

## Opinion No. 46-4864

February 25, 1946

**BY:** C. C. McCULLOH, Attorney General

**TO:** Alfonso C. de Baca Assistant Commissioner Motor Vehicle Department Santa Fe, New Mexico

{\*195} We are in receipt of your letter of February 18, 1946, in which you ask our opinion on the following questions:

1. If a lien is filed with the Motor Vehicle Department covering more than one vehicle, and new certificates of title are issued on each vehicle, included in such lien, would the fee be 50 [cents] for each title issued, or only 50 [cents] for all titles issued on the filing of such mortgage?
2. What fee should be charged by the department to issue the original title when no lien is filed?

The answers to your questions depend upon the construction of the phrase "and/or" in Section 68-121 of the 1941 Compilation as amended by Chapter 73 of the Laws of 1943, which insofar as is material reads as follows:

"The motor vehicle department shall collect in advance for the filing and entry of each such instrument described in section 10 (Secs. 68-115) hereof and/or the issuance of such certificate of title the sum of fifty cents (50 [cents])."

The courts uniformly condemn the use of the clause "and/or". From a reading of the cases, it is impossible to place any definite construction on this usage. The only uniform rule appears to be that the words should be construed so as to effectuate the legislative intent.

In view of the foregoing, it is my opinion that if one lien is filed and one license issued that the "and" becomes operative so that one fee of 50 [cents] is charged. Otherwise, the word "and" could never become operative, and a separate fee would be charged for both the filing of the lien and the issuance of the certificate.

If, however, a lien is filed and no certificate issued, or a certificate is issued without the filing of the lien, it is my opinion that the "or" becomes effective so that a fee of 50 [cents] should be charged in either of these cases. Otherwise, the word "or" would not become effective in the above quoted clause.

Thus, in answer to your second question, a fee should be charged upon the issuance of a certificate of title where no lien is filed.

If one lien is filed covering several automobiles so that several certificates of title are issued, it is my opinion that a separate fee of 50 [cents] {*\*196*} should be charged for the issuance of each certificate of title. This appears to me to be the legislative intent. As demonstrated above, a charge of 50 [cents] is made for issuing each certificate of title where no lien is filed. It could not have been contemplated by the Legislature that a fee of 50 [cents] each would be charged for the issuance of each new certificate of title and a fee of only 50 [cents] be charged for the filing of a mortgage and, for instance, the issuance of 25 certificates covered by such mortgage.

Thus, the answer to your first question would be that a separate fee should be charged for each certificate issued under the mortgage.

By ROBERT W. WARD,

Asst. Atty. General