

## No. 170

**MOTOR VEHICLES—REGISTRAR OF MOTOR VEHICLES—MORTGAGES—LIENS—CERTIFICATE OF TITLE**

**Held:** The Registrar of Motor Vehicles is required to file all mortgages or liens given by a record owner of a vehicle. The Registrar of Motor Vehicles cannot require the certificate of title to accompany the mortgage or conditional sales contract given by a legal owner to be recorded. The Registrar of Motor Vehicles is required to issue new certificate of title to person lawfully acquiring title to vehicle through foreclosure of a lien for storage and repairs.

July 16, 1941.

Deputy Registrar of Motor Vehicles  
Deer Lodge, Montana

Mr. M. P. Trenne

You have submitted the following questions:

"For a long time there has been more or less confusion with regard to legal and registered owners of motor vehicles and the question of second liens given by a registered owner . . .

"Should the Registrar of Motor Vehicles be required to record any lien given by a registered owner? . . .

"The second question concerns the filing of a conditional sales contract or mortgage. Would we be justified in asking that in all cases, with the exception of application for original registration, the outstanding certificate of title accompany the conditional sales contract or mortgage given by the legal owner to be recorded in this office?"

You state a former Attorney General held, where conditional sales vendors repossessed an automobile and sold the same, the purchaser should be entitled to a clear certificate of ownership, notwithstanding the fact the conditional sales vendee had given a mortgage thereon.

I am in entire accord with that former opinion. However, that opinion should not be interpreted as holding the conditional sales vendee cannot give a valid mortgage.

In fact, such a conditional sales vendee can give a valid mortgage, because he has an equitable interest in the property—and equitable interests can be mortgaged.

Section 8275, Revised Codes of Montana, 1935;

Hoeller v. Moog, 60 Mont. 74, 198 Pac. 367.

Of course, if the conditional sales vendee or the person to whom he gives a mortgage does not take care of the obligation due the conditional sales vendor, then the conditional sales vendor is entitled to repossess the property. It then becomes his own property, to do with as he sees fit.

Thus it becomes readily apparent the Registrar of Motor Vehicles is required to record any lien given by a registered owner. In fact, this is a duty imposed upon the Registrar of Motor Vehicles by Section 1755, Revised Codes of Montana, 1935, which provides it shall be the duty of the Registrar to keep a record showing the name and address of a conditional sales vendor, mortgagee, or other lien holder. Section 1755.1, Revised Codes of Montana, 1935, makes it a misdemeanor on the part of the Registrar of Motor Vehicles to violate any of the duties prescribed in Section 1755, Revised Codes of Montana, 1935.

Coming now to your inquiry whether or not the Registrar can require the certificate of title to accompany the mortgage or conditional sales con-

tract given by a legal owner to be recorded, it is my opinion this cannot be required by the Registrar.

The office of Registrar of Motor Vehicles is purely a statutory office and there is nothing in Section 1755 or in Section 1758 (2) or in any other sections of the law which we can find which gives the Registrar such authority. Inasmuch as the legislature—by the passage of Section 1755.1—makes certain violations of the duties a misdemeanor, it seems quite apparent to us that, had the legislature intended the Registrar could make the requirement herein discussed, it would have incorporated such a duty in Section 1755.

This now brings us to the proposition of whether or not the Registrar of Motor Vehicles is required to issue a certificate of title to a vehicle which was foreclosed under a lien for storage and repairs, as provided by Section 8383, Revised Codes of Montana, 1935. The Registrar's conduct in this regard is governed by Section 1758.2 (f).

It is my opinion a person foreclosing such a lien becomes the owner of the title by operation of law. Then, if such person files an application with the Registrar, together with the necessary verified statement, the names of the persons whose title is sought to be transferred, the addresses of the persons to whom the title is to be transferred, the processes of procedure affecting such transfer, and any other instruments or information requested by the Registrar, the Registrar shall send the notice provided by law and thereafter issue a new certificate of registration and a new certificate of ownership to the person or persons entitled thereto.

Sincerely yours,

JOHN W. BONNER  
Attorney General