

Opinion No. 63-56

May 22, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr Benny E. Sanchez Commissioner of Motor Vehicles Santa Fe, New Mexico

QUESTION

QUESTIONS

1. Is a photocopy or carbon copy of an instrument indicating the creation of a lien or encumbrance submitted to the Department of Motor Vehicles for filing in accordance with the Motor Vehicle Code, a valid instrument when it shows actual signature of the debtor or mortgagor?
2. Is a photocopy or carbon copy of an instrument submitted for filing with the Department of Motor Vehicles, a valid instrument acceptable for filing where such is not certified and the signatures thereto are shown to be carbon or photocopies?

CONCLUSIONS

1. Yes, if properly certified by a notary public to be a true and correct copy of the original.
2. No.

OPINION

{*116} ANALYSIS

In your first question you inquire if the Department of Motor Vehicles may properly accept as a valid instrument for filing a photocopy or a carbon copy of an instrument indicating the creation of a lien or encumbrance against a vehicle and which instrument is of a type required to be filed with the Department of Motor Vehicles under the Motor Vehicle Code. The statutory provision governing the filing of liens or encumbrances upon such vehicles is contained in Section 64-5-1, N.M.S.A., 1953 Compilation. This section specifies in part as follows:

"Filing liens and encumbrances. -- (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 requirements of this article have 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. . . . (Emphasis supplied)

Section 64-1-26 (P.S.) N.M.S.A., 1953 Compilation, contained in the Motor Vehicle Code defines a "lien or encumbrance" as employed in Section 64-5-1, above, to include every chattel mortgage, conditional sales contract, lease, purchase lease, sales lease, contract, security interest under the Uniform Commercial Code 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.

Under the provisions of Section 64-5-1, supra, it is required that unless the original instrument evidencing the creation of a valid lien or encumbrance is submitted to the Motor Vehicle Department for filing then all copies must contain or have attached thereto a certificate of a notary public stating that such copy is a true and correct copy of the original.

Thus, it is clear from the language of Section 64-5-1, that for purposes of acceptance for filing under the Motor Vehicle laws of this state either a photocopy or a carbon copy of an instrument creating a lien or encumbrance may be received and filed by the department if such instrument is properly certified by a notary public (pursuant to the provisions of Section 35-1-8, N.M.S.A., 1953 Compilation) indicating that the instrument is a true and correct copy of the original.

Your second question poses the problem of whether or not a photocopy or a carbon copy of an instrument sought to be filed under the provisions of the Motor Vehicle laws of New Mexico may be accepted for filing if the signature {**117*} thereto is a carbon copy or photocopy of a signature and such is not certified as a true copy of an original.

As discussed in our answer to the first question herein, Section 64-5-1, supra, states that if the instrument submitted for filing is not the original then such must contain a proper certificate of a notary public that the instrument is a true and correct copy of the original thereof, in order to be properly acceptable for filing with the Department of Motor Vehicles.

Under Attorney General's Opinion No. 62-126, dated October 9, 1962, it was held that the Secretary of State could properly accept instruments submitted to that office for filing under the provisions of the Uniform Commercial Code where the signatures on such instruments were carbon copies or photocopies of signatures of the parties signing such documents. That opinion did not deal with the validity of instruments required to be filed with the Department of Motor Vehicles and as held in Attorney General's Opinion

No. 62-30, February 6, 1962, the Motor Vehicle Code of New Mexico, rather than the Uniform Commercial Code is controlling as to the manner and method by which instruments creating liens, encumbrances or title retention are perfected to those vehicles which must be registered under the Motor Vehicle Code.

We therefore conclude in respect to your second question that any instrument submitted for filing to the Department purporting to create a lien, encumbrance or title retention to a vehicle under the provisions of the Motor Vehicle Act, must, if not actually the original instrument or a duplicate original thereof, contain, pursuant to Section 64-5-1, supra, a proper certificate of a notary public indicating that such is a true and correct copy of the original instrument. An instrument which is a photocopy or carbon copy of another instrument, and which bears a signature thereon which is shown to be a photocopy or carbon copy, would not in our opinion constitute an instrument which is an original copy within the meaning and contemplation of Section 64-5-1, supra, and the Department of Motor Vehicles should under the statute limit its acceptance of instruments evidencing liens or encumbrances and of such nature to those bearing a certificate of a notary public showing the document to be a true and correct copy of the original.

By: Thomas A. Donnelly

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