

into the validity of the tax sale before issuing certificates of ownership and registration to the transferee.

The duties of the registrar of motor vehicles are set forth in Chapter 152, Vol. 1 of the Political Code. By Section 1758.2 therein you are required to issue a new certificate of ownership and certificate of registration upon proof of transfer of title. Subdivision (f) of Section 1758.2 provides that:

"In the event of the transfer by operation of law of the title or interest of a legal owner or owner in and to a vehicle registered under the provisions of this act, as upon inheritance, devise or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in performance of the terms of a lease or executory sales contract, or otherwise than by the voluntary act of the person whose title or interest is so transferred, the executor, administrator, receiver, trustee, sheriff or other representative or successor in interest of the person whose title or interest as so transferred shall forward to the registrar of motor vehicles an application for registration, together with a verified or certified statement of the transfer of such title or interest, which statement shall set forth the reason for such involuntary transfer, the title or interest so transferred, the name or names of the person or persons whose title or interest is sought to be transferred, the name or names and addresses of the person or persons to whom such title or interest is to be transferred, the process of procedure effecting such transfer and such other information as may be requested by the registrar and with such statement shall be furnished such evidence and instruments as may be otherwise required by law to effect a transfer of legal title to or an interest in chattels as may be required in such cases, and in the event the registrar shall be satisfied that such transfer is regular and that all formalities as required by law have been complied with, he shall cause to be sent to the owner and legal owner notice of such intended transfer and thereafter, but not less than five (5) days thereafter, shall register such vehicle or effect the transfer of the registration thereof and shall issue a new certificate of

Opinion No. 156.

Motor Vehicles—Registration of—Certificates of Title—Duty of Registrar Where Application for Registration Is Made.

HELD: The Registrar of Motor Vehicles may not inquire into the validity of a tax sale before issuing certificates of ownership and registration to the transferee.

September 13, 1937.

Mr. T. F. Walsh
Deputy Registrar of Motor Vehicles
Deer Lodge, Montana

Dear Sir:

You have asked whether the registrar of motor vehicles must inquire

registration thereof and a new certificate of ownership to the person or persons entitled thereto. The notice herein required shall be deemed complied with by deposit in the post office in Deer Lodge, such notice, postage prepaid, addressed to such person or persons at their last known addresses."

By this section the registrar must receive,

1. An application for registration in the same form as required for an original application.
2. Verified or certified statement of the county treasurer setting forth,
 - (a) The title so transferred;
 - (b) The name or names of the persons or persons whose title is to be transferred;
 - (c) Process of procedure effecting such transfer;
 - (d) Such other information as the registrar may require.

The fact that the statement must be verified or certified does not necessarily mean certification by oath. To certify means to vouch for a thing in writing.

In re Kostohris Estate, 96 Mont. 226-237.

It is sufficient if there is a written statement signed by the county treasurer and sealed with his official seal.

State v. Abernethy, 130 S. E. 619-620.

The requirement that the name or names of the person or persons whose title is to be transferred be set forth must be read in the light of section 2009, R. C. M., 1935, which provides that:

"If the name of absent owner is known to the assessor, the property must be assessed in his name, but if unknown, the property must be assessed to unknown owner."

So if an automobile has been assessed to an "unknown owner" then a recital of this fact would be sufficient compliance with subdivision 2 (b) above. Also a recital that the transfer was by tax sale, or in compliance with Sections 2238-2252, R. C. M., 1935, would meet the requirement of setting forth the procedure.

After receiving the above information, it is the duty of the registrar to issue the certificate of ownership and certificate of registration. He is entitled to rely on the presumption that the county treasurer has proceeded legally and in conformity with the law. There is always the presumption that official acts or duties have been performed, and generally it is to be presumed that everything done by an officer in connection with the performance of an official act in line with his duty is legally done.

Section 10606, Subdivision 15, R. C. M., 1935;

State v. District Court, 55 Mont. 158;

In re Williams Estate, 55 Mont. 53; Grant v. Williams, 54 Mont. 246.

The tax title is a paramount lien, and, presuming it to be valid, creates a claim superior to any other claim or title having its origin prior thereto.

Averill Machinery Company v. Freebury Bros., 59 Mont. 544.

The duty of the registrar is in conformity with the provisions of Chapter 152. It is not his jurisdiction to inquire into the legality of the acts of the county treasurer or to determine whether that officer has complied with the law. He may not inquire as to prior liens, notice, and the like. If there is any complaint, the remedy lies in an action against the county treasurer, but an objection registered with the registrar of motor vehicles is ineffective and he is without power or authority to withhold the certificate of ownership and registration.

In the specific cases you mention in your letter; i. e., the Ulmen case and the Sigmund case, the certificate should be issued according to law, providing you have received an application for registration in addition to bills of sale enclosed in your letter.