

**OPINION NO. 2008-028****Syllabus:**

2008-028

The Registrar of the Bureau of Motor Vehicles has the authority to implement changes to the architecture of the Automated Title Processing System (ATPS), or to require the clerks of the courts of common pleas to implement such changes, and to adopt an information security policy with which the clerks of courts must comply. The Registrar may centralize the ATPS servers and take any other steps he reasonably deems necessary to ensure the efficient operation of the ATPS and security of the data therein.

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**To: Henry Guzmán, Director, Columbus, Ohio**

**By: Nancy H. Rogers, Attorney General, August 19, 2008**

You have requested an opinion about the relative authority of the Registrar of the Bureau of Motor Vehicles (Registrar) and the clerks of the courts of common pleas (clerks) to control operation of the Automated Title Processing System (ATPS). You ask whether the Registrar has the authority to implement changes to the architecture of the ATPS system, or to require clerks to implement changes, as needed to improve efficiency and security. You also ask whether the Registrar has the ability to enforce an information security policy on the clerks' title offices.

By way of background, the General Assembly has established a comprehen-

sive scheme for titling vehicles, including the issuance of certificates of title to the owners of motor vehicles, special vehicles (all-purpose vehicles and off-highway motorcycles), and watercraft. *See* R.C. Chapter 4505 (motor vehicles); R.C. 4519.51-.70 (special vehicles); R.C. Chapter 1548 (watercraft and outboard motors).<sup>1</sup> This statutory scheme features an “automated title processing system,” which tracks certificates of title statewide. *See* R.C. 4505.09(B)(3) and (C). Owners of motor vehicles must apply for certificates of title with the clerks of the courts of common pleas, who enter information from the applications, and other related information, into the ATPS.<sup>2</sup> R.C. 4505.021; R.C. 4505.06; R.C. 4505.08(A).<sup>3</sup> *See also* R.C. 4505.07 (form and contents of certificates of title and applications therefor). The record of each certificate of title must be maintained in the ATPS, R.C. 4505.08(A) and (F), and the ATPS must “contain all active records and an index of the active records, a record and index of all inactive titles for ten years, and a record and index of all inactive titles for manufactured and mobile homes for thirty years.” R.C. 4505.08(A). *See also* R.C. 1548.09 (the record of the issuance of a watercraft certificate of title “shall be maintained” in the ATPS); R.C. 4519.58(A) and (B) (the record of the issuance of a certificate of title for a special vehicle “shall be maintained” in the ATPS, and the ATPS “shall contain all active records and an index of the active records, and shall contain a record and index of all inactive titles for ten years”).

You have explained that currently, an ATPS server is located at each clerk’s

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<sup>1</sup> *See also* R.C. 4505.03 (no person shall sell a motor vehicle without delivering to the buyer a certificate of title, nor shall any person acquire a motor vehicle without obtaining a certificate of title); R.C. 4505.04(A) (no person shall acquire “any right, title, claim, or interest in or to” a motor vehicle until there is issued to the person a certificate of title to the motor vehicle). *See generally Hughes v. Al Green, Inc.*, 65 Ohio St. 2d 110, 115, 418 N.E.2d 1355 (1981) (the “purpose of the Certificate of Title Act is to prevent the importation of stolen motor vehicles, to protect Ohio bona-fide purchasers against thieves and wrongdoers, and to create an instrument evidencing title to, and ownership of, motor vehicles”); *State ex rel. City Loan & Savings Co. v. Taggart*, 134 Ohio St. 374, 375, 17 N.E.2d 758 (1938) (upholding the constitutionality of the Certificate of Title Act and stating that “the primary object of the new law is to afford an effective means of transferring and recording the evidence of title to motor vehicles in one continuous chain from the beginning to the end of their existence in Ohio”).

<sup>2</sup> For example, a secured party may have evidence of his security interest in a motor vehicle noted on the certificate of title and entered into the ATPS. R.C. 4505.13. Cancellation of the security interest also may be entered into the ATPS. *Id.*

<sup>3</sup> Similar provision is made for issuing certificates of title for special vehicles in R.C. 4519.512 and R.C. 4519.55-.59, and for watercraft in R.C. 1548.021 and R.C. 1548.06-.10. Note that all three statutory schemes provide for the issuance of a physical certificate of title, or an electronic certificate of title if the owner so requests.

title office, and each county's ATPS server is connected to the State of Ohio Computer Center (SOCC) by a "T1" line. The SOCC backs up and stores information, but each county has its own method of backing up data at offsite locations. The counties' systems typically use backup tapes to create copies of files on a routine schedule, and the tapes are used to restore the servers in the event of system failure. Thus, if a T1 line between the SOCC and a county server crashes, the title office still has an operating system and access to the data it has entered.

You state that servers contain sensitive personal data, including social security numbers, about title office customers.<sup>4</sup> The State of Ohio has undergone a review of policies and procedures related to data security, and state agencies are now required to implement security measures for systems and data. The Registrar and Director of the Ohio Department of Public Safety (ODPS)<sup>5</sup> have reviewed the capabilities of ATPS servers and would like to provide additional security measures as needed. They have determined that the most effective method for securing the ATPS servers would be to centralize the systems at ODPS data centers. Centralization would also enable ODPS to better maintain the ATPS and to cut costs.

You explain that clerks object because, if the ATPS servers are moved to a central location, the title offices will be unable to operate if there is a problem with the T1 line between the state server and title office computers. You indicate that some clerks of court assert that "the data contained in each ATPS server is owned by them and that they should be allowed to keep the servers at each title office instead of centralizing them."<sup>6</sup>

An examination of the manner in which the responsibilities for administer-

<sup>4</sup> An application for a certificate of title, memorandum certificate of title, or salvage certificate of title must include a space for an applicant's social security number or employer's identification number. R.C. 4505.07(F)(12)(d). *See also* R.C. 1548.07; R.C. 4519.56; 1999 Op. Att'y Gen. No. 99-034 at 2-223 (an applicant for a certificate of title must include his social security number "in the space on the application form provided for that information"). The Registrar and his employees are prohibited, however, from disclosing social security numbers obtained from records pertaining to motor vehicle certificates of title. R.C. 4501.27. *See also State ex rel. Office of Montgomery County Public Defender v. Siroki*, 108 Ohio St. 3d 207, 842 N.E.2d 508, 2006-Ohio-662, at ¶ 18 (the custodians of public records must redact Social Security numbers from what are otherwise public records before disclosing the records).

<sup>5</sup> The Bureau of Motor Vehicles has been established within the Ohio Department of Public Safety (ODPS), and the Registrar is appointed by, and serves at the pleasure of, the Director of ODPS. R.C. 4501.02(A).

<sup>6</sup> You have asked who is "responsible" for the data entered into the ATPS. The assignment of responsibility for data may depend upon the context in which the issue is raised. As a general matter, however, both the Registrar and the clerks of court are responsible for the data entered into the ATPS—the scope of their respective responsibilities is defined by the duties imposed upon them by statute.

ing the titling system are divided between the State and the counties clearly shows that the Registrar of Motor Vehicles has the authority both to implement changes to the architecture of the ATPS system (or require clerks to do so) and to implement an information security policy with which the clerks of court must comply. The Registrar, who is charged with administering the Bureau of Motor Vehicles, R.C. 4501.02(A), has broad statutory authority to execute the certificate of title laws. The Registrar is required, *inter alia*, to “administer the laws of the state relative to the registration of and certificates of title for motor vehicles,” and may, with the approval of the Director of the Department of Public Safety, “[a]dopt such forms and rules as are necessary to carry out all laws the registrar is required to administer.” (Emphasis added.) R.C. 4501.02(A)(1). See also R.C. 4505.06(A)(1) (“[a]pplication for a certificate of title shall be made in a form prescribed by the registrar of motor vehicles”); R.C. 4505.08(A) (the clerk of court shall issue a physical certificate of title “on a form and in a manner prescribed by the registrar of motor vehicles”). Furthermore, the Registrar is authorized to issue rules as he “determines necessary to ensure uniform and orderly operation of [R.C. Chapter 4505] and to ensure that the identification of each applicant for a certificate of title is reasonably accurate.” R.C. 4505.02.<sup>7</sup>

Not only does the Registrar have the authority to promulgate rules, but the clerks of the courts of common pleas are required explicitly by statute to “conform thereto.” (Emphasis added.) R.C. 4505.02.<sup>8</sup> More specifically, *all counties must “conform to the requirements of the registrar regarding the operation of their*

<sup>7</sup> The General Assembly also has established at the state level, the Automated Title Processing Board (ATPB), the purpose of which is to “facilitate the operation and maintenance” of the ATPS and to “approve the procurement of automated title processing system equipment.” R.C. 4505.09(C)(1). The ATPB is charged with determining the “automated title processing equipment and certificates of title requirements for each county,” the “payment of expenses that may be incurred by the counties in implementing an automated title processing system,” and the “repayment to the counties for existing title processing equipment.” R.C. 4505.09(C)(2).

The ATPB consists of the Registrar or the Registrar’s representative, a person selected by the Registrar, the president of the Ohio Clerks of Court Association or the president’s representative, and two clerks of courts of common pleas appointed by the governor. R.C. 4505.09(C)(1). The director of the state Office of Budget and Management, the chief of the Division of Watercraft in the state Department of Natural Resources, and the Tax Commissioner (or their designees) serve as nonvoting members of the board. *Id.*

<sup>8</sup> Similarly, R.C. 4519.51 authorizes the Registrar to “adopt rules the registrar considers necessary to ensure uniform and orderly operation” of R.C. 4519.51-.70 for special vehicles, “and the clerks of the courts of common pleas shall conform to those rules.” As explained in 2008 Op. Att’y Gen. No. 2008-029, the Chief of the Division of Watercraft, within the state Department of Natural Resources, (Chief) performs many of the duties with regard to watercraft certificates of title that the

*automated title processing system* for motor vehicle titles, certificates of title for off-highway motorcycles and all-purpose vehicles, and certificates of title for watercraft and outboard motors.” (Emphasis added.) R.C. 4505.09(D). *Cf.* R.C. 4505.141 (the Registrar must adopt procedures governing public access to motor vehicle title information “via electronic means,” and “[i]n adopting the procedures, the registrar shall confer with the clerks of the courts of common pleas”).<sup>9</sup>

An earlier opinion of the Attorney General addressed the authority of the Registrar to direct the clerks of the common pleas courts in the use of technology—at that time, the typewriter—by issuing a regulation pursuant to G.C. 6290-7 [now R.C. 4505.02] to the clerks mandating that all certificates of title be typed.<sup>10</sup> 1941 Op. Att’y Gen. No. 3683, p. 311. The Attorney General opined that the regulation “definitely tends toward the uniform and orderly operation of the Certificate of Title Law,” and “[t]herefore, the clerk of courts is required by virtue of Section 6290-7, General Code, to conform to such regulation.” *Id.* at 312. *Cf.* 1938 Op. Att’y Gen. No. 2515, vol. II, p. 1117, 1119 (“[a]lthough the first sentence of Section 6290-7 . . . authorizes the Registrar to make such regulations as he may deem necessary for the uniform and orderly operation of the Certificate of Title Law, yet, it is quite apparent that this language can not be construed or interpreted as authorizing the Registrar to delegate to the various clerks of courts the power which the Legislature has specifically conferred upon him”). In this instance, clerks not only are mandated generally to comply with the rules promulgated by the Registrar to ensure the uniform and orderly operation of the certificate of title law, but are mandated specifically to conform to the Registrar’s requirements regarding the operation of their automated title processing systems.

The power of the Registrar to implement changes to the architecture of the ATPS and to establish an information security policy with which the clerks of court must comply falls within the scope of the Registrar’s broad authority to administer

Registrar performs with regard to motor vehicle and special vehicle certificates of title. R.C. 1548.02 requires the Chief to “adopt such rules as the chief considers necessary to ensure uniform and orderly operation” of R.C. Chapter 1548, and the clerks “shall conform to those rules.” Only the Registrar, however, is authorized to implement requirements regarding the operation of the ATPS, and those requirements apply to all three statutory schemes. R.C. 4505.09(D) states: “All counties shall conform to the requirements of the registrar regarding the operation of their automated title processing system for motor vehicle titles, certificates of title for off-highway motorcycles and all-purpose vehicles, and certificates of title for watercraft and outboard motors.”

<sup>9</sup> See 2008 Op. Att’y Gen. No. 2008-029 (discussing the manner in which the State and counties must share the costs of operating the ATPS).

<sup>10</sup> When 1941 Op. Att’y Gen. No. 3683, p. 311 was issued, G.C. 6290-7 read: “The registrar shall issue such regulations as he may deem necessary to insure uniform and orderly operation of this chapter, and the clerks of courts of all counties shall conform thereto.” 1937-1938 Ohio Laws 373, 376 (Am. H.B. 514, filed May 13, 1937).

the certificate of title law and the affirmative duty of the counties to conform to the Registrar's requirements regarding the operation of their automated title processing systems. Indeed, it is difficult to conceive of language that would more clearly delineate the relative authority of the Registrar and the clerks of court. The Registrar, therefore, may centralize the ATPS servers and take any other steps he reasonably deems necessary to ensure the efficient operation of the ATPS and security of the data therein.<sup>11</sup>

In closing, we emphasize the observation of the Ohio Supreme Court that the certificate of title law entails "close cooperation between the various clerks of courts and the registrar." *State ex rel. City Loan & Savings Co. v. Taggart*, 134 Ohio St. 374, 375, 17 N.E.2d 758 (1938). The clerks and the work that they perform obviously are essential under the current statutory scheme to the operation of the state titling system, and the Registrar has an obligation to ensure that the ATPS is operated and maintained in such a way that the clerks can perform their titling duties with minimal disruption.

In conclusion, it is my opinion, and you are advised that, the Registrar of the Bureau of Motor Vehicles has the authority to implement changes to the architecture of the Automated Title Processing System (ATPS), or to require the clerks of the courts of common pleas to implement such changes, and to adopt an information security policy with which the clerks of courts must comply. The Registrar may centralize the ATPS servers and take any other steps he reasonably deems necessary to ensure the efficient operation of the ATPS and security of the data therein.

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<sup>11</sup> You have asked whether the Bureau of Motor Vehicles or the clerks of court own the ATPS servers located at each title office. 2008 Op. Att'y Gen. No. 2008-029 discusses in detail the manner in which the State and counties must share the costs of operating the ATPS. Briefly, the ATPB "approve[s] the procurement of automated title processing system equipment," and determines the "automated title processing equipment and certificates of title requirements for each county." R.C. 4505.09(C). The Registrar is charged with acquiring any ATPS equipment that the ATPB determines is necessary, and the cost of such equipment is paid from the Automated Title Processing Fund which has been established in the state treasury. R.C. 4505.09(B)(3) and (C)(3). The Registrar's broad authority over the operation of the ATPS, including the authority to implement changes to the system's architecture, the authority of the ATPB to determine what equipment is necessary and to approve its procurement, the responsibility of the Registrar to acquire the equipment, and the fact that the equipment is acquired with moneys in the state treasury lead us to conclude that the servers are the property of the State rather than that of the clerks of court. The Registrar's authority to determine the architecture of the ATPS and centralize the system would certainly include the ability to locate the servers where he deems necessary and appropriate.