

Opinion No. 31**Attachment of Mortgaged Motor
Vehicles—Duty of Registrar of Motor
Vehicles.**

Held: 1. If an attaching creditor deposits with the Registrar of Motor Vehicles the amount due by the debtor to a mortgagee of record, the Registrar may require the mortgagee to make a

formal assignment of his interest to the attaching creditor before paying the deposited amount over to the mortgagee.

2. The Registrar of Motor Vehicles may require that the attaching creditor supply evidence that a suit has been started and that a writ of attachment has been issued before accepting the deposit of the amount due the mortgagee.

August 2, 1951.

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

Dear Sir:

You have requested my opinion on following questions:

1. In the event that a lienholder of record files an affidavit in your office setting forth the balance due under the lien, and the attaching creditor deposits this amount with the Registrar, should the Registrar require that a Writ of Attachment be filed by the attaching creditor before forwarding the amount deposited to the lienholder?

2. In the event such deposit is made and forwarded to the lienholder by the Registrar, should the Registrar require an assignment by the lienholder to the attaching creditor of the lienholder's rights?

At the outset I refer you to my recent Opinion No. 26, Volume 24, of the Official Opinions of the Attorney General for a discussion of the nature of the lien created by an attachment.

Section 52-309, Revised Codes of Montana, 1947, sets forth a procedure to be followed in attaching mortgaged personal property. The holder of a chattel mortgage must upon fifteen days written notice from the creditor of the mortgagor file with the Registrar an affidavit setting forth the full amount due under the mortgage, and if the mortgagee neglects to file his affidavit within this period the mortgage has no force and effect as against the attaching creditor. The attaching creditor may either (a) pay or tender the amount of the balance

due under the mortgage to the mortgagee or (b) deposit the balance with the County Treasurer and Section 53-110 substituted the Registrar of Motor Vehicles for the County Treasurer.

In the event that the attaching creditor deposits the balance due with your office then I believe that the Registrar should immediately notify the mortgagee that such a deposit has been made and if the mortgagee desires to accept the balance then the Registrar should require that the mortgagee surrender to the Registrar the note or other evidence of indebtedness. Further, it is my opinion that the Registrar should require the mortgagee to make a formal assignment of the mortgage to the attaching creditor. The law does not specifically require such a formal assignment to be made but it is my opinion that the Registrar may require such an assignment as a reasonable regulation to keep the records straight and protect the Registrar from any liability that may result from the transaction.

If the lienholder does not desire to accept the balance which has been deposited in your office and declines to make the formal assignment and surrender of the note, then the Registrar should continue to hold the deposit as a bailee until the cause of action that gave rise to the attachment is fully litigated. If the plaintiff prevails and executes on the vehicle then the sheriff is required by the provisions of 52-309, supra, to apply the proceeds of the sale to the repayment of the sum deposited with the Registrar by the attaching creditor and then to apply the balance in like manner as the proceeds of sales under execution are applied in other cases. Thus, the title to the vehicle will pass to the vendee at the sheriff's sale if the property is sold on execution, and the mortgagee or conditional sales vendor will be compelled to accept the money deposited with the Registrar in full payment of his lien against the vehicle.

The Registrar should not take the initiative and forward the money to the lienholder without first ascertaining if the lienholder wishes to accept the payment, because it may very well be that the debtor may make other arrangements for paying his debt, or the plaintiff may not be successful in the suit, and if such is the case, then the

lienholder and mortgagor may wish to continue their relationship under the terms of their contract, and the Registrar will then return the money deposited with him to the person depositing the same.

Before accepting any deposit the Registrar should require that the depositor supply evidence that a suit has been started and that a writ of attachment has been issued.

Very truly yours,
ARNOLD H. OLSEN
Attorney General