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1. MOTOR VEHICLE, CERTIFICATE OF TITLE — MUST BE TYPED — REGULATION, REGISTRAR OF MOTOR VEHICLES — AUTHORITY, SECTION 6290-7 G.C.
2. CLERK OF COURTS OR PERSON DELEGATED BY HIM, REQUIRED TO PREPARE ALL CERTIFICATES OF TITLE AND NOTE ALL LIENS — NO SUCH AUTHORITY VESTED IN ANY OTHER PERSON — SECTION 6290-2 ET SEQ., G.C.

SYLLABUS:

1. *By virtue of a regulation promulgated by the Registrar of Motor Vehicles under authority of Section 6290-7, General Code, all certificates of title to motor vehicles must be typed.*

2. *The clerk of courts or a person under his supervision and control is required by the provisions of law relating to the issuance of certificates of title (Section 6290-2, et seq., General Code) to prepare all certificates of title and note all liens thereon. No authority to prepare a certificate of title or note a lien thereon is vested in any other person.*

Columbus, Ohio, April 14, 1941.

Hon. Joe M. Moorhead, Prosecuting Attorney,
Findlay, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion as follows:

“The local Clerk of Courts raises several questions in relation to the so-called Certificate of Title Law, General Code, Sections 6290-2 and following, upon which we respectfully request your opinion.

The above officer is directed by the Chief of Title Division under authority of the above cited sections to prepare the face of all Certificates of Title (including notations of liens thereon) by typing the same. Must, by virtue of these sections and by

direction of the Chief of Title Divisions, all Certificates of Title be typed and may, under the above sections, anyone besides the Clerk of Courts or a Deputy thereof prepare a Certificate of Title (including notations of liens thereon)?"

The first question you have propounded no doubt has arisen by reason of an instruction issued under date of November 9, 1937, by the Registrar of Motor Vehicles to the clerk of courts to the effect that all certificates of title must be typed. This instruction was issued under authority of Section 6290-7, General Code, which is a part of the so-called Certificate of Title Law. Said section provides in part:

"The registrar shall issue such regulations as he may deem necessary to insure uniform and orderly operation of this chapter, and the clerks of courts of all counties shall conform thereto.
* * * "

It is clear that a regulation requiring the typing of certificates of title definitely tends toward the uniform and orderly operation of the Certificate of Title Law. Therefore, the clerk of courts is required by virtue of Section 6290-7, General Code, to conform to such regulation.

With reference to your second inquiry, an examination of the law relating to the issuance of a certificate of title definitely reveals that the tenor of such law is that the clerk of courts shall prepare the certificate of title. Section 6290-5, General Code, provides that the application for a certificate of title shall be filed with the clerk of courts. Such section further provides that:

" * * * The clerk of courts shall use reasonable diligence in ascertaining whether or not the facts in said application are true by checking the application and documents accompanying same with the records of motor vehicles in his office; and if satisfied that the applicant is the owner of such motor vehicle and that the application is in the proper form, the clerk of courts shall issue a certificate of title over his signature and sealed with his seal, but not otherwise."

Furthermore, Section 6290-6, General Code, provides that the "clerk of courts shall issue the certificate of title in triplicate."

It is manifest that when the Legislature has said that the clerk of courts "shall issue" a certificate of title the preparation of same is a

definite part of his authority and duty. There is no such authority vested in any other person.

The question as to who may note a lien on a certificate of title is answered expressly by Section 6290-9, General Code, which provides in part:

“ * * * 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. * * *

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. * * *

According to the express terms of the foregoing section a lien is not valid as to creditors of the mortgagor, subsequent purchasers, mortgagees and other lien-holders or claimants unless notation of such lien has been made on the certificate of title by the clerk of courts. Therefore, the attempted notation of a lien by any other person could have no legal effect.

The conclusions herein pronounced are supported by a statement found in Crawford on Statutory Construction, page 335, as follows:

“ * * * So also, if the statute directs that certain acts shall be done in a specified manner, or by certain person, their per-

formance in any other manner than that specified, or by any other person than one of those named, is impliedly prohibited.”

Obviously the acts which the clerk of courts is required to perform by virtue of the Certificates of Title Law may be executed by a person under his supervision and control.

Therefore, in specific answer to your inquiries, I am of the opinion that:

1. By virtue of a regulation promulgated by the Registrar of Motor Vehicles under authority of Section 6290-7, General Code, all certificates of title to motor vehicles must be typed.

2. The clerk of courts or a person under his supervision and control is required by the provisions of law relating to the issuance of certificates of title (Sections 6290-2, et seq., General Code) to prepare all certificates of title and note all liens thereon. No authority to prepare a certificate of title or note a lien thereon is vested in any other person.

Respectfully,

THOMAS J. HERBERT,

Attorney General.