

MOTOR VEHICLES:

Commissioner of Motor Vehicles does not have to amend certificate of ownership to show liens or encumbrances; neither is he compelled to file notices of releases or filing of mortgages.

January 27, 1934.



Hon. V. H. Steward
Commissioner of Motor Vehicles
Jefferson City, Missouri

Dear Mr. Steward:

This office acknowledges receipt of your letter dated January 19, 1934, as follows:

"Please give an opinion of law on the following questions:

First: Where the applicant for a Title Deed to a motor vehicle failed to set out, on his original application, the fact that his automobile was owned subject to a chattel mortgage, and a Title Deed was issued pursuant to said applicant whereon no lien was shown, after discovering that the Title Deed fails to show existing liens, then is there any law requiring the Motor Vehicle Department to amend the original application and change the Title Deed to read, showing such lien or mortgage when brought to their attention by the title holder?

Second: Where the applicant for a Title Deed to a motor vehicle receives his Title Deed subject to all mortgages, if any, has shown upon his original application for such title, then is there any law requiring the Motor Vehicle Department to file notices, notations, or letters from the mortgagors advising this Department as to subsequent liens upon the motor vehicle described in the original application?"

At the outset we direct your attention to the distinction between the "Certificate of Registration" and the "Certificate of Ownership", to the end that you will distinguish between such and keep in mind the purposes of each and the dependency of one to the other, and that you will have a general idea of the office each fills.

I.

CERTIFICATE OF REGISTRATION.

The 57th General Assembly, Extra Session, passed an act with an emergency clause, which was approved by the Governor January 6, 1934, relating, among other things, to the registration of motor vehicles. Note these provisions therein found:

"Section 7761. (a) Every owner of a motor vehicle or trailer, which shall be operated or driven upon the highways of this state, shall except as herein otherwise expressly provided, cause to be filed, by mail or otherwise, in the office of the commissioner, an application for registration on a blank to be furnished by the commissioner for that purpose, containing: (1) a brief description of the motor vehicle to be registered, including the name of the manufacturer, the motor number and character, and amount of motive power, stated in figures of horsepower; (2) the name, residence and business address of the owner of such motor vehicle; etc."

"Section 7769. (a) Registration of motor vehicles * * * shall be renewed annually, etc."

II.

CERTIFICATE OF OWNERSHIP.

Section 7774 R. S. Mo. 1929, provides in part the following:

" (a) Upon the transfer of ownership of any motor vehicle or trailer its certificate of registration and the right to use the

number plates shall expire, etc."

Paragraph "(c)" of said section is captioned "Certificate of ownership", and we divide said section to emphasize the various provisions therein found:

"No certificate of registration of any motor vehicle or trailer, * * *, shall be issued by the commissioner unless the applicant therefor shall make application for and be granted a certificate of ownership of such motor vehicle etc.

"Application shall be made upon a blank form furnished by the commissioner and shall contain a full description of the motor vehicle or trailer, manufacturer's or other identifying number, together with a statement of the applicant's source of title and of any liens or encumbrances on the motor vehicle or trailer.

"The commissioner shall * * *, if satisfied that the applicant is the lawful owner of such motor vehicle or trailer, or otherwise entitled to have the same registered in his name, shall thereupon issue an appropriate certificate over his signature and sealed with the seal of his office, * * * The certificate shall contain a description, manufacturer's or other identifying number, and other evidences of identification of the motor vehicle or trailer, * * * together with a statement of any liens or encumbrances which the application may show to be thereon.etc.

"The certificate shall be good for the life of the motor vehicle or trailer, so long as the same is owned or held by the original holder of the certificate, and shall not have to be renewed annually. Etc.

"After the expiration of said four months it shall be unlawful for any person to operate in this state a motor vehicle or trailer registered under the provisions of the law unless a certificate of ownership shall have been issued as herein provided.

"In the event of a sale or transfer of ownership of a motor vehicle or trailer for which a certificate of ownership has been issued the holder of such certificate shall endorse on the same an assignment thereof, with warranty of title in form printed thereon, * * * with a statement of all liens or encumbrances on said motor vehicle or trailer, and deliver the same to the buyer at the time of the delivery to him of said motor vehicle or trailer. Etc."

III.

We epitomize the provisions of the above statutes as follows:

- (1) Certificate of ownership must be obtained before motor vehicle shall be registered.
- (2) No motor vehicle shall be operated on the highways unless it be registered.
- (3) Registration shall be annually.
- (4) Certificate of ownership shall be good for the life of the motor vehicle, so long as the same is owned or held by the original holder of the certificate, and shall not have to be renewed annually.
- (5) Certificate of ownership provides for the following:
 - (a) Manufacturer's number or other identifying number so as to particularly identify the motor vehicle.
 - (b) Statement of liens or encumbrances.
 - (c) Name of owner, etc.

(6) Certificate of registration only provides for:

- (a) Name of owner, and residence.
- (b) Brief description of motor vehicle (motor number and amount of horsepower). Such does not contain a statement of liens or encumbrances.

(7) Upon transfer or sale of a motor vehicle, the certificate of ownership must be assigned with warranty of title with a statement of all liens or encumbrances on said motor vehicle or trailer and delivered to the buyer at the time of delivery to him of said motor vehicle.

Section 7771 R. S. No. 1929, provides:

"In the event of the loss, mutilation or destruction of any certificate of registration, certificate of ownership * * * issued by the commissioner, the lawful holder thereof may, upon filing with the commissioner an affidavit showing such fact, and on the payment of a fee of \$1.00 obtain a duplicate of such * certificate * *."

One of the purposes of requiring owners of motor vehicles to have certificates of ownership was to suppress the theft of same.

Section 7774 (c), supra, has this provision:

"The commissioner shall co-operate with the commissioners or the officials of other states and countries having supervision of the registration of motor vehicles and shall exchange information with them relative to the registration, ownership, sale and theft of motor vehicles, for the purpose of suppressing the stealing and unauthorized use of motor vehicles."

The courts of this State have held that the provisions of the statute relative to the sale or transfer of motor vehicles is mandatory and unless complied with the sale thereof is void.

In Weaver et al v. Lake et al, 4 S. W. (2) 834, the Springfield Court of Appeals said:

"Their claim of possession is founded on an alleged sale of an automobile to which no certificate of title was assigned or delivered. Under our statute there can be no question that a sale of an automobile without an assignment or transfer of a certificate of title is absolutely void."

Also, in Platner v. Bourne, 275 S. W. 590, the court (Springfield Court of Appeals) said:

"The motor vehicle statute is a police regulation and provides (Acts 1921, p. 90) how motorcars may be transferred from one person to another, and also provides that, unless its provisions are complied with, the sale shall be fraudulent and void. The Supreme Court has held that a transfer of a motorcar cannot be made in any other way. State ex rel. Conn. Fire Ins. Co. of Hartford, Conn., v. Cox et al., Judges (Mo. Sup.) 268 S. W. 87, 37 A. L. R. 1456."

IV.

The provision of the statute requiring the showing of liens and encumbrances on the certificate of ownership neither adds to nor detracts from the validity of the certificate. The Legislature required such, in our opinion, to be shown as an added safeguard to the public. In other words, the fact that a certificate of ownership does not show a lien or mortgage does not mean that there is none on the motor vehicle, and vice versa, because a mortgage could be placed thereon after the certificate was issued and if a lien appears on the certificate such could be satisfied before transfer or sale of the motor vehicle. However, upon transfer or sale of the motor vehicle the transferor must make an affidavit as to liens or encumbrances,

and if he falsifies same he would be guilty of making a false affidavit with respect to that matter, but the title to the motor vehicle would pass, subject, however, to any liens whether shown on the certificate or not.

Section 3097 R. S. Mo. 1929, requires chattel mortgages to be filed and/or recorded at the place of residence of the mortgagor. Said section provides in part as follows:

"No mortgage or deed of trust of personal property hereafter made shall be valid against any other person than the parties thereto, unless possession of the mortgaged or trust property be delivered to and retained by the mortgagee or trustee or cestui que trust, or unless the mortgage or deed of trust be acknowledged or proved and recorded in the county in which the mortgagor or grantor resides, * * * * * or unless the mortgage or deed of trust, or a true copy thereof, shall be filed in the office of the recorder of deeds of the county where the mortgagor or grantor executing the same resides, etc."

V.

In answer to your first question it is our opinion that there is no statute requiring the Motor Vehicle Department to amend the original application to show liens or encumbrances omitted (intentionally or otherwise) therefrom.

Section 7771, supra, uses these words:

"In the event of the loss, mutilation or destruction of any * * certificate of ownership * * the lawful holder thereof may, upon filing with the commissioner an affidavit showing such fact, etc."

Section 7774 (c), supra, provides this:

"The certificate shall be good for the life of the motor vehicle * * so long as the same is owned or held by the original holder of the certificate, and shall not have to be renewed annually. Etc."

If the Legislature intended the Motor Vehicle Department to amend certificates of ownership when the status of liens and encumbrances changed, it would have so provided in the statute.

VI.

In answer to your second question, it is our opinion that the filing of notices, notations, etc., concerning liens placed (or satisfied) on motor vehicles, subsequent to the issuance of the certificate of ownership, is discretionary with the commissioner. The statute does not compel (in fact silent) him to file them.

Section 7772 R. S. No. 1929, provides in part:

"(c) The commissioner may keep such other classifications and records as he may deem necessary."

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

JLH:EG