

Opinion No. 41-3825

June 27, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. J. O. Garcia Motor Vehicle Commissioner Santa Fe, New Mexico. Attention: Mr. Alfonso C. de Baca, Chief Clerk

{*72} Your letter dated June 26, 1941, requests an opinion by the Attorney General's office upon several questions relative to the new motor vehicle registration law, being Chapter 140, Laws of 1941, or Senate Bill 198.

Your first question is as follows:

"Should filing with the Motor Vehicle Department under the new act be made by the individual dealer, as they are at present with the various County Clerks, or by General Motors Acceptance Corporation?"

By this question I take it that you refer to the filing of security devices. Section 10, Chapter 140, Laws of 1941, provides that every security device "shall hereafter be filed with the Motor Vehicle Department." I am of the opinion that any person may file these instruments. If it is more convenient for the dealer than the dealer's assignee to file these instruments, then I believe the dealer should file the device. When a dealer sells a car on the installment plan he should mail to your department a copy of manufacturer's certificate of title, an application for title, a copy of the security device, and the necessary fees for filing.

Your department will then issue a certificate of title showing the nature of the purchaser's title and the nature of any lien against the motor vehicle; if the lien has been assigned by the dealer to a financing concern, as shown by the security device, then certificate of title should state that lien is held by that concern.

The second question is

"Under the new law, is it necessary to have contracts acknowledged by a Notary Public?"

The new law contains no statement as to the form and content of security devices. I am of the opinion that our general law still applies. Section 21-301, New Mexico Statutes Annotated, 1929 Compilation, requires that security devices be acknowledged. In this connection I wish to advise you that when such an instrument is not properly acknowledged, it is not entitled to be filed in your office.

Your third question reads as follows:

"Your opinion is requested as to the manner and method of procedure in satisfying encumbrances on motor vehicles."

Section 18, Chapter 140, Laws of 1941, provides as follows:

"The holder of a lien or encumbrance upon or against any vehicle shall forthwith, upon the payment in full of the indebtedness secured by such lien or encumbrance, deliver to the owner of such vehicle a written release thereof. Upon the filing of such release with the motor vehicle department, accompanied by the certificate of title, such certificate of title shall be cancelled and a new certificate of title issued. Such release shall be filed without charge, but the sum of twenty-five cents shall be charged for the issuance of a new certificate of title when requested by the registered owner thereof, accompanied by the certificate of title formerly issued."

In view of the foregoing section, I am of the opinion that "holder" means the person in whom rights of a security device finally come to rest. If the person is a dealer, then the dealer should file the release; if the dealer has assigned his lien to a financing concern (and the certificate of {73} title accompanying the release would so show), then the financing concern would be the proper "person" to file the release.

Your last question reads as follows:

"Another questions raised has been the constitutionality of the act. Section 22 of the act deals with the refiling of all encumbrances which are on file at the effective date of this act within six months thereafter and also the bill as enacted has no several ability clause. Therefore, if General Motors Acceptance Corporation proceeds to make its filings with this office as required by the new act, not filing with the County Clerks as in the past, and should the new act be subsequently held unconstitutional, then and in that case would the rights of the General Motors Acceptance Corporation be fully protected?"

I am of the opinion that the position taken by the General Motors Acceptance Corporation as stated in the foregoing question is untenable. To say that a law is unconstitutional because it might be declared unconstitutional is certainly neither logical nor based upon any proper concept of constitutional law. It is my opinion that when filings are made in accordance with the provisions of the law, those persons so filing will be fully protected in their rights.

Trusting that the foregoing sufficiently answers your inquiry, I am

By GEO. H. HUNKER, Jr.

Asst. Atty. General