1867.

LIEN — AGAINST MOTOR VEHICLE — NOT VALID WHERE RECORDED ON CERTIFICATE OF TITLE ISSUED IN COUNTY OTHER THAN COUNTY WHERE OWNER RESIDED AT TIME APPLICATION FOR SUCH CERTIFICATE MADE.

SYLLABUS:

A lien against a motor vehicle is not valid where the certificate of title on which the said lien is noted was issued in a county other than the county in which the owner of such motor vehicle resided at the time the application for said title was made.

Columbus, Ohio, February 17, 1940.

Hon. Cylon W. Wallace,
Registrar, Bureau of Motor Vehicles,
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of a request from your office for my opinion which reads as follows:

> "Will you please give us your opinion as to whether or not a lien against a motor vehicle is valid in a case where the Certificate of Title was issued in a County other than the County of the motor vehicle owner's residence?

For your information Section 6290-5 G. C. states in part that the applicant for Certificate of Title must apply for Title in the County of his residence. Section 6290-9 G. C. states in part and in substance that the lien must be recorded in the office of the County Clerk of Courts who issued the Title."

The Certificate of Title Law was passed by the legislature April 28, 1937, as Amended House Bill No. 514 and entitled "An act to prevent the importation of stolen motor vehicles and thefts and frauds in the transfer of title to motor vehicles * *." It was imperative that a uniform law be enacted to provide a system of recording the titles to motor vehicles.

Material to the question herein are Sections 6290-4 and 6290-5, General Code.

Section 6290-4, General Code, provides:

"No person acquiring a motor vehicle from the owner thereof whether such owner be a manufacturer, importer, dealer or otherwise, hereafter shall acquire any right, title, claim, or interest in or to said motor vehicle until he shall have had issued to him a certificate of title to said motor vehicle, or delivered to him a manufacturer's or importer's certificate for the same; nor shall any waiver or estoppel operate in favor of such person against a person having possession of such certificate of title or manufacturer's or importer's certificate for such motor vehicle for a valuable consideration. No court in any case at law or in equity shall recognize the right, title, claim, or interest of any person in or to any motor vehicle, hereafter sold or disposed of, or mortgaged or encumbered, unless evidenced by a certificate of title or manufacturer's or importer's certificate duly *issued, in accordance with the provisions of this chapter.*" (Emphasis mine.)

Clearly, under the above section a person cannot acquire title to or any interest in a motor vehicle unless he has a certificate of title issued to him in accordance with the provisions thereof.

Section 6290-5, General Code, provides in part as follows:

"Application for a certificate of title shall be made upon a form hereinafter prescribed by this chapter; and shall be sworn to before a notary public or other officer empowered to administer oaths; *and shall be filed with the clerk of courts of the county in which the applicant resides* if the applicant be a resident of this state or if not such resident, in the county in which the transaction is consummated; * * *" (Emphasis mine.)

Under the above sections the legislature has stated that the application for the certificate of title *shall* be filed with the clerk of courts of the county of applicant's residence, if he be a resident of the State of Ohio. Discussing the meaning of the word "shall" it was stated in 59 C. J., at pages 1079, 1080, 1081 and 1082:

> "As a general rule the word 'may,' when used in a statute, is permissive only and operates to confer discretion, while the word 'shall' is imperative, operating to impose a duty which may be enforced. Of similar effect and import with 'shall' is the word 'must.' These words, however, are constantly used interchangeably, in statutes, and without regard to their literal meaning; and in each case are to be given that effect which is necessary to carry out the intention of the legislature as determined by the ordinary rules of construction. In determining the intention of the legislature in using the word 'shall,' the court may consider the legislative history of the statute, and the deliberate refusal of the legislature to insert the word 'may' in place of 'shall' shows a settled intention to use the latter word as mandatory."

The intention of the legislature seems clear. In the first place, the word "shall" has been used in the statute. The demand for a uniform law was apparent and if it were said that it was immaterial where such application for a certificate of title was filed then there would be no uniformity and no sure method of ascertaining the true owner of a motor vehicle except through the office of the Bureau of Motor Vehicles of Ohio.

It clearly appears from the above that a certificate of title issued in a county other than the county of the residence of the applicant, if such applicant be a resident of Ohio, gives such party no title or interest in such motor vehicle, since the certificate has not been issued in accordance with the provisions of Section 6290-5, General Code.

We come now to the question of the validity of a lien noted on the face of the certificate of title which was issued in a county other than the county of the motor vehicle owner's residence.

Obviously, if the person has no title to a motor vehicle, a mortgage or conveyance intended to operate as a mortgage executed by him would have no effect and would therefore be invalid.

In 42 C. J., 758, it is stated:

> "However, where the sale of a motor vehicle is void and conveys no title, by reason of a failure to comply with a statute regu-

lating such sales, a chattel mortgage given by the purchaser to secure his note for the purchase price thereof is also void."

In 42 C. J., 774, the following is stated:

"Whether or not the statute includes an express declaration of invalidity, it is held in a number of jurisdictions that a transfer of a motor vehicle cannot be made in any other way than that prescribed, and unless the statutory provisions are complied with, the attempted sale is void, and hence passes neither title nor an insurable interest, nor the right of possession, and gives no rights enforceable at law to either party."

Section 6290-9, General Code, provides as follows:

"The provisions of sections 8560 to 8572, inclusive, of the General Code shall never be construed to apply to or to permit or require the deposit, filing or other record whatsoever of a chattel mortgage, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or other similar instrument, or any copy of same, made hereafter and covering a motor vehicle. Any mortgage, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or other similar instrument made hereafter and covering a motor vehicle, if such instrument is accompanied by delivery of said manufacturer's or importer's certificate and followed by actual and continued possession of same by the holder of said instrument, or in the case of a certificate of title if a notation of same has been made by the clerk of courts on the face thereof, shall be valid as against the creditors of the mortgagor whether armed with process or not, and subsequent purchasers, mortgagees and other lien holders or claimants but otherwise shall not be valid against them. All liens, mortgages and encumbrances noted upon a certificate of title shall take priority according to the order of time in which the same are noted thereon by the clerk of courts. Exposure for sale of any motor vehicle by the owner thereof, with the knowledge or with the knowledge and consent of the holder of any lien, mortgage or encumbrance thereon, shall not render the same void or ineffective as against the creditors of such owner, or holders of subsequent liens, mortgages or encumbrances upon such motor vehicle.

The holder of a chattel mortgage, trust receipt, conditional sales contract or similar instrument, upon presentation of said instrument to the clerk of courts of the county where such certificate of title was issued, together with the certificate of title and the fee prescribed by this chapter, may have a notation of such lien made on the face of such certificate of title. The clerk of courts shall enter said notation and the date thereof over his signature and seal of office, and he shall also note such lien and the date thereof on the duplicate of same in his files and on that day shall notify the registrar who shall do likewise. The clerk of courts shall

also indicate by appropriate notation on such instrument itself the fact that such lien has been noted on the certificate of title.

When such lien is discharged, the holder thereof shall note a cancellation of same on the face of the certificate of title over his signature and shall deliver it to the owner. Said owner may, upon presentation of said certificate of title to the clerk of courts, have the clerk of courts note the cancellation of said lien on the face of said certificate of title. The clerk of courts, if such cancellation appears to be genuine, shall note said cancellation on said certificate of title and he shall also note said cancellation on his records and notify the registrar who shall do likewise.

The provisions of sections 8560 to 8572, inclusive, of the General Code shall continue to apply to the deposit, filing, re-filing, or other record whatsoever of a chattel mortgage, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or other similar instrument, or any copy of same, made prior to the effective date of this act and covering a motor vehicle."

By virtue of the above section, if a notation of the lien has not been made on the face of the certificate of title by the clerk of courts, then such lien is not valid as against the creditors of the mortgagor, subsequent purchasers, mortgagees and other lien holders or claimants. Obviously, the notation of such lien can only be made by the clerk of courts of the county where such certificate was issued, which must be, as hereinbefore pointed out, by the clerk of courts of the county of applicant's residence. The clerk, in the case of the notation or cancellation of a lien, must note the same on the duplicate certificate of title on file in his office.

It will be noted that the language of Section 6290-5, General Code, provides that the "application * * * shall be filed with the clerk of courts of the county in which the applicant resides;" in other words, it is the county of the residence of the owner of the motor vehicle at the time he is an applicant for a certificate of title where such application is filed and a certificate of title issued. Obviously, if he removes from the county in which he made application for a certificate of title to another county, he would not again be required to make application for a certificate of title in the county to which he moved. It would therefore appear that once having made application for a certificate of title in the county in which he lived at the time of making such application and thereafter having removed from such county, a valid lien could nevertheless be secured on his motor vehicle, even though at the time the lien attached such owner no longer lived in the county where the

application for a certificate of title was made and where such certificate of title was issued. However, such lien must be noted on the face of the certificate of title by the clerk of courts of the county where such application for the certificate of title was made and where such certificate of title was issued.

However, if the owner of a motor vehicle was not, at the time of making the application for a certificate of title, a resident of the county in which such application was filed and the certificate of title issued, a lien against this motor vehicle would, under the provisions of Section 6290-5, General Code, be invalid.

The language of the Certificate of Title Act is clear and unambiguous and must be given effect according to its plain and obvious meaning. Section 26 of Black on Interpretation of Laws reads as follows:

> "If the language of the statute is plain and free from ambiguity, and expresses a single, definite, and sensible meaning, that meaning is conclusively presumed to be the meaning which the legislature intended to convey. In other words, the statute must be interpreted literally. Even though the court should be convinced that some other meaning was really intended by the law-making power, and even though the literal interpretation should defeat the very purposes of the enactment, still, the explicit declaration of the legislature is the law, and the courts must not depart from it."

Therefore, in specific answer to your inquiry, I am of the opinion that a lien against a motor vehicle is not valid where the certificate of title on which the said lien is noted was issued in a county other than the county in which the owner of such motor vehicle resided at the time the application for said certificate of title was made.

Respectfully,

THOMAS J. HERBERT,
Attorney General.