

## **Opinion No. 62-30**

February 6, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

**TO:** Mr. Reyes R. Padilla, Commissioner, Department of Motor Vehicles, Santa Fe, New Mexico

### **QUESTION**

#### **QUESTIONS**

1. Do the provisions of the Uniform Commercial Code apply or affect the provisions of Section 64-5-1, New Mexico Statutes Annotated, 1953 Compilation, with regard to instruments required to be filed with the Motor Vehicle Division, which instruments create a lien or encumbrance on a vehicle required to be registered under the Motor Vehicle Code?
2. Do instruments filed pursuant to the provisions of Section 64-5-1, New Mexico Statutes Annotated, 1953 Compilation, have to be acknowledged in order to be filed with the Motor Vehicle Division?

#### **CONCLUSIONS**

1. See analysis.
2. No.

### **OPINION**

#### **ANALYSIS**

In your first question inquiry is made as to whether the provisions of Section 64-5-1, N.M.S.A., 1953 Compilation, relating to the manner and procedure for filing liens and encumbrances against motor vehicles, are affected by the provisions of the Uniform Commercial Code, Section 64-5-1, N.M.S.A., 1953 Compilation referred to above, provides in part as follows:

"(a) No conditional sale contract, conditional lease, chattel mortgage, or other lien or encumbrance or title retention instrument upon a vehicle of a type required to be registered hereunder, other than a lien dependent upon possession, is valid as against the creditors of an owner acquiring a lien by levy or attachment or against subsequent purchasers or encumbrancers without notice until the requirement of this article has been complied with.

(b) There shall be deposited with the division the original or a copy of the instrument creating and evidencing the lien or encumbrance which instrument shall be executed in the manner required by the laws of this state. When a copy of the instrument is filed there shall be attached to or endorsed upon the instrument a certificate of a notary public stating that the same is a true and correct copy of the original. The instrument deposited with the division shall be accompanied by the certificate of title last issued for the vehicle named in the instrument."

Section 50A-9-302, N.M.S.A., 1953 Compilation, expressly designates what transactions are excluded from the provisions of the Uniform Commercial Code and the necessity for filing pursuant to the Code. This section provides as follows:

"(1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under section 9-305 (50A-9-305);

(b) a security interest temporarily perfected in instruments or documents without delivery under section 9-304 (50A-9-304) or in proceeds for a 10 day period under section 9-306 (50A-9-306);

(c) a purchase money security interest in farm equipment having a purchase price not in excess of \$ 2,500; but filing is required for a fixture under section 9-313 (50A-9-313) or for a motor vehicle required to be licensed;

(d) a purchase money security interest in consumer goods; but filing is required for a fixture under section 9-313 (50A-9-313) or for a motor vehicle required to be licensed;

(e) an assignment of accounts or contract rights which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts or contract rights of the assignor;

(f) a security interest of a collecting bank (section 4-208 (50A-4-208) or arising under the article on Sales (see section 9-113 (50A-9-113) or covered in subsection (3) of this section.

(2) If a secured party assigns a perfected security interest, no filing under this article is required in order to continue the perfected status of the security interest against creditors of the transferees from the original debtor.

**(3) The filing provisions of this article do not apply to a security interest in property subject to a statute**

(a) of the United States which provides for a national registration or filing of all security interests in such property;

or

**(b) of this state which provides for central filing of, or which requires indication on a certificate of title of, such security interests in such property.**

(4) A security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official." (emphasis supplied).

Under the wording of the above section, it is not necessary to file a financing statement pursuant to the Uniform Commercial Code in order to perfect a security interest in a motor vehicle required to be registered and having a certificate of title issued by this State.

As specified in the official code comment to the Uniform Commercial Code, Section 9-302, in states wherein legislation has been adopted governing certificate of title requirements for motor vehicles, and where such statutes require the entry of all security interest on such certificate of title, then such transactions are exempted from the filing requirements specified under the provisions of the Uniform Commercial Code. The official code comment under this section sets out in part:

"8. Subsection (3) exempts from the filing provisions of this Article transactions as to which an adequate system of filing, state or federal, has been set up outside this Article and subsection (4) makes clear that when such a system exists perfection of a relevant security interest can be had only through compliance with that system (i.e., filing under this Article is not a permissive alternative.)

\* \* \*

Some states have enacted central filing statutes with respect to security transactions in kinds of property which are of special importance in the local economy. Subsection (3) (b) adopts such statutes as the appropriate filing system for such property.

**In addition to such central filing statutes many states have enacted certificate of title laws covering motor vehicles and the like. If a certificate of title law requires the indication of all security interests on the certificate, Subsection (3) (b) exempts transactions covered by the law from the filing requirements of this Article. (Alternative A).**

\* \* \*

9. Perfection of a security interest under a state or federal statute of the type referred to in subsection (3) has all the consequences of perfection under the provisions of this Article." (emphasis supplied).

The State of New Mexico requires all persons seeking to perfect any lien or encumbrance, or to retain title, upon any motor vehicle of a type required to be registered by law, must file with the Division of Motor Vehicles the original or a copy of such instrument creating such lien, encumbrance or title retention.

Section 64-5-2, N.M.S.A., 1953 Compilation, provides in part that:

"(a) The filing with the division and the issuance of a new certificate of title by the division as provided in Section 72(64-5-1), shall constitute constructive notice of all liens and encumbrances against the vehicle described therein to creditors of the owner, to subsequent purchasers and encumbrancers except such liens as may be authorized by a law dependent upon possession.

\* \* \*

**(b) The method provided in this article (64-5-1, 64-5-2) of giving constructive notice of a lien or encumbrance upon a registered vehicle shall be exclusive, except as to liens dependent upon possession and any said lien or encumbrance or title retention instrument filed as herein provided, and any documents evidencing the the same are hereby exempted from the provisions of law which otherwise require or relate to the recording or filing of instruments creating or evidencing title retention or other liens or encumbrances upon vehicles of a type subject to registration hereunder." \* \* \* (emphasis supplied)**

Under Section 64-5-2, N.M.S.A., 1953 Compilation, above, the method for perfecting a lien, encumbrance, or title retention, upon motor vehicles required to be registered under the law, is declared to be exclusive of the provisions of any other law which otherwise requires or relates to the recording or filing of instruments creating or evidencing title retention upon motor vehicles of a type subject to registration in this State.

In Anderson's Uniform Commercial Code, Vol. 2, Section 9-302:6, at page 545, it is stated in respect to the provisions of the Uniform Commercial Code and the code's relation to motor vehicles that:

"When a federal or state statute requires a national or a statewise registration, respectively, or a filing as to title and security interest, or requires a notation of a Security interest on a certificate of title, a secured party must comply with such statute and is not required to file a financing statement under the Commercial Code.

\* \* \*

When a security interest is perfected under a federal or state statute as above described it is a perfected interest with the same consequences as if it has been perfected under the Code."

We conclude that under a plain reading of the above statutes and authorities that the provisions of the Uniform Commercial Code do not apply to the perfection of liens, encumbrances, or title retention creating a security interest in motor vehicles. In **Union National Bank & Trust Co. v. Geyer Auction, Inc.**, (1958) 18 D. & C. 2d., 98, in a case construing the Uniform Commercial Code in Pennsylvania, it was held similarly, that the statutes relating to the filing of liens upon motor vehicles were intended as an exclusive recording system for motor vehicle titles and for legally adequate notice of motor vehicle liens, and that the Uniform Commercial Code does not apply to perfecting liens or encumbrances or "security interests" in motor vehicles. In this case the court held that "It is clear that the General Assembly did not intend that motor vehicles should fall within the terms or the purview of the Uniform Commercial Code." See also **Girard Trust Corn Exchange Bank v. Warren Lepley Ford, Inc.**, (1957) 12 D. & C. 2d. 351.

In your second question, you inquire as to whether or not it is necessary for instruments creating and evidencing title retention or a lien or encumbrance upon motor vehicles, to be acknowledged in order to be filed with the Motor Vehicle Division.

Section 64-5-1, N.M.S.A., 1953 Compilation, expressly provides in part that:

"(b) There shall be deposited with the division the original or a copy of the instrument creating and evidencing the lien or encumbrance **which instrument shall be executed in the manner required by the laws of this state.<\*\*\*>**" (emphasis supplied).

Former Sections 50-11-1 through 50-11-4, and 61-8-1 through 61-8-14, N.M.S.A., 1953 Compilation, as amended, specifically relating to the legal requisites incident to the creation, execution and filing of Conditional Sales Contracts and Chattel Mortgages, have been expressly repealed by the Uniform Commercial Code.

Section 71-1-3, N.M.S.A., 1953 Compilation, as amended, relates to the necessity for including acknowledgments upon all instruments submitted for filing unless excepted therein. This section provides as follows:

"Any instrument of writing, duly acknowledged and certified, may be filed and recorded. Any instruments of writing, not duly acknowledged and certified, may not be filed and recorded, nor considered of record, though so entered; Provided, however, that judicial decrees or certified copies, patents, land office receipts, certified copies of foreign wills duly authenticated, and instruments of writing in any manner affecting lands in the state, when these instruments have been duly executed by an authorized public officer, need not be acknowledged but may be filed and recorded; and, Provided further, any financing agreement or security agreement required to be filed under the provisions of the Uniform Commercial Code (50A-1-101 to 50A-9-507) is not required to be acknowledged in order to be filed and recorded."

Section 64-5-2, N.M.S.A., 1953 Compilation, specifically provides that the method provided under Sections 64-5-1 and 64-5-2, N.M.S.A., 1953 Compilation for giving constructive notice of a lien or encumbrance upon a registered vehicle shall be

exclusive of the provisions of law which otherwise require or relate to the recording or filing of instruments creating or evidencing title retention or other liens or encumbrances upon vehicles of a type subject to registration.

This section sets out in part as follows:

"(b) The method provided in this article (64-5-1, 64-5-2) of giving constructive notice of a lien or encumbrance upon a registered vehicle shall be exclusive, except as to liens dependent upon possession, and any said lien or encumbrance or title retention instrument filed as herein provided, and any documents evidencing the same are hereby exempted from the provisions of law which otherwise require or relate to the recording or filing of instruments creating or evidencing title retention or other liens or encumbrances upon vehicles of a type subject to registration hereunder."

Under the provisions of the above statutes it is our opinion that the provisions of Sections 64-5-1 and 64-5-2, N.M.S.A., 1953 Compilation, were intended to provide an exclusive statutory procedure whereby constructive notice of a lien or encumbrance is sought to be created upon vehicles of a type subject to registration under the laws of New Mexico. As we interpret subsection (b) of Section 64-5-2, N.M.S.A., 1953 Compilation, the provisions of this section do not require the inclusion of acknowledgments upon instruments creating a lien, encumbrance or title retention upon motor vehicles required by law to be registered.

The provisions formerly contained in the statutes relating to conditional sales contracts and chattel mortgages were repealed by provision of the Uniform Commercial Code, and as we interpret Section 71-1-3, N.M.S.A., 1953 Compilation, the references to the requirements for acknowledgments contained therein are not applicable to instruments filed with the division of motor vehicles. Section 71-1-3, N.M.S.A., 1953 Compilation, appears to have application only to instruments filed with the County Clerk, and the instruments filed with the Division of Motor Vehicles would not be subject to such statutory provision. Sections 64-5-1 and 64-5-2, N.M.S.A., 1953 Compilation, except liens filed thereunder from the recording or filing provisions contained elsewhere in other statutes.

In addition, Section 64-5-2, N.M.S.A., 1953 Compilation, constitutes specific legislation which would be controlling over the more general statute, and Section 64-5-2, N.M.S.A., supra, was enacted last by the legislature and would appear to be the only statute controlling as to the legislative requisites necessary for filing.

Based upon a careful study and interpretation of the above statutes, we conclude that the Motor Vehicle Division should accept for filing all instruments, with or without acknowledgments appearing thereon, filed pursuant to Sections 64-5-1 and 64-5-2, N.M.S.A., 1953 Compilation, and which instruments create and evidence a lien or encumbrance, or title retention upon motor vehicles required to be registered.