

Opinion No. 26**Motor Vehicles—Attachments of Motor Vehicles—Liens**

- Held:** (1) The Registrar of Motor Vehicles should not record a Writ of Attachment alone, because the Writ itself creates no lien of record against the title of the motor vehicles.
- (2) The law only contemplates that notice be given that a motor vehicle has been attached, and no lien is created until the vehicle is taken into custody by the sheriff.
- (3) The certificate of ownership need not accompany the notice of attachment before it can be recorded by the Registrar of Motor Vehicles.
- (4) A Writ of Attachment together with the Return of Sheriff should be filed by the Registrar because together they constitute notice that a lien has been created on the title of the motor vehicle.
- (5) The Registrar need not inquire into whether a valid summons has been issued before the Writ of Attachment was issued.

June 29, 1951.

Mr. Lou Boedecker
Registrar of Motor Vehicles
Deer Lodge, Montana
Attention: Mr. Edward A. Gill

Dear Sir:

You have requested my opinion on the correct procedure that should be followed in your office upon receipt of writs of attachment of motor vehicles. You have specifically asked my opinion on the following questions:

1. Should the Registrar of Motor Vehicles file writs of attachment against motor vehicles, thereby creating a lien of record against the titles concerned?

2. If such writs are accepted, should the Registrar require that the title be submitted for each vehicle to be attached?

3. Should the Registrar require that the Writ of Attachment contain a statement that the summons has been issued against the defendant?

4. Should the Sheriff's return be executed as a prerequisite to filing?

At the outset, I believe that a few preliminary remarks concerning the nature of writs of attachment would be in order. In the early days of the common law the writ of attachment was a device used in order to obtain jurisdiction over the person of the debtor by seizing his property. Today, however, the writ of attachment serves the purpose of giving the creditor a provisional remedy to secure his claim. In those certain cases set forth in Section 93-4301, Revised Codes of Montana, 1947, the plaintiff may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered. It is to be noted that the property of the defendant may be attached before trial and judgment in only a limited number of cases.

Although some legal authorities contend that the modern writ of attachment creates no lien at all, the Montana Supreme Court has held that in view of our statutory provisions that an attachment does create a lien. In *re Stevenson*, 87 Mont. 487, 491. This lien becomes effective once judgment is rendered and relates back to the time of the levy. There is no lien on personal property until such time as the sheriff takes the property into custody, if it is capable of manual delivery. See Section 93-4307, Revised Codes of Montana, 1947; Section 93-4335, Revised Codes of Montana, 1947; *Moreland v. Monarch Mining Co.*, 55 Mont. 419, 425; 178 Pac. 175.

In answer to your first question, it is my opinion that a writ of attachment in and of itself does not create a lien upon the record title to an automobile, as no lien exists until such time as the sheriff has taken the automobile into his custody. Section 93-4335, *supra*. Hence, no useful purpose would be served by filing a copy of a writ of attachment itself, as it creates no lien. Another reason why this is true is that the defendant may prevent the sheriff

from seizing his automobile by giving security in an amount sufficient to satisfy the demand of the plaintiff's complaint.

Section 53-110, Revised Codes of Montana, 1947, sub-division (f) provides as follows:

"Upon receipt of any liens, or notice of liens dependent upon possession, or attachments, etc., against the record of any motor vehicle registered in this state, the registrar shall within 24 hours, mail to the owner, conditional sales vendor, mortgagees, or assignees of any thereof a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and/or attaching creditor."

This section is not well drafted as it is indeed difficult to imagine what the legislature meant by the abbreviation, "etc.", but I believe that the legislative intent is clear that attachments are to be treated in the same manner as other possessory liens, as the attachment of a motor vehicle only becomes effective as a lien when taken into possession by the sheriff. Hence, it would appear from the above section that the law only contemplates the filing of notice that the vehicle has been attached, and any notice that gives the information required by above quoted section is sufficient and should be recorded by the Registrar. Further, the Registrar has the duty to notify other lien holders of record that the vehicle has been attached.

Hence, it is my opinion that writs of attachment in and of themselves should not be filed by the Registrar. However, if the writ of attachment is accompanied by the Return of the Sheriff so that it shows that the vehicle has been attached, and if the statutory information is supplied by the writ and the return, then the writ and return should be filed, as they would then constitute the required notice that the vehicle has been attached.

Secondly, it is my opinion that the notice of attachment need not be accompanied by the certificate of ownership of the vehicle. It is true that Section 53-110, Revised Codes of Mont-

ana, 1947, sub-section (a) provides that "the registrar shall not file any mortgage, conditional sales contract, lease or other lien unless such mortgage, *** or other lien is accompanied by the certificate of ownership of such vehicle, ***." However, it is clear that this sub-section does not apply to possessory liens such as attachments because otherwise it would be virtually impossible to record such liens, as the certificate of ownership is seldom available to the attaching creditor.

I have already answered your third question in part. As I have already said all that is required to be recorded is the notice that the vehicle has been attached. True, a writ of attachment issued before a valid summons is absolutely void. *Duluth Brewing & Malt-ing Co. v. Allen*, 51 Mont. 89, 102; 149 Pac. 494. However, it is not the function of the Registrar to pass on whether the attachment is valid, but rather his function is simply to record the notice that the vehicle has been attached, and thereby warn subsequent creditors or purchasers that the vehicle is involved in litigation.

Fourthly, if the writ of attachment is used as the statutory notice required by Section 53-110, sub-section (f), supra, then the Return of the Sheriff or other evidence that a levy has in fact been made is necessary before the recording, because, I repeat, it is the levy by the Sheriff that dates the lien.

Very truly yours,
ARNOLD H. OLSEN
Attorney General