

Opinion No. 241.

Registrar of Motor Vehicles—Mortgages on Motor Vehicles—Certificate of Ownership—Recording Mortgages—Motor Vehicles—Vehicles.

Held: That the registrar of motor vehicles has no authority to record a mortgage, etc., on a motor vehicle unless the certificate of ownership is presented, and may not record a mortgage even if certificates of ownership are presented for

some of the motor vehicles included in the mortgage.

August 15, 1944.

Mr. John E. Henry
Registrar of Motor Vehicles
Deer Lodge, Montana

Dear Mr. Henry:

You have requested an opinion of this office asking whether you should record a chattel mortgage on 128 motor vehicles, only ten of which have been registered in the state of Montana, in view of the provisions of Section 1758.3, Revised Codes of Montana, 1935, as amended by Chapter 148, Laws of 1943.

Section 3 of said Chapter 148 provides in part as follows:

"That Section 1758.3 of the Revised Codes of Montana, 1935, shall be, and the same is hereby amended to read as follows:

"(a) No chattel mortgage, conditional sales contract, lease, or other lien on a motor vehicle shall be valid as against creditors, subsequent purchasers or encumbrances unless and until such mortgage . . . or a true copy thereof, certified by a notary public, has been filed with the registrar of motor vehicles as hereinafter provided; the registrar of motor vehicles shall not file any mortgage, conditional sales contract . . . unless such mortgage . . . is accompanied by the certificate of ownership of such vehicle except in the sale of a new motor vehicle by a duly licensed dealer . . ."

The reason for enacting that portion of the above quoted section of said Chapter 148, providing for the filing of mortgages, etc., only when accompanied by the certificate of ownership, was to provide for placing on the said certificate a statement of such encumbrance and thereby giving notice to any purchaser that such an encumbrance existed. It was a safeguard against sales of encumbered vehicles to the public. This statute in reality establishes a public policy in this state which may not be waived by individuals or servants of the state.

In view of the plain wording of the statute and the evident intent thereof,

it is my opinion you may not record the mortgage on vehicles on which you have not been presented with a certificate of ownership, except in cases of duly licensed dealers. Therefore, you have no authority to file the mortgage you refer to in your letter as such mortgage pertains to some motor vehicles for which you do not have the certificate of ownership. Although it does pertain to some motor vehicles to which you have been furnished certificates of ownership, nevertheless, to file the mortgage as it stands would give rise to opportunity to do, in cases of the ones on which you do not have such certificates, the very thing the statute evidently was enacted to prohibit.

Sincerely yours,
R. V. BOTTOMLY
Attorney General