

Opinion No. 42-4201

December 12, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Robert W. Reidy Assistant District Attorney Albuquerque, New Mexico

{*290} We have your letter of December 2, 1942, requesting an opinion on the question contained in a letter previously received by us from the Motor Finance Company. This question is:

"Where a party owns an automobile against which he owes a balance to a finance company and such owner later sells his equity in this automobile and the purchaser thereof assumes the balance due to the finance company, is it necessary (a) that the finance company first release its mortgage against the original owner and take a new mortgage from the purchaser, or that (b) the seller, purchaser and finance company join in together and execute a Transfer of Equity in order for the State Automobile License Bureau to issue new title and registration certificates in the name of the purchaser?"

In my opinion, the following sections of the New Mexico Statutes Annotated, 1941, are pertinent:

Section 68-112 which provides:

"Upon the filing with the department of a lien or encumbrance against the vehicle as provided herein, or the release of any lien or encumbrance, **or** the transfer of title to **or interest in the vehicle**, accompanied by the original certificate of title so previously issued and outstanding the department shall thereupon cancel the original certificate of title previously issued and retain and appropriately file every such canceled certificate of title, and shall thereupon issue and deliver a new certificate or certificates of title as hereinabove provided."

Section 68-124:

"In case of the transfer of ownership of any vehicle the department, upon receipt of the application for registration by the transferee, accompanied by the certificate of title theretofore issued by the department to the former owner, properly assigned by such former owner, shall cancel the said certificate of title so theretofore issued and shall issue to such transferee a new certificate of title as herein provided for the issuance of the original certificate of title."

Section 68-215:

"(a) Whenever the owner of a vehicle registered under the foregoing provisions of this act transfers or assigns this (his) title **or interest thereto**, the registration of such

vehicle, together with the number plates originally assigned thereto, shall be transferred to the transferee as hereafter provided. * * * *

{*291} (c) The department on receipt of such transfer fee and the certificate of title and registration card bearing the endorsement of the name and address of the transferee shall at once enter a record transferring to the name of the transferee * * * *."

In view of the above sections, it seems that an owner of a motor vehicle such as referred to in the above question, may transfer his interest to a purchaser, and that upon the proper execution of such papers referred to in such sections, the transferee is entitled to a new certificate of title regardless of whether or not the original lien holders have released such lien.

By HARRY L. BIGBEE,

Asst. Atty. General