in Kentucky. This was an increase of approximately 200,000 vehicles since 1977. Extrapolation of these figures leads to the conclusion that nearly 3,000,000 vehicles will be registered in the Commonwealth in 1980. BUREAU OF STATE POLICE, KENTUCKY TRAFFIC ACCIDENT FACTS 6 (1978).

⁴⁴ This figure is based on a calculation of six forms for each of the 1,000,000 vehicles that will be transferred. The estimate of the number of transfers was obtained in an interview with Lt. Richard D. McQuown, Commander of the Kentucky State Police Auto Theft Unit (July 11, 1980).

⁴⁵ Lexington Leader, March 3, 1980, § A, at 8, col. 1.

⁴⁶ Louisville Times, March 6, 1980, § A, at 14, col. 1.

⁴⁷ Memorandum from then Detective Sgt. Richard D. McQuown, Commander of Auto Theft Section of the Kentucky State Police to Lt. Colonel James Mayes of the Kentucky State Police (April 19, 1974).

⁴⁸ *Id.*

⁴⁹ Lexington Herald, March 26, 1980, § A, at 10, col. 1. See notes 40-42 *supra* and accompanying text for an explanation of how this delay hinders the efforts of law enforcement officers to recover stolen vehicles.

⁵⁰ Lexington Herald, March 26, 1980, § A, at 10, col. 1.

⁵¹ KRS § 355.9-302 (1978).

certificate of registration⁵² to insure perfection of a security interest in a motor vehicle.⁵³ This unnecessary duplication is largely due to the fact that the UCC was designed to correspond with certificate of title laws requiring notation as the exclusive method of perfection.⁵⁴ The Kentucky system of double perfection results in needless confusion and in a regrettable waste of resources.⁵⁵

C. *Loss of Tax Revenue*

Each year over 200,000 Kentucky car owners avoid paying personal property tax on their vehicles.⁵⁶ The resulting loss in annual revenue has been estimated at six to eight million dollars.⁵⁷ The principal means of avoiding this tax is by supplying a fictitious address to the county clerk when making application for a certificate of registration.⁵⁸ The tax bills are then mailed to the wrong address. Additionally, clerical errors often cause tax bills either not to be sent or to be sent to an improper address.⁵⁹ The whole situation is compounded by the fact that the expense of time and effort needed to track down the owner is often greater than the amount of tax on the car.⁶⁰

⁵² KRS § 186.045 (Supp. 1978).

⁵³ See *Lincoln Bank & Trust Co. v. Queenan*, 344 S.W.2d 383 (Ky. 1961). See also *General Motors Acceptance Corp. v. Hodge*, 485 S.W.2d 894 (Ky. 1972).

⁵⁴ Whiteside, *supra* note 25, at 10.

⁵⁵ See generally Fitzgerald, *supra* note 25.

⁵⁶ *Louisville Courier-Journal*, Feb. 12, 1978, § B, at 1, col. 1. See also *Lexington Leader*, March 5, 1980, § A, at 8, col. 1 (annual delinquency rate of approximately 15% exists among car owners).

⁵⁷ *Lexington Herald*, March 26, 1980, § A, at 10, col. 2. See generally LEGISLATIVE RESEARCH COMMISSION FISCAL NOTE—TAXATION OF MOTOR VEHICLES AND TRAILERS (Feb. 23, 1978).

⁵⁸ Interview with Lt. Richard B. McQuown, Commander of the Kentucky State Police Auto Theft Unit (July 11, 1980).

⁵⁹ Interview with Gerard R. Gerhard, Assistant Kentucky Attorney General (Anti-Trust Unit) (June 20, 1980). Mr. Gerhard drafted KRS § 186A.010 in 1976, Senate Bill No. 236 in the 1980 General Assembly, House Bill No. 630 in the 1980 General Assembly, Senate Bill No. 326 and House Bill No. 666 in the 1977 General Assembly. His expertise in the field of certificate of title legislation is well-recognized.

⁶⁰ *Louisville Courier-Journal*, Feb. 12, 1978, § B, at 1, col. 4. The tax on many cars is only a few dollars.

III. HISTORY OF PROPOSED CERTIFICATE OF TITLE LEGISLATION IN KENTUCKY

With the exception of the 1960 session, motor vehicle certificate of title legislation has been introduced in every regular session of the General Assembly since 1956.⁶¹ The repeated failure of this legislation to pass has been largely due to confusion among the Frankfort political bureaucracy and to powerful lobbying by potent special interest groups.

Political confusion surrounding certificate of title legislation is found on two levels. The first level consists of the various governmental departments affected by title legislation, *i.e.*, the Department of Finance, the Department of Law, the Department of Justice, the Department of Revenue, and the Department of Transportation. Throughout the years, these departments have failed to join forces in active support of a title bill, although the various departments at times have supported one bill or another.⁶² The lack of coordination has stemmed from disagreement over which department would be responsible for administering the title law and for financing its implementation. It appears that while several departments are willing to oversee the operation of a title law, they express reluctance to foot the bill.⁶³

The second level of confusion consists of the various legislative committees to which title bills have been assigned over the years. The bills have been handled by many committees, among them: Courts and Legal Procedure,⁶⁴ Motor Transportation,⁶⁵ Administrative Agencies,⁶⁶ Rules,⁶⁷ State Government,⁶⁸ Public Utilities and Transportation,⁶⁹ Judici-

⁶¹ LEGISLATIVE RESEARCH COMMISSION, RESEARCH REPORT No. 119, MOTOR VEHICLES: CERTIFICATES OF TITLE AND TAXATION 1 (1975).

⁶² Interview with Gerard R. Gerhard, *supra* note 59.

⁶³ *Id.*

⁶⁴ S. 138, Ky. Gen. Assem., Reg. Sess. (1962).

⁶⁵ S. 236, Ky. Gen. Assem., Reg. Sess. (1980); H.R. 135, Ky. Gen. Assem., Reg. Sess. (1966); H.R. 310, Ky. Gen. Assem., Reg. Sess. (1962).

⁶⁶ S. 189, Ky. Gen. Assem., Reg. Sess. (1964).

⁶⁷ S. 236, Ky. Gen. Assem., Reg. Sess. (1978); S. 256, Ky. Gen. Assem., Reg. Sess. (1966).

⁶⁸ H.R. 109, Ky. Gen. Assem., Reg. Sess. (1968).

⁶⁹ H.R. 662, Ky. Gen. Assem., Reg. Sess. (1976); H.R. 793, Ky. Gen. Assem., Reg.

ary,⁷⁰ Highways and Traffic Safety,⁷¹ and Counties and Special Districts.⁷² The sheer number of committees which have handled certificate of title bills indicates that an organized and coherent effort to formulate and push through a title bill has been slow to develop. The inconsistent committee assignments may also reflect the effectiveness of special interest groups' efforts to channel such bills into committees which tend to issue unfavorable reports on the proposed legislation.

In any event, the result of this confusion has been the death of certificate of title legislation. Each department has actively supported only legislation beneficial to itself, and there has been little or no compromise between the departments.⁷³ When coupled with negative to lukewarm committee reports, this lack of bureaucratic cooperation has been a significant factor in the failure of title legislation.

The primary reason for the defeat of title legislation, however, has been the successful lobbying efforts of powerful special interest groups, most notably the county clerks. These clerks have enormous political muscle and have exercised that power to defeat title legislation for two main reasons: fear of losing fees they receive under the present system and fear of losing patronage jobs which they use as a means of perpetuating their political power.⁷⁴ In addition to the court clerk lobby, the Kentucky Automobile Dealers' Association has often exercised its influence to defeat title legislation.⁷⁵

Sess. (1974); H.R. 703, Ky. Gen. Assem., Reg. Sess. (1970).

⁷⁰ H.R. 497, Ky. Gen. Assem., Reg. Sess. (1972).

⁷¹ S. 326, Ky. Gen. Assem., Reg. Sess. (1978); H.R. 793, Ky. Gen. Assem., Reg. Sess. (1974).

⁷² H.R. 793, Ky. Gen. Assem., Reg. Sess. (1974); H.R. 818, Ky. Gen. Assem., Reg. Sess. (1974).

⁷³ Interview with Gerard R. Gerhard, *supra* note 59.

⁷⁴ Louisville Courier-Journal, March 7, 1980, § A, at 14, col. 1; State Journal, March 24, 1980, at 4, col. 5. Clerks can hire as many persons as they wish to assist them in their duties. The only practical limitation involved is their budget, which is largely based on fees received. If their budgets are reduced from a loss of fees under certificate of title legislation, clerks fear that a reduction of patronage jobs will result.

⁷⁵ LEGISLATIVE RESEARCH COMMISSION, RESEARCH REPORT NO. 119, MOTOR VEHICLES: CERTIFICATES OF TITLE AND TAXATION 23-24, 33 (1979).

The primary reason that the automobile dealers have opposed title legislation is the delay it would cause in transferring legal title to a motor vehicle. The dealers feel that this delay would work to their detriment by postponing receipt of the sale price

A title bill however, was very nearly passed during the 1980 General Assembly. Senate Bill No. 236 passed the Senate⁷⁶ only to fail in the House of Representatives by two votes.⁷⁷ This vote is the closest a title bill has ever come to being enacted in the Commonwealth of Kentucky. The bill proposed a statewide computerized system for the registration and titling of vehicles beginning with 1983 models.

IV. ANALYSIS OF CERTIFICATE OF TITLE LEGISLATION

Any analysis of Kentucky's present system of regulation and registration of motor vehicles leads to the inevitable conclusion that reform is long overdue. Given that the motivating force behind any reform movement is improvement of the status quo, a preliminary consideration in deciding whether to adopt a certificate of title law is whether such a law would eliminate the abuses and inadequacies of the present system. A second, yet related factor involves inquiry into the various types of title laws and a selection of one which would best suit the needs of the Commonwealth. The discussion which follows will address these considerations jointly. In the process of suggesting the most favorable form of title law, the discussion will demonstrate that a certificate of title law could eliminate the shortcomings of the present system.

In determining what form a title law should take, the analysis can be broken down into four main issues:

- (1) whether a computerized or manual system would be

from consumer financing institutions. This delay would result because the money would not be transferred to the dealers until the certificate of title was received. The delay would hurt the dealers because they must remit the money to the manufacturer when the car is sold. *Id.* at 33. This reason for opposition would apply only to a title law based on central issuance. See notes 92-103 *infra* and accompanying text for a discussion of central issuance and local issuance.

A secondary reason for the automobile dealers' opposition to certificate of title legislation is their friendship with the county clerks. These two factions work together on a daily basis and it naturally follows that the dealers would support the wishes of the clerks and oppose title legislation.

⁷⁶ The vote in the Senate was 29 to 6. Interview with Edith M. Schwab, staff member of the Legislative Research Commission (June 13, 1980).

⁷⁷ The vote in the House of Representatives was 38 to 36 in favor of the bill with 40 votes being necessary for the bill to pass. Interview with Edith M. Schwab, *supra* note 76.

more advantageous;

(2) whether central or local issuance of the certificate of title would be preferable;

(3) whether the title act should provide an exclusive or a non-exclusive means of perfecting security interests; and

(4) whether Kentucky should enact the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act as its title act.

A. *The Computerized System vs. the Manual System*

A completely computerized system of title registration has not been effectuated in any state, yet the 1980 General Assembly came within two votes of enacting such a system.⁷⁸ The system as proposed in Senate Bill No. 236 involved placing video computer terminals and registration printers in the office of each county clerk. These terminals would be connected with the state's central computer in Frankfort. The process of registration and titling would begin with the clerk typing the requisite information into the terminal. The registration printer would immediately print out two certificates of registration. One would go to the owner and the other into the clerk's back-up file. The information typed in by the county clerk would be transmitted to the state's central computer. The computer would check to see if the car were stolen⁷⁹ or encumbered by lien. The entire process of checking to see if the car was "clean" would take only about ten seconds.⁸⁰ Once the car had been cleared, a certificate of title would be mailed from Frankfort to the owner. Thus, there would be a delay of several days before the owner actually received the certificate of title. The county clerk would later mail the original certificate of title application to the Division of Titling in Frankfort so that the information which was typed into the computer

⁷⁸ See notes 76-77 *supra* for a discussion of the vote on S. 236, Ky. Gen. Assem., Reg. Sess. (1980).

⁷⁹ The computer would do this by checking the car against the records kept in the Law Information Network of Kentucky (LINK) computer and in the National Crime Information Center (NCIC) computer, which is operated and maintained by the U.S. Department of Justice. S. 236, Ky. Gen. Assem., Reg. Sess. § 8 (1980).

⁸⁰ Interview with George Fisher, Special Assistant for Computer Services (July 11, 1980).

could be double checked against the original. All titling and registration information would be stored on the central computer, and all necessary parties would have access to that information via terminal.⁸¹

The process of transferring title to a vehicle would involve a similar process. The seller would surrender his certificate of title to the county clerk who would type the transfer information into the terminal. Immediately, the buyer would get a registration certificate and would know if the vehicle was "clean." Again, there would be a wait of several days before the buyer would receive his certificate of title through the mail.

Liens would be recorded through the county clerk in like fashion. The clerk would type the lien information into the terminal after the old certificate of title had been surrendered to him. The owner's registration certificate would then be placed in the printer which would record the lien information on it. The owner would get the registration certificate back immediately. His or her new certificate of title, with the lien information duly noted, would arrive by mail soon thereafter. Senate Bill No. 236 further required that the certificate of title to any destroyed vehicle be surrendered to the county clerk.⁸²

The advantages of a computerized system such as that proposed in Senate Bill No. 236 are numerous. From the law enforcement standpoint, many benefits would result from direct connection with the state's central computer. Police would have immediate access to reliable and up-to-date vehicle registration and titling information. This access would enable law enforcement officers to quickly determine if a car is stolen and to quickly trace a car used in crime. Obviously, this access to information could result in savings of lives, property,

⁸¹ The parties with terminal hook-ups would include the county clerks, the Department of Revenue, and the Department of Transportation. Furthermore, the property valuation administrators would have access to the terminals in the various county clerk's offices.

⁸² S. 236, Ky. Gen. Assem., Reg. Sess. § 58 (1980). Destroyed vehicles are salvage vehicles. Surrendering the title certificates to these vehicles would eliminate the auto theft scheme known as the "salvage switch." See notes 37-38 *supra* and accompanying text for a discussion of the "salvage switch" scheme.

and money.⁸³

Equal benefits would result in terms of efficiency. The chance of clerical error would be greatly reduced through the elimination of sixteen million forms from the processing system.⁸⁴ There would be no delay between the application for a certificate of registration and the availability of that information to law enforcement agencies and other governmental departments. Lien information would be equally current. Assessment and collection of tax revenues would be greatly simplified. The central computer could prepare and print out tax bills without the inherent possibility of human error that exists when the property valuation administrators and the Department of Revenue each process two million forms.⁸⁵

There are two apparent disadvantages to a computerized system: cost and outages. The "price" of Senate Bill No. 236 was approximately \$7,000,000.⁸⁶ While at first glance this is an enormous figure and one that probably led to the bill's defeat,⁸⁷ it appears much less intimidating when compared with the annual loss of \$6,000,000 to \$8,000,000 tax dollars occurring under the present system.⁸⁸ A computerized system with central issuance of titles would greatly reduce this loss of revenue⁸⁹ and, depending on the level of savings, could actually prove profitable in the long run. Outages, or computer breakdowns, were foreseen by the drafter of Senate Bill No. 236, and provisions were inserted to avoid a cessation of operations during such periods.⁹⁰

⁸³ Press release of Kentucky Attorney General Robert F. Stephens (Feb. 28, 1978).

⁸⁴ See notes 43-47 *supra* and accompanying text for a discussion of the problems which result solely from the voluminous number of forms. The sixteen million figure was arrived at by subtracting the eight million forms which would be required under S. 236 from the twenty-four million forms which the present system requires.

⁸⁵ See notes 56-59 *supra* and accompanying text for a discussion of loss of tax revenue associated with clerical errors.

⁸⁶ S. 236, Ky. Gen. Assem., Reg. Sess. § 71 (1980).

⁸⁷ Louisville Courier-Journal, March 21, 1980, § A, at 10, col. 1.

⁸⁸ Lexington Herald, March 26, 1980, § A, at 10, col. 2. See generally LEGISLATIVE RESEARCH COMMISSION FISCAL NOTE—TAXATION OF MOTOR VEHICLES AND TRAILERS (Feb. 23, 1978).

⁸⁹ See notes 56-60 *supra* and accompanying text for a discussion of how citizens avoid paying personal property taxes.

⁹⁰ S. 236, Ky. Gen. Assem., Reg. Sess. §§ 27-28 (1980).

The major advantages of the manual system are deemed to be reduced cost and freedom from mechanical breakdowns. As has been shown, however, the manual system requires more personnel, forms, and time than does a computerized system. This renders an accurate cost comparison between the two systems difficult if not impossible to accomplish. Furthermore, while a manual system is not subject to shutdowns due to computer malfunctions, the likelihood of numerous and/or lengthy computer outages and the amount of inconvenience caused thereby is a matter of pure conjecture.⁹¹ It is difficult, therefore, to accurately compare the two systems on either of these points.

B. *Central Issuance vs. Local Issuance*

With regard to the issuance of the certificate itself, there are two basic types of title laws: those that distribute the certificates centrally⁹² and those that do so locally.⁹³ There are numerous advantages to central issuance and particularly to a computerized system of central issuance. Central issuance allows storage of the blank certificates in one location. Strict security measures can thus be more easily employed to prevent theft.⁹⁴ Central issuance assures that a valid name and address are given on the application since the certificate of title is mailed to the owner at the address which he gives. Thus, the most popular method of tax avoidance is eliminated.⁹⁵ Furthermore, a reduction in automobile thefts will result from the delay inherent in the process of checking a title and mailing the certificate to the "owner." A thief will not

⁹¹ This is particularly true since no state has fully adopted a computerized system.

⁹² See, e.g., ALA. CODE §§ 32-81 to -87 (1975). Basically, central issuance means that the certificates of title are issued from the state capital (i.e., the Department of Motor Vehicles).

⁹³ See, e.g., OHIO REV. CODE ANN. §§ 4505.01-.99 (Page 1973). Basically, local issuance means the titles are issued by a local official (i.e., a county clerk).

⁹⁴ LEGISLATIVE RESEARCH COMMISSION, RESEARCH REPORT NO. 119, MOTOR VEHICLES: CERTIFICATE OF TITLE AND TAXATION 6 (1975). See notes 31-38 *supra* and accompanying text for a discussion of the problems associated with the theft of blank certificates.

⁹⁵ *Id.* at 7. See note 58 *supra* and accompanying text for a discussion of this scheme.

wait several days to receive a certificate of title. His success depends upon "instant transfer of title and unknown whereabouts."⁹⁶ Processing titles in a central location by trained personnel would also reduce the number of counterfeit documents and clerical errors.⁹⁷

The primary disadvantage of central issuance is the time lapse between application for the title certificate and receipt of the certificate by mail.⁹⁸ This delay, however, would be no more than two to seven days if a computerized system were implemented. Furthermore, the anti-theft advantages of mailing the certificates clearly outweigh any inconvenience caused by the delay.⁹⁹

The chief advantage of local issuance is that the certificate of title can be obtained immediately.¹⁰⁰ This factor makes local issuance particularly attractive to automobile dealers since it allows them to quickly resell used motor vehicles.¹⁰¹ The most serious problem with local issuance is that the blank certificates¹⁰² are more easily stolen. In addition, local issuance does not facilitate an accurate title check to assure that the vehicle is not stolen or encumbered by liens.¹⁰³

C. *Exclusive Perfection vs. Non-Exclusive Perfection*

Exclusive title acts provide that notation of a lien on the title certificate is the sole means of perfecting a security interest. Non-exclusive title acts allow for notation on the title certificate, but further require filing under the applicable security statute in order to perfect. An exclusive title act is clearly

⁹⁶ Kentucky News, May 3, 1974, at 1, col. 1 (publication of the Kentucky Department of Public Information).

⁹⁷ LEGISLATIVE RESEARCH COMMISSION, RESEARCH REPORT NO. 119, MOTOR VEHICLES: CERTIFICATES OF TITLE AND TAXATION 7 (1975).

⁹⁸ *Id.* at 7-8.

⁹⁹ See notes 95-96 *supra* and accompanying text for a discussion of the advantages of mailing the certificates of title to the vehicle owner.

¹⁰⁰ LEGISLATIVE RESEARCH COMMISSION, RESEARCH REPORT NO. 119, MOTOR VEHICLES: CERTIFICATES OF TITLE AND TAXATION 8 (1975).

¹⁰¹ *Id.*

¹⁰² See notes 31-38 *supra* and accompanying text for a discussion of problems associated with the theft of blank certificates.

¹⁰³ LEGISLATIVE RESEARCH COMMISSION, RESEARCH REPORT NO. 119, MOTOR VEHICLES: CERTIFICATES OF TITLE AND TAXATION 9 (1975).

the better system of the two. This superiority is evidenced by the fact that Kentucky and Wyoming are the only states which are non-exclusive.¹⁰⁴ The advantages of exclusive title acts are readily apparent. They provide simplicity and efficiency by allowing only one means of perfection.

D. *The Uniform Motor Vehicle Certificate of Title and Anti-Theft Act.*

In 1955, the National Conference of Commissioners on Uniform State Laws¹⁰⁵ drafted the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act.¹⁰⁶ The Uniform Act is simple and concise and has since been adopted in ten states.¹⁰⁷ The value of the Uniform Act is twofold. First, by enacting a statute similar to that of other states an instant line of judicial precedent is established. Foreign decisions could be used as guidelines for interpreting the newly adopted statute and as a means of avoiding the judicial pitfalls that may have occurred in other jurisdictions. Secondly, uniformity of title statutes throughout the country would remove the confusion surrounding the recognition of foreign security interests on titled motor vehicles.¹⁰⁸ The confusion which pres-

¹⁰⁴ WYO. STAT. § 34-21-73(d) (1977); See notes 51-54 *supra* and accompanying text for a discussion of the Kentucky system of "double perfection."

¹⁰⁵ The Commissioners are leading lawyers, judges, and professors of law who are united in an organization to promote uniformity in state laws where such uniformity is deemed desirable and practicable.

¹⁰⁶ 11 UNIFORM LAWS ANNOTATED, Uniform Motor Vehicle Certificate of Title and Anti-Theft Act, 421-76 (1974). Professor Gilmore called this the "best drafted of all title acts." 1 G. GILMORE, *supra* note 5, at 557. For an in-depth discussion of the Uniform Act, see *id.* at 556-78.

¹⁰⁷ ALA. CODE §§ 32-8-1 to -87 (1975); CONN. GEN. STAT. ANN. §§ 14-165 to -211 (West 1958); GA. CODE ANN. §§ 68-401a to -443a (1980); ME. REV. STAT. ANN. tit. 29, §§ 2350-447 (1964); MASS. GEN. LAWS ANN. ch. 90D, §§ 1-38 (1975); MINN. STAT. ANN. §§ 168A.01-31 (West 1980); N.H. REV. STAT. ANN. §§ 269-A-1-49 (1977); N.Y. VEH. & TRAF. LAW §§ 2101-35 (McKinney 1979); R.I. GEN. LAWS §§ 31-3.1-1 to .1-38 (1979); VT. STAT. ANN. tit. 23, §§ 2001-87 (1978).

¹⁰⁸ See J. WHITE & R. SUMMERS, HANDBOOK OF THE LAW UNDER THE UNIFORM COMMERCIAL CODE 855-63 (1972); Meyers, *Multi-State Motor Vehicle Transactions Under the Uniform Commercial Code: An Update*, 30 OKLA. L. REV. 834 (1977); Rohner, *Autos, Title Certificates and UCC 9-103; The Draftsmen Try Again*, 27 BUS. LAW. 1177 (1972); Note, *Buyer-Secured Party Conflicts and Automobiles: A New Facet to an Old Problem*, 10 LOY. CHI. L.J. 76 (1978); Comment, *supra* note 25, at 924.

ently exists stems from the diversity of state title acts, from the interstate character of auto theft, and from the failure of motor vehicle administrators to check for lien information from other states.¹⁰⁹ The result is an abundance of litigation between secured parties and subsequent purchasers or lenders in other states who have dealt without knowledge of the security interest.¹¹⁰ It has been suggested that only uniformity of state title laws, or in the alternative, a federal title law, will alleviate this problem.¹¹¹

The one serious flaw with the Uniform Act is its uneasy relationship with Article 9 of the UCC.¹¹² This lack of harmony can be attributed in large part to the fact that the Commissioners drafted the two statutes independently.¹¹³ The lack of a coordinated effort has led to several areas of conflict in the two laws. These areas of conflict include the issues of assignment and release of security interest, consequences of a failure to perfect, and the applicability of the Code's choice of law provision (UCC section 9-103).¹¹⁴

CONCLUSION

In 1965, Professor Gilmore noted that "it is a safe prediction that within a few years all states will have some form of

¹⁰⁹ Comment, *supra* note 7, at 398.

¹¹⁰ See Meyers, *supra* note 108; Rohner, *supra* note 108.

¹¹¹ Rohner, *supra* note 108, at 1194.

¹¹² UCC § 9-302(3)(B) was inserted in the Code to allow notation on the certificate of title to be the exclusive means of perfection and UCC § 9-103(4) was added as a conflict of law provision to allow the local title law to govern perfection. By deferring to state law, the drafters passed up an opportunity to provide a uniform system of perfection. Comment, *supra* note 7, at 398-99.

¹¹³ I. G. GILMORE, *supra* note 5, at 572-73.

¹¹⁴ In regard to this conflict, Professor Gilmore made the following observation:

In general, the substantive provisions of Article 9 . . . will continue to govern the security transaction. However, the Uniform Act contains provisions on the assignment and release of security interests in certificated cars: presumably these provisions would, at least to the extent of conflict, prevail over the analogous assignment and release provisions of Article 9. One question which may prove troublesome is whether Article 9 or the title act determines the consequences of a failure to perfect.

Id. at 577.

For a good general discussion of the conflicts between the UCC and the Uniform Act, see Comment, *supra* note 7.

certificate of title legislation."¹¹⁵ It is past time for his prediction to come true.

Kentucky should enact a title law that functions through a computerized system with the certificates of title centrally issued. Senate Bill No. 236, which was proposed in the 1980 General Assembly only to fail by two votes, contained these features. The two significant drawbacks of Senate Bill No. 236 are that its wording often unnecessarily strays from the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act¹¹⁶ and that it continues the Kentucky system of "double perfection."¹¹⁷ Senate Bill No. 236 easily could be modified to follow the Uniform Act more closely and to provide for notation on the certificate as the exclusive means of perfection. Enacting a duly modified Senate Bill No. 236 would provide Kentucky with the most advanced and efficient system of motor vehicle regulation and registration in the country.

Thomas C. Marks

¹¹⁵ I. G. GILMORE, *supra* note 5, at 553.

¹¹⁶ Compare S. 236, Ky. Gen. Ass., Reg. Sess. §§ 23, 31, 34, 42, 47, 66 (1980) with UNIFORM MOTOR VEHICLE CERTIFICATE OF TITLE AND ANTI-THEFT ACT §§ 6, 8, 15, 18, 33.

As can be seen from an examination of these sections, S. 236 did not adopt the language of the Uniform Act *verbatim*. The discrepancies are so minor in most instances, however, that the variations seem unnecessary. By adopting the language of the Uniform Act completely in these instances, Kentucky could derive more of the benefits associated with the Uniform Act discussed in notes 108-11 *supra* and accompanying text.

¹¹⁷ S. 236, Ky. Gen. Ass., Reg. Sess. § 35 (1980). The system of "double perfection" was maintained because the bill was drafted to mirror the existing state law. Any system of perfection which would remove the responsibility of lien notation from the county clerks would have met staunch opposition. Interview with Gerard R. Gerhard, *supra* note 59.