

CHattel MORTGAGE: : A Recorder of Deeds has no statutory or
MOTOR VEHICLE: : other authority to defer the endorsement
CERTIFICATE OF TITLE: : on a certificate of title to a motor vehicle
: the date of the filing of a chattel mortgage
: on such motor vehicle to a later date and
: back date the date of the endorsement on
: such certificate of title to make it appear
: to have been made on the same date of the
: original filing of such chattel mortgage.



March 23, 1955

Honorable Ernest Troutman
Prosecuting Attorney
Carroll County
Carrollton, Missouri

Dear Mr. Troutman:

This is the opinion you requested from this office as to the authority of the Recorder of Deeds to endorse the date of the filing of a chattel mortgage securing a loan on an automobile on the certificate of title to such automobile at a later date than the date of the recording of the chattel mortgage itself and back date the endorsement of the date placed on such title to conform to and be the same date as the date of the original filing for record of such chattel mortgage as it appears on such mortgage.

Your letter requesting an opinion on the subject reads as follows:

"The Recorder of Deeds of Carroll County, has requested that I write you for an opinion which involves the following situation:

"A mortgage holder, a bank, has during the past two years at various times, had recorded a series of chattel mortgages for loans made on automobiles. The titles to the automobiles were not presented and stamped at the time of recording. The bank has now collected the auto titles on their outstanding chattel mortgages and has presented them to the recorder, requesting that he now stamp them, showing the same date as the filing date.

"The Recorder requests an opinion as to whether he is authorized to now stamp the

Honorable Ernest Troutman:

titles submitted, and back date the stamp to the date of the original filing."

Section numbers of the statutes herein refer to RSMo 1949.

Section 443.480 defining the duties of the Recorder of Deeds respecting the endorsement of the date of the filing of a chattel mortgage on the certificate of title to a motor vehicle, and naming other duties incident to the release of such chattel mortgages, and noting certain things as exempt from the terms of the section, and noting the effect of the failure to endorse such filing date on such certificate of title when the chattel mortgage is filed, as a notice, 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. In all counties now or hereafter having a population of three hundred thousand inhabitants or less the recorder shall receive for services herein provided a fee of twenty cents; in all counties now or hereafter having a population of three hundred thousand inhabitants or more the recorder shall receive for services herein provided a fee of thirty cents. 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 or 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."

Honorable Ernest Troutman;

This section has been before the appellate courts of this State for the construction of some of its various terms in numerous cases. The provision in the section exempting from the terms thereof of the endorsement of the date of the filing of the chattel mortgage given to secure the purchase price or any part thereof, on the certificate of title, as not required to be placed thereon by the Recorder of Deeds at the request of the mortgagee or his assigns, was considered and construed by the Springfield Court of Appeals in *Butler County Finance Co. vs. Prince*, 231 S.W. (2d) 834, and held to be clear and not subject to doubt where the Court, l.c. 836, quoting from another and earlier decision of that Court involving the same legal principle, said:

"The provisions of this statute are so clearly stated that there can be no doubt but the legislature intended it to apply to any mortgage given to secure the purchase price or any part thereof, of a motor vehicle, from whomsoever purchased.

"This note was given for part of the purchase price of the motor vehicle and therefore the requirement that a record of it be noted on the certificate of title does not apply."

The provision in said section that "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;" was considered and discussed by the Kansas City Court of Appeals in *Kansas City Automobile Auction Co. vs. Overall*, 238 S.W. (2d) 446. It appears from the facts, as recited in the case, that the evidence showed it was the practice of the Recorder to endorse the filing of a mortgage on a certificate of title at any time requested, regardless of the date of the filing of the mortgage. In such statement, relating to the official acts of the Recorder in regard to his practices in such matters, it appeared that in some cases the date of the filing of the mortgage was not endorsed on the title for days, weeks, or months after the filing of the mortgage. In other cases such endorsement

Honorable Ernest Troutman:

was made on the certificate of title showing a date before the date the certificate of title itself was issued, thus leaving the question of the date when such endorsements were made unascertainable, and that the date of the endorsement on the certificate of title, and, therefore, the effective date of the notice thereby involved, were disputed facts. The court, in that case, in regard to the office to be served by the notice, called attention, l.c. 452, to Section 3488 (R.S. Mo. 1939, A.L. 1941, pp 327, A.L. 47, Vol. II, p. 220, now Section 443.480) where the court, discussing the question, said:

"The general rule stated in Section 3488, is that the filing of the mortgage on a motor car is not notice 'to the whole world' until such fact is noted on the title certificate, unless the mortgage is for part of the purchase price. Absent such endorsement of a mortgage not for part of the purchase price, a person acquiring such car without actual notice of the existing mortgage, would have no knowledge of it at all. * * *."

While the courts of Missouri have not in terms condemned the practice of deferring the making of such endorsements on certificates of title to a later time than the date of the filing of chattel mortgages, the implications to be drawn from the decision in the case cited showing the confusion and uncertainty created by following the practice, as such deferments may affect the rights of subsequent mortgages and those who have fixed rights and interests in the subject-matter and the public generally, such decisions in the discussion of this principle indicate that the appellate court in the Overall case, supra, thought the practice was not to be approved or commended. The court evidently thought it should be enough to say that, with the exceptions noted, it was sufficient to strictly obey the terms of the section, and that, in effect, was the holding of the court.

53 C.J., page 609, under the subject of "Records", discussing the filing of documents as the date of filing as shown thereon, or the deferment of the endorsement

Honorable Ernest Troutman:

of the filing date to a later time, may or may not affect its validity states the following text:

"To constitute a valid filing, the instrument must not only be presented at the proper place, but also within the proper time, such time depending usually upon statutory provisions. An instrument is filed when it is deposited in the proper office with the person in charge thereof, with directions to record it, although not within the time that the office is required by statute to be kept open. Further, an instrument is filed at the time of its actual delivery to the proper officer and at the proper office for filing, or, where it is delivered to him at a place other than the proper office, at the time of its actual deposit by him in such office, and his failure to indorse the date of filing on the instrument, or his delay in placing a file mark thereon, or his indorsement thereon of a later date is immaterial. The proper officer's indorsement of a date of filing on the instrument is prima facie proof of filing on such date, but it may be shown that such indorsed date is not the true date of filing; or, as otherwise expressed, the date of filing indorsed on the instrument by the proper officer is prima facie the date of actual filing, and must control until it has been shown by competent and clear evidence to be incorrect. * * *."

Footnote 8 to such text, on the same page, cites *Balm vs. Cape May*, 3 N.J. Misc. 58, 127 A. 88 (aff 101 N.J.L. 400, 127 A. 923). That was a case involving the filing of a petition by electors calling for a special election. On the question of the authority of an officer whose duty it is to file instruments and endorse thereon the date of filing, the court in that case, l.c. 89, said:

"Upon the question of the date of filing it is the rule that the date of filing indorsed upon a document by the official

Honorable Ernest Troutman:

with whom it is required to be filed is prima facie proof of its filing on such date. It is likewise true that it may be shown that such indorsed date is not the true date of filing, but I know of no authority permitting an official to receive a document required by statute to be filed with him or in his office and withhold it from his files to some subsequent date unless so authorized by statute.

The decision in that case is persuasive here on the point. We have no statute in this State authorizing a Recorder of Deeds to defer to a later date the endorsement of the date of the filing of a chattel mortgage on a motor vehicle on the certificate of title to such vehicle to a later date, or, at a later date, to endorse such filing date of such a mortgage on such certificate of title to such vehicle to conform to and appear to have been made at the original date of filing entered upon the chattel mortgage.

CONCLUSION

It is, therefore, considering the premises, the opinion of this office that a Recorder of Deeds in this State has no authority to defer to a date later than the date of the filing of the mortgage on a motor vehicle, the endorsement on a certificate of title to such motor vehicle the date of the filing of such mortgage on such motor vehicle, or at any later date to make such endorsement on such certificate of title to conform to and make it appear to be the same filing date as was originally placed on such chattel mortgage.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. George W. Crowley.

Yours very truly,

JOHN M. DALTON
Attorney General

GWC:irk