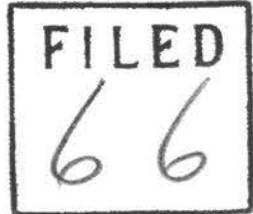


RECORDERS -- DUTIES AS TO CHATTEL MORTGAGES:

It is not necessary that a certificate of title be presented at the time a chattel mortgage on an automobile is recorded.

July 28, 1944.



Mr. Chas. A. Neumann
Chief Deputy Recorder
City of St. Louis
St. Louis, Missouri

Dear Mr. Neumann:

This is to acknowledge your request for an official opinion, dated July 17, 1944, which is as follows:

"We would like to have your ruling on this question of Chattels.

"Is it legal to file a chattel on an automobile, and then later, say four or six weeks, come in to certify same?

"It is our thought that the title should be presented at the time of filing of chattel.

"Awaiting your early reply, and thanking you in advance, we are,
* * "

Section 3488, Laws of Missouri, 1941, page 329, reads as follows:

"Certification of filing chattel mortgage on motor vehicles -- release, fee, certain exemptions. -- It shall be the duty of the recorder of deeds, on request of the mortgagee, or his assignee, to certify on the certificate of title to the mortgaged motor vehicle, that such chattel mortgage has been filed showing the date, the amount of the mortgage and the name of the payee. When such chattel mortgage

is released it shall be the duty of the recorder to so show on the certificate of title. For services herein provided the recorder shall receive a fee of twenty cents (20 Cts.). A mortgage on a motor vehicle shall not be notice to the whole world, unless the record thereof is noted on the certificate of title to the mortgaged motor vehicle, as herein provided. Provided, however, that the provisions of this section shall not apply to chattel mortgages given to secure the purchase price or any part thereof or to a motor vehicle sold by the manufacturer or their distributing dealers, or to a chattel mortgage given by dealers to secure loans on the floor plan stock of motor vehicles."

It can be seen from the above that it is "legal" to file a chattel mortgage on an automobile irrespective of whether or not the title is presented at the time. The statute is plain in its meaning wherein it says: "on request of the mortgagee, or his assignee."

It is the recorders duty to file the chattel upon the same being presented and the fee being paid. If the mortgagee or his assignee does not request a certification of the title, it does not preclude the recorder from filing the chattel.

It follows, therefore, that it makes no difference when the mortgagee, or his assignee, makes the request for the certification.

The statute is somewhat peculiar in that it specifically provides that the section will not apply to chattel mortgages given to secure a purchase price of a motor vehicle sold by a manufacturer or distributing dealer.

This section has been interpreted once in this state in the case of Interstate Securities Co. V. Barton, 153 S.W. (2d) 393, in which case the court construed the statute in the following words, l.c. 396:

"Section 8382, R. S. Mo. 1939, Mo. St. Ann. Sec. 7774, p. 5193, and particularly the proviso at the close of paragraph (c) thereof, provides the method by which the purchaser of a new car secures his certificate of title, but no mention is made relative to recording liens or encumbrances on the certificate of title to a new car; nor does the statute, anywhere, provide that a chattel mortgage given for the purchase price of a new car, from a dealer, shall not give notice to the world unless the recorder or any one else enters a memorandum on the certificate of title of the existence of such mortgage. In the case of Vetter v. Browne, 231 Mo. App. 1147, 85 S.W. 2d 197, it is expressly held that liens or encumbrances referred to in paragraph (c) applies only to used or second-hand automobiles.

"It has also been held in a case analogous in some respects to the case at bar, that a finance company, in a suit to replevin an automobile, may recover although the transaction between the parties to the sale of such automobile was void from the fact that there was a failure to comply with the provisions of Section 7774, R. S. Mo. 1929, Mo. St. Ann. Sec. 7774, p. 5193, said section appearing as Section 8382, R. S. Mo. 1939, and in substantially the same language, assuming that plaintiff had no notice of failure to deliver a certificate of title or of any infirmities therein. National Bond

& Investment Co. v. Miller, Mo. App.,
76 S.W. 2d 703.

"Since we hold that Section 3488, supra, does not apply to mortgages given to a dealer to secure the purchase price of a new automobile, the same being exempt by the proviso at the close of said Section, the proper filing of such mortgage with the Recorder of Deeds in the proper county, gives notice to the world of its existence under the provision of Section 3486, R. S. Mo. 1939, Mo. St. Ann. Sec. 3097, p. 1919." * * *

CONCLUSION

It is therefore the opinion of this office that it is legal to file a chattel mortgage on a motor vehicle without presenting the title for certification at the time the mortgage is filed. It is further the opinion of this office that in the case of chattel mortgages filed by manufacturers or their distributing agents, the mortgage so filed notwithstanding the fact that the title has not been certified, is notice to the world in the same manner as any other chattel mortgage.

Respectfully submitted

GAYLORD WILKINS
Assistant Attorney General

APPROVED:

ROY McKITTRICK

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