

MOTOR VEHICLES: Certification of the description of the chattel mortgage on a motor vehicle can only be placed upon the certificate of title.

October 13, 1939

Mr. John P. Sherrod
Recorder of Deeds
Jackson County
Kansas City, Missouri



Dear Sir:

We are in receipt of your request for an opinion under date of October 12, 1939, which reads as follows:

"With further reference to House Bill No. 546, which provides certification of chattel mortgages on automobile titles, I find we are receiving a number of inquiries from lenders as to whether we will make the certification on the chattel mortgage or a copy thereof when presented prior to their receipt of the title.

"To make this a bit more lucid; a bank may approve a loan today on a new car; the old title which is in the possession of the purchaser is forwarded to Jefferson City in exchange for a new title, and there will, undoubtedly, occur a lapse of several days at this point until return of the title to the lending company.

"I have ruled that there is no provision for making any record of certification upon the chattel mortgage,

and that the purpose designated by the statute is only accomplished through the act of certifying on the title itself.

"Will you kindly advise me as to whether I have ruled correctly."

House Bill No. 546, as passed by the last General Assembly and known as Section 3097A, Laws of Missouri, 1939, reads as follows:

"It shall be the duty of the recorder of deeds, on request of the mortgagee, or his assignee, to certify on the certificate of title to the mortgaged motor vehicle, that such chattel mortgage has been filed showing the date, the amount of the mortgage and the name of the payee. When such chattel mortgage is released it shall be the duty of the recorder to so show on the certificate of title. For services herein provided the recorder shall receive a fee of twenty cents (20 cts.). A mortgage on a motor vehicle shall not be notice to the whole world, unless the record thereof is noted on the certificate of title to the mortgaged motor vehicle, as herein provided. Provided, however, that the provisions of this section shall not apply to chattel mortgages given to secure the purchase price of any part thereof or to a motor vehicle sold by the manufacturer or their distributing dealers, or to a chattel mortgage given by dealers to secure loans on the floor plan stock of motor vehicles."

It will be noticed in the above Section 3097A that it specifically says "to certify on the certificate of title to the mortgaged motor vehicle".

This phrase is unambiguous and it is not necessary that it be construed. When a statute is in plain common English words it is not subject to construction. The purpose and intent of the Legislature was that notice to the whole world would be given if the description of the chattel mortgage would be placed upon the certificate of title, which is an instrument separate and apart from the chattel mortgage itself.

Section 3097A further provides that the certification of the recorder of deeds should be placed on the certificate of title showing "that such chattel mortgage has been filed showing the date, the amount of the mortgage and the name of the payee". Surely it was not the intent of the Legislature that this information be placed on the chattel mortgage for the reason that the chattel mortgage has been filed by the recorder of deeds and the instrument itself would give the information that Section 3097A required to be placed on the certificate of title as requested by the mortgagee.

The purpose of the certification of the certificate of title was to prevent resale of a mortgaged automobile by use of a certificate of title that did not show a mortgage, and for the protection of the mortgagee. The stamping of such a notice on the certificate of title would be notice to the whole world that the car in question was subject to that lien if not released. In many cases the mortgagor is permitted to retain the certificate of title for the purpose of obtaining licenses, etc. By the stamping of the certificate of title as set out in Section 3097A, no fraud could be committed upon an innocent purchaser, and it would also protect the mortgagee in the chattel mortgage.

In 59 C. J., page 952, it is said:

"The intention of the legislature is to be obtained primarily from the language used in the statute. The court must impartially and without bias review the written words of the act, being aided in their inter-

pretation by the canons of construction. Where the language of a statute is plain and unambiguous, there is no occasion for construction, even though other meanings could be found; and the court cannot indulge in speculation as to the probable or possible qualifications which might have been in the mind of the legislature, but the statute must be given effect according to its plain and obvious meaning," citing *Gendron v. Dwight Chapin & Co.*, (App.) 37 S. W. (2d) 486; *Betz v. Kansas City So. R. Co.*, 284 S. W. 455, 314 Mo. 390; *Grier v. Kansas City C. C. & St. J. Ry. Co.*, 228 S. W. 454, 286 Mo. 523.

In *Betz v. Columbia Telephone Co.*, (App.) 24 S. W. (2d) 224, the Court said:

"To get at the true meaning of the language of the statute the court must look at the whole purpose of the act, the law as it was before the enactment, and the change in the law intended to be made."

CONCLUSION.

In view of the above authorities, it is the opinion of this department that there is no provision for making any record of certification as to mortgages on automobiles upon the chattel mortgage itself, and the certification can only be made upon the certificate of title.

For your further information we are enclosing opinions which partially touch upon your request as follows:

Mr. John P. Sherrod

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an opinion dated September 19, 1939, addressed to Hon. Roy Coyne, Prosecuting Attorney, Joplin, Missouri; an opinion dated September 1, 1939, addressed to Mr. John P. English, Recorder of Deeds, St. Louis, Missouri; an opinion dated September 1, 1939, addressed to Hon. Roy Coyne, Prosecuting Attorney, Joplin, Missouri, and an opinion dated September 28, 1939, addressed to Mr. E. T. Hardy, Circuit Clerk, Shelbyville, Missouri.

Respectfully submitted

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APPROVED:

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WJB:RV

Encls.