

OPINION NO. 930**Syllabus:**

The security agreements referred to in Sections 1548.20 and 4505.13, Revised Code, which must be presented to the Clerk of Courts when notation of a security interest on a certificate of title is desired, include combination agreements covering more than one watercraft, outboard motor, and/or motor vehicle for which a certificate of title is issued, but such do not include combination agreements covering property for which a certificate of title is not issued in accordance with the provisions of either Chapter 1548 or Chapter 4505, Revised Code.

To: Fred E. Morr, Director of Department of Natural Resources, Columbus, Ohio
By: William B. Saxbe, Attorney General, March 18, 1964

You have requested my opinion on the extent of authority in Clerks of Court to accept so-called combination security agreements as a basis for making notation of security interests on watercraft certificates of title. More specifically, you have raised that question as to a case where the combination security agreement covers not only a boat and motor but also a boat trailer. It has also come to my attention that this same question has been raised as to combination security agreements covering both watercraft and motor vehicles; and, because many of the same considerations are involved, I shall here consider these questions together.

Provision for the notation of security interests on certificates of title of watercraft and outboard motors is made in Section 1548.20, Revised Code, enacted last year by the General Assembly. The language used is substantially identical to that found in Section 4505.13, Revised Code, providing for the notation of such interests on certificates of title of motor vehicles, which has been a part of the law of this state for many years. In each case the notation is to be made by the Clerk of Courts of the county in which the certificate of title was issued, upon presentation to him of the certificate of title and the agreement evidencing the security interest, together with the payment of a prescribed fee.

Under these circumstances, I am aware of no principle which would require that a separate security agreement be drawn merely because notation was desired on more than one certificate of title, be they certificates of title of watercraft, outboard motors, or motor vehicles, or of all three. I am, therefore, of the opinion that the security agreements referred to in Sections 1548.20 and 4505.13, *supra*, may be combination agreements covering one or more watercraft, outboard motors and/or motor vehicles.

A different problem is presented, however, where some of the property included as security under a combination agreement is not property for which a certificate of title is issued. Boat trailers are not included in the watercraft certificate of title provisions contained in Chapter 1548, Revised Code; and trailers in general are not eligible for certificates of title as motor vehicles under the provisions of Section 4505.01, Revised Code, unless they weigh in excess of four thousand pounds. Since the vast majority of boat trailers in use in this state presumably weigh less than two tons, with rare exceptions such trailers would have to be treated as any other chattel for which certificates of title are not issued.

This problem of dealing with a combination security agreement covering both property for which certificates of title are issued and property for which they are not was considered by one of my predecessors in Opinion No. 802, Opinions of the Attorney General for 1939, Volume II, page 1025. It was his conclusion, based upon a comparison of the duties of Clerks of Court in noting security interests on certificates of title and the duties of County Recorders in recording chattel mortgages, that encumbrances on motor vehicles joined with encumbrances on other chattel property could not be filed with Clerks of Court, those officers having no authority to accept such documents except where they covered motor vehicles.

Were this a problem of first impression, the same conclusion might not be reached today; but there now exists twenty-five years of established procedure grounded on my predecessor's conclusion. In addition, there has been ample opportunity for the Legislature to correct that interpretation of the law if it considered such to be in error. The authority of Clerks of Courts to make notation of security interests has now been extended to cases involving watercraft and outboard motors; but, with that exception, I find no subsequent changes in the law, including those made by the adoption of the Uniform Commercial Code (see Section 1309.38, Revised Code), which would warrant a departure from the rule laid down in Opinion No. 802, *supra*. I must therefore conclude that, unless a boat trailer is of sufficient weight to qualify as a motor vehicle under Section 4505.01, *supra*, the security agreement referred to in Sections 1548.20 and 4505.13, *supra*, may not be a combination agreement including such a boat trailer.

In summary, it is my opinion and you are advised that the security agreements referred to in Sections 1548.20 and 4505.13, Revised Code, which must be presented to the Clerk of Courts when notation of a security interest on a certificate of title is desired, include combination agreements covering more than one watercraft, outboard motor, and/or motor vehicle for which a certificate of title is issued, but such do not include combination agreements covering property for which a certificate of title is not issued in accordance with the provisions of either Chapter 1548 or Chapter 4505, Revised Code.