

**Opinion No. 86.****Motor Vehicles—Liens, Recording of.**

HELD: 1. No lien may be placed upon any motor vehicle unless the application for recording of the lien is accompanied by the certificate of ownership, and the lien is endorsed upon the face of the certificate.

2. Liens which have been placed in the files of the registrar of motor vehicles and which were not accompanied by the certificate are invalid, and should be removed from the files of that department.

August 4, 1954.

Mr. John L. Hoffman  
Deputy Registrar of Motor Vehicles  
Deer Lodge, Montana

Dear Mr. Hoffman:

You have requested my opinion upon the following question:

"May a valid lien be filed against a motor vehicle if the certificate of ownership is not delivered to the registrar of motor vehicles together with the request for the filing of the lien, and, as a result, the lien is not endorsed upon the face of the certificate of ownership?"

Liens upon motor vehicles are not filed in the same manner as liens upon other types of property in this state. The filing of liens on motor vehicles is governed by a special statute. Section 53-110, R.C.M., 1947, which, as far as it is here pertinent, provides:

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

new motor vehicle by a duly licensed dealer, and when such mortgage, conditional sales contract, lease or other lien or certified copy thereof is so presented for filing the registrar shall file the same entering upon his records the name and address of the mortgagee, conditional sales vendor, lessor, or other lienor together with the amount of the lien and **he shall at the same time endorse the same information upon the face of the certificate of ownership, mailing a statement certifying to the filing of such mortgage, conditional sales contract, lease or other lien, to the mortgagee, vendor, or other lienor and mail the certificate of ownership to the owner at the address given on said certificate. The owner being the person entitled to operate and possess such motor vehicle.**" (Emphasis supplied.)

Section 53-110, supra, was enacted as part of Ch. 159, Laws of 1933, and was included in the Revised Codes of Montana, 1935, as Section 1758.3. At that time no provision was made for the filing of liens, or for the endorsement of chattel mortgages or other encumbrances on the face of the certificate of ownership. The Section at that time provided:

"(a) No chattel mortgage or conditional sales contract on a motor vehicle shall be valid as against creditors or subsequent purchasers or encumbrancers until the mortgage or conditional sales vendor therein named is registered as the legal owner thereof as herein provided."

In the case of *Rigney v. Swingley*, 112 Mont. 104, 113 Pac. (2d) 344, our Supreme Court held this section sufficient to protect an innocent purchaser, relying on the record title, against an unrecorded mortgage, but pointed out that a conflict of authority existed as to whether the ownership certificate was determinative of legal ownership under such a statute. The next session of the State Legislature enacted Section 53-110 (a), supra, in its present form. This section added the requirements that mortgages, liens, or other encumbrances should not be placed upon record, and should not be valid, unless the certificate of ownership was

delivered to the registrar with the application for recording of the encumbrance, and the encumbrance recorded upon the face of the certificate at that time.

The plain meaning of the words of the statute indicate that the legislature intended that only those liens which were endorsed upon the face of the certificate of ownership should be valid encumbrances against the vehicle, and that any possible ambiguity which may have existed under the previous statute should be wiped out. It is the declared intention of the legislature that the face of the certificate should contain all information necessary to show the full and accurate current state of the title to the automobile, and that a certificate, free of all encumbrances should be a guarantee to the prospective purchaser or lienor that he is dealing with a vehicle unencumbered in any way.

It necessarily follows that mere filing in the office of the registrar is no longer sufficient to place a lien on the vehicle, as was possible under the law prior to 1943. Endorsement upon the face of the certificate is now indispensable to the creation of a valid lien.

It is, therefore, my opinion that no lien may be placed upon any motor vehicle unless the application for recording of the lien is accompanied by the certificate of ownership, and the lien is endorsed upon the face of the certificate of ownership.

It is also my opinion that any liens which have been placed in the files of the registrar of motor vehicles and which were not accompanied by the certificate of ownership or endorsed upon the certificate are invalid, and should be removed from the files of that department.