

CHATTEL MORTGAGES: Kansas Certificate of Title must be stamped by recorder of deeds if requested by the mortgagee when the chattel mortgage is executed in the State of Missouri.

November 8, 1939

Mr. John G. Utz
Recorder of Deeds
Buchanan County
St. Joseph, Missouri



Dear Sir:

We are in receipt of your request for an opinion, under date of November 3, 1939, which reads as follows:

"The Commerce Loan Company of St. Joseph, Mo., loaned money on an Automobile, while the owner resided in St. Joseph, but has a Kansas Certificate of Title on same.

"Should this Kansas Certificate of Title carry notice of Mortgage, just the same as the Missouri Certificate of Title, which are presented for Certification of Mortgages, when mortgages are filed in Missouri?"

Section 3097a Session Laws of 1939, page 278, 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 here-

in 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." (Underscoring ours.)

It will be noticed that this new section is included in Article 3, Chapter 22, R. S. Missouri, 1929, which applies to chattel mortgages, and not to motor vehicles. It will also be noticed that this section is not mandatory upon the part of the mortgagee, for the reason that it reads, "on request of the mortgagee or his assignee." This section has been enacted for the protection of the mortgagee and the only application that it may have to motor vehicles is for the benefit of a mortgagee of a motor vehicle. The general chattel mortgage law, Section 3097 R. S. Missouri, 1929, does not specifically mention motor vehicles, and does provide, "when acknowledged or recorded, or when the same, or a copy thereof, shall have been filed, as above provided, shall thenceforth be notice of the contents thereof to all the world." The new section specifically states that unless the certificate of title is stamped by the recorder of deeds in compliance with the section, the filing and recording would not be notice to all the world.

Section 3097 R. S. Missouri, 1929, further provides:

"* * * 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, and in the case of the city of St. Louis, with the recorder of deeds for said city, or, where such grantor is a non-resident of the state, then in the office of the recorder of deeds of the county or city where the proper-

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ty mortgaged was situated at the time of
executing such mortgage or deed of trust
* * * ."

Under this phrase an automobile being considered as movable property, even when owned by a non-resident of the state, may be used as security for a loan in a different county other than the residence of the mortgagor or the permanent location of the personal property securing the loan. This phrase specifically says "where the property mortgaged was situated at the time of executing such mortgage or deed of trust."

It will also be noticed under Section 3097A, supra, that it does not mention specifically a Missouri certificate of title issued by the Motor Vehicle Commission of the State of Missouri, but merely mentions "certificate of title." Certificate of title is mentioned in two places in the section and does not specifically say as to any particular state.

CONCLUSION

Since Section 3097a, Session Laws of 1939, page 278, was enacted specifically for the benefit of the mortgagee and since automobiles are movable personal property, it is the opinion of this department that when a chattel mortgage is given upon an automobile owned by a resident of the City of St. Joseph, but the resident has a Kansas certificate of title on same, it is mandatory upon the recorder of deeds to stamp the Kansas certificate of title if requested by the mortgagee of the automobile, so that the mortgage acknowledged and recorded or filed in the county of Buchanan be notice thereof to all the world. Upon the face of the request it appears that the resident of St. Joseph may be attempting to violate the Missouri State Motor Vehicle Laws, but it is possible that a resident of St. Joseph may own a car which is used in a business located in the State of Kansas. In such a case a Missouri certificate of title would not be necessary and yet the owner who lives in the State of Missouri may pledge the automobile as security for a loan.

APPROVED:

TYRE W. BURTON
(Acting) Attorney-General

Respectfully submitted,

W. J. BURKE
Assistant Attorney-General

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