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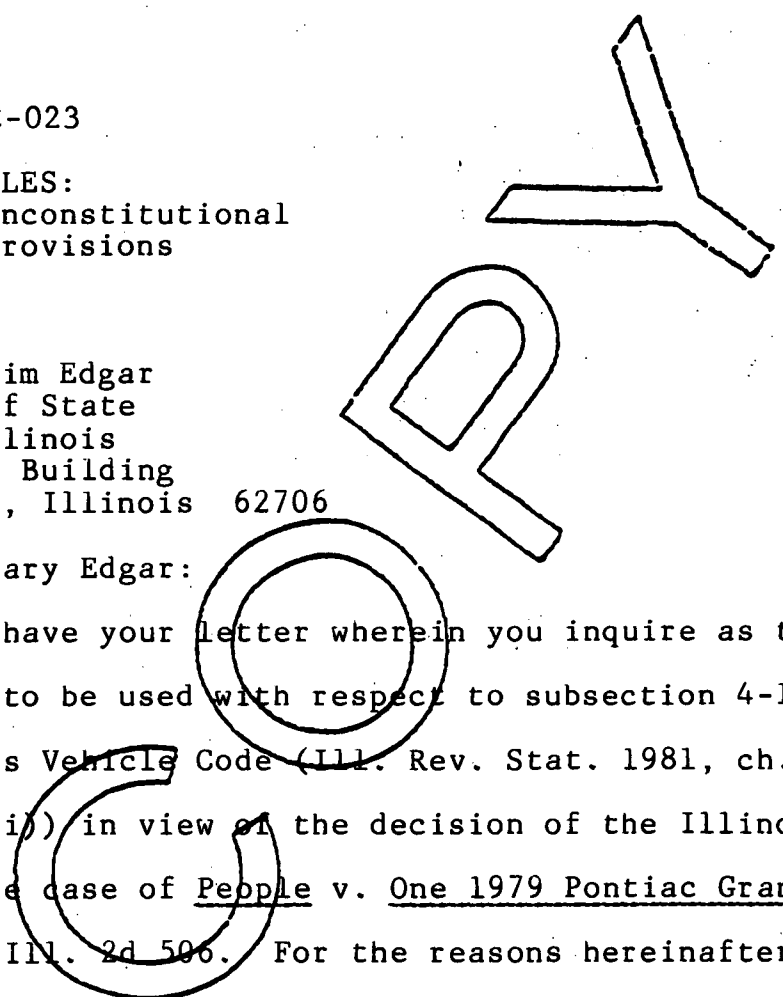
FILE NO. 82-023

MOTOR VEHICLES:  
Effect of Unconstitutional  
Statutory Provisions

Honorable Jim Edgar  
Secretary of State  
State of Illinois  
213 Capitol Building  
Springfield, Illinois 62706

Dear Secretary Edgar:

I have your letter wherein you inquire as to the procedures to be used with respect to subsection 4-107(i) of The Illinois Vehicle Code (Ill. Rev. Stat. 1981, ch. 95 1/2, par. 4-107(i)) in view of the decision of the Illinois Supreme Court in the case of People v. One 1979 Pontiac Grand Prix (1982), 89 Ill. 2d 506. For the reasons hereinafter stated, it is my opinion that, since the Illinois Supreme Court has declared subsection 4-107(i) of the Code unconstitutional, it is null and void as of the date of its enactment. Subsection



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4-107(i) may not be relied on as authorization for any law enforcement agency, State's Attorney or court to treat a vehicle having its identification number removed, altered, defaced or destroyed as contraband or to sell or otherwise dispose of such vehicle.

Subsection 4-107(i) of The Illinois Vehicle Code (Ill. Rev. Stat. 1981, ch. 95 1/2, par. 4-107(i)) provides as follows:

"(i) If a vehicle or component part of any vehicle is found to have the manufacturer's identification number removed, altered, defaced or destroyed, the vehicle or component part shall be seized by any law enforcement agency having jurisdiction and held for the purpose of identification. In the event that the manufacturer's identification number of a vehicle or component part cannot be identified, the vehicle or component part shall be considered contraband, and no right of property shall exist in any person owning, leasing or possessing such property.

It shall be the duty of the State's Attorney of the county in which a seizure under this subsection occurs to make application to the Circuit Court on final determination of any prosecution arising out of the seizure, for an order to sell the property so seized; and the court, if satisfied that the property did not at the time of its seizure, possess a manufacturer's identification number, and that this number cannot be ascertained, shall make an order that the property be disposed of by the law enforcement agency which made the seizure and shall fix the time, place, manner and nature of such disposal. The proceeds of the sale shall be disposed of in accordance with Section 4-211 of this Act."

In the case of People v. One 1979 Pontiac Grand Prix (1981), 98 Ill. App. 3d 841, the Appellate Court for the Third District held unconstitutional those provisions in subsection

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4-107(i) of the Code which declare vehicles with defaced identification numbers contraband per se. The court stated, on page 843, that a statute exercising the police power must bear a reasonable relationship to the public interest intended to be protected, and the means adopted must be a reasonable method of accomplishing the desired objective. The court further stated:

" \* \* \*

The objective sought by the legislature in enacting the statute is to put a damper on the stolen vehicle industry. The State argues that the statute will make car dealers and consumers more careful because if the VINs are false, the possessor of the car could lose it without receiving any recompense. This will then make it more difficult for auto thieves to sell the stolen cars.

While the objective sought is laudable, we do not believe that the statute serves to achieve that objective. It is reasonable for police to impound a car suspected of being stolen. Certainly an auto with its VIN defaced is likely to have been stolen. However, where the VIN has been destroyed and there is no way of determining to whom the car properly belongs, we see no advantage accruing to society by stripping an innocent owner of his property. Such an action will not deter thieves nor lead to their discovery. Once it has been determined that the buyer of the car is unaware that it was stolen, discovering the thieves will better be accomplished by questioning the vendor as to how he gained possession of the car. Simply stripping the innocent purchaser of his rights to the car without giving him notice or a hearing will not aid in uncovering the thieves.

\* \* \*

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The decision of the Appellate Court was affirmed by the Illinois Supreme Court in People v. One 1979 Pontiac Grand

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Prix (1982), 89 Ill. 2d 506. The court agreed with the Appellate Court's reasoning concerning the exercise of the police power, and stated at page 512:

" \* \* \*

While no one can deny that the twin goals of catching car thieves and deterring thefts are highly desirable, it does not appear that depriving the innocent purchaser of his property will further either purpose. The State appears to argue that this effect, although harsh on an individual basis, will produce salutary results in the future by making the buyer and seller more careful and by removing the incentive to deal in cars with altered numbers, i.e., stolen cars. The State admits, however, that several confidential numbers may be located at different places on a vehicle of which the average buyer is unaware. This is a needlessly harsh and cruel way to accomplish the desired result. It is also indirect and of doubtful effectiveness. It would be more appropriate to prosecute the dealer who sold the car and who would have a means of ascertaining the location of the confidential or secret number. \* \* \*

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Generally, where a statute has been declared invalid or unconstitutional by the Illinois Supreme Court, it is null and void as of the date of its enactment; it confers no rights, imposes no duties and offers no protection. (Mills v. Peoples Gas Light Co. (1927), 327 Ill. 508, 535; Grasso v. Kucharski (1968), 93 Ill. App. 2d 233, 237; Peterson v. Montegna & Co. (1956), 11 Ill. App. 2d 109, 110-111.) The fact that the Illinois Supreme Court has declared subsection 4-107(i) of the Code unconstitutional does not mean, however, that the

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remainder of section 4-107 of the Code is null and void. A statute may be in part valid or constitutional and in part invalid or unconstitutional. (Hansen v. Raleigh (1945), 391 Ill. 536, 546; The People v. Crowe (1927), 327 Ill. 106, 119; The People v. Olsen (1906), 222 Ill. 117, 124-125.) If that which remains after the invalid or unconstitutional portion of the statute is stricken is complete in itself and capable of being executed wholly independently of that which is rejected, the invalid or unconstitutional portion does not render the entire section or Act invalid or unconstitutional. City of Carbondale v. Van Natta (1975), 61 Ill. 2d 483, 490; The People ex rel. Adamowski v. Wilson (1960), 20 Ill. 2d 568, 582; Myers v. Krajefska (1956), 8 Ill. 2d 322, 327-328. It is clear from reading the entire statute that all the parts of section 4-107 of the Code, other than subsection (i), are complete and capable of being executed independently from subsection (i).

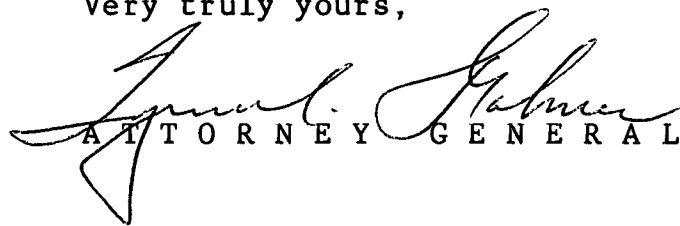
You have inquired whether the provisions of subsection 4-107(i) of the Code may be used, provided that the State proves a prima facie case that the numbers were altered and the car reported stolen. The person who purchased the car from its last seller would be notified of the hearing and would be given the opportunity to prove to the court that he is a bona fide purchaser, that the title was not altered, that the identifi-

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cation number matched on the title and vehicle, and that he had no knowledge that the identification number was altered and/or that the vehicle was stolen. There is no basis in either the Code or the general rules of statutory construction which would authorize a court, an administrative body, or an executive officer to replace unconstitutional provisions with new provisions.

On the basis of the above discussion, it is my opinion that since the Illinois Supreme Court has declared subsection 4-107(i) unconstitutional, it is null and void as of the date of its enactment. Subsection 4-107(i) of the Code may not be relied on as authorization for any law enforcement agency, State's Attorney or court to treat a vehicle having its identification number removed, altered, defaced or destroyed as contraband or to sell or otherwise dispose of such vehicle.

Very truly yours,

  
ATTORNEY GENERAL