

## Opinion No. 41-3848

July 25, 1941

**BY:** EDWARD P. CHASE, Attorney General

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

{\*81} In response to the many requests from District Attorneys and private individuals throughout the state for an opinion from this office as to the enforcement of the new motor vehicle registration law, we are addressing this opinion to you for your help in performing your duties under Chapter 140, Laws of 1941.

1. It is our opinion that your department should collect only 25c for the filing and issuance of a certificate of title. (See Section 17, Chapter 140, Laws of 1941).
  2. Where a release is given to an owner, the fee to be charged for filing the same and for issuing a new certificates of title is 25c. (See Section 18, Chapter 140, Laws of 1941).
  3. In cases of transfers of ownership in a motor vehicle, we are of the opinion that a \$ 1.00 charge should be made. (See Section 14, Chapter 140, Laws of 1941). This fee is to be charged only on absolute transfers and not for the certificate issued after a lien instrument or a release has been filed.
  4. We are of the opinion that when a lien is filed with your department, the previously issued certificate of title should not be endorsed on the back. The giving of a lien by the owner does not constitute a change in the ownership under the terms of this law. The title remains in the owner, subject to a lien.
  5. We would also like to call to your attention the provisions of Section 8 of this Act, which provide:  
  
"The department shall only show in the certificate of title such liens or encumbrances upon or against the vehicle therein described as shall have theretofore been filed with said department."
- In view of the foregoing section, we are of the opinion that only those lien instruments which are filed with your department are entitled to be shown, and must be so shown, on certificates of title issued after the provisions of this law went into effect.
6. Further, inasmuch as Section 10 provides that all lien instruments on vehicles "shall hereafter be filed with the Motor Vehicle Department," it is our opinion that all lien instruments which are not filed with the department are void as to those persons described in Section 13. (See Section 13, Chapter 140, Laws of 1941). We view this

new registration law not as one which repeals the provisions of the law allowing the filing of liens with the county clerk, but merely as a law which supersedes it as to those vehicles defined in subsection (a) and subsection (b), Section 1, Chapter 140, Laws of 1941. In order for persons to obtain the protection of filing, we are of the opinion {<sup>\*82</sup>} that those persons must file their lien instruments with the Motor Vehicle Department here in Santa Fe.

7. Your letter dated July 25 asks for our opinion as to whether or not lien instruments upon the following articles may be filed with your department:

Trailers or semi-trailers

Horse drawn vehicles

Tractors

Section 10, Chapter 140, Laws of 1941, provides that all lien instruments upon **vehicles** shall hereafter be filed with the Motor Vehicle Department. Subsection (a) of Section 1 defines a vehicle as:

"'Vehicle.' Every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks."

If horse drawn vehicles and tractors are operated upon a public highway, liens obtained thereupon may certainly be filed with your department. We are of the further opinion that trailers and semi-trailers are vehicles and that lien instruments obtained thereupon may be filed with your department. Had the words "motor vehicles" been used in Section 10, then, clearly, only mortgages on self-propelled vehicles could be filed with your department.

By GEO. H. HUNKER, Jr.,

Asst. Atty. General