

Opinion No. 46-4962

November 1, 1946

BY: C. C. McCULLOH, Attorney General

TO: Mr. J. S. Mitchell, Director Motor Vehicle Division Bureau of Revenue Santa Fe, New Mexico

{*282} This is to acknowledge receipt of your letter of October 30, 1946, in which you request the opinion of this office as to whether you are authorized to file a chattel mortgage in your office on a vehicle which has not been titled in the State of New Mexico.

The answer to your question lies in the specific provisions of Sections 68-115 and 68-117 of the N.M. 1941 Compilation, which provide as follows:

Section 68-115:

"Every chattel mortgage, conditional sales contract, lease, purchase lease, sales lease, contract or other instrument in writing having the effect of a mortgage or lien or encumbrance upon, or intended to hold, the title to any vehicle in the former owner, possessor or grantor shall hereafter be filed with the motor vehicle department. **Except that encumbrances against vehicles not titled in New Mexico shall be {*283} filed with the county clerk of the county where the vehicles are so encumbered.**" (Emphasis ours.)

Section 68-117:

"Upon the filing with the department of said instrument described in Section 10 (§ 68-115) hereof, or a copy thereof accompanied by the certificate or certificates of title as herein provided, the clerk of said department shall endorse thereon a filing number in consecutive order, together with the time and date of its reception, and shall retain the same in the files of the department. **No such instrument shall be filed by said department as provided herein unless the same shall be accompanied by the certificate of title issued by the department to the owner of the vehicle described in such instrument.** The department, upon the filing of such instrument as provided herein, shall cancel such certificate of title and issue a new certificate of title as herein provided." (Emphasis ours.)

In view of the clear language of the above statutes, I am of the opinion that you are not authorized to file a chattel mortgage in your office on a vehicle unless the mortgage is accompanied by a certificate of title, or unless the vehicle has been previously titled in this State.

By WILLIAM R. FEDERICI,

Asst. Atty. General