

802.

MORTGAGE—AUTOMOBILE—FILED WITH CLERK OF COURTS—CHATTEL MORTGAGE—FILED WITH COUNTY RECORDER—SECTIONS 6290-9 AND 8561, G. C., MAKE NO PROVISION FOR FILING COMBINATION CHATTEL MORTGAGE COVERING BOTH AUTOMOBILES AND OTHER PERSONAL PROPERTY—NO AUTHORITY TO ACCEPT SUCH MORTGAGE FOR FILING.

**SYLLABUS:**

*Sections 6290-9 and 8561, General Code, which provide respectively for the filing of encumbrances on automobiles with the clerk of courts and the filing of chattel mortgages with the county recorder, make no provision for the filing of a combination chattel mortgage covering both automobiles and other personal property and the clerk of courts and the county recorder are, therefore, without authority to accept such mortgage for filing.*

COLUMBUS, OHIO, June 23, 1939.

HON. ROY L. HENRY, *Prosecuting Attorney, Ironton, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion which reads as follows:

“Our County Recorder has asked me to secure an opinion from your office upon this question:

Under the new law the mortgage on automobiles is kept in the records of the Clerk of Courts and chattel mortgages are filed with the County Recorder. Where a mortgage is brought to the County Recorder which in effect is a combination mortgage covering chattel property and an automobile, where should that mortgage be filed—with the County Recorder or the Clerk of Courts. If it is filed in the Recorder's office, how should it be filed?”

Pertinent to your question is Section 6290-9, General Code, being a part of the new Certificate of Title Law which became effective January 1, 1938 and which reads 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 instru-

ment, 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 a 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."

Sections 8560 to 8572, inclusive, of the General Code, referred to in Section 6290-9, *supra*, cover chattel mortgages and conditional sales. It is provided in Section 8561, General Code, that a chattel mortgage must be filed with the county recorder of the county where the mortgagor resides at the time of the execution of the chattel mortgage, and further provides if the mortgagor is not a resident of the State, then the mortgage is filed with the county recorder of the county in which the mortgaged property is situated. Section 8562, General Code, provides for the mechanics of filing, indexing, etc., of chattel mortgages.

Referring again to Section 6290-9, set forth above, it is expressly stated that Sections 8560 to 8572, inclusive, of the General Code shall never be construed to apply to or permit the filing of any chattel mortgage or other encumbrance covering any motor vehicle. Therefore, it follows that a county recorder shall not and may not accept for filing a chattel mortgage covering a motor vehicle.

Also pertinent to your question is the case of *State, ex rel. vs. Taggart*, 133 O. S., 382. This was an action in mandamus to compel the recorder of Seneca County to file three chattel mortgages, the first covering one automobile, the second covering two automobiles and the third covering an automobile and *other* personal property. The writ of mandamus was denied and the court said in its opinion at page 383:

"Section 6290-9, General Code, effective January 1, 1938, specifically provides that the provisions of Sections 8560 to 8572, General Code, dealing with the depositing, filing and indexing of chattel mortgages by the county recorder, shall never be construed to apply to a chattel mortgage covering a motor vehicle, and that such chattel mortgage shall be presented to the clerk of courts in order to have a notation of a lien made on the face of a certificate of title to a motor vehicle.

There being no statutory duty now imposed upon the county recorder to receive and file a chattel mortgage covering a motor vehicle, a writ of mandamus will not be issued upon the facts pleaded in this case."

No distinction was drawn by the court between the two mortgages covering motor vehicles only and that mortgage covering a motor vehicle *and* personal property. It is apparent, therefore, that the Supreme Court of Ohio has construed Section 6290-9, *supra*, to mean that any chattel

mortgage covering a motor vehicle, irrespective of whether other personal property may be included in said chattel mortgage, may not and shall not be filed by the county recorder.

Turning now to the question of presenting to the clerk of courts, the officer authorized by Section 6290-9, *supra*, to file encumbrances on motor vehicles, a combination chattel mortgage covering an automobile and other personal property, it would appear at first blush that he could properly make a notation on the certificate of title of the lien evidenced by the chattel mortgage, and that, therefore, said chattel mortgage would be operative as to the automobile.

However, I wish to call your attention to the fact that prior to the enactment of the new Certificate of Title Law there was no provision in the statutes permitting or requiring the clerk of courts to file or accept for filing any chattel mortgage, and there is nothing in Section 6290-9, *supra*, which now gives him authority to accept any document purporting to be a chattel mortgage on any chattel other than a motor vehicle. Section 6290-9, *supra*, gives him authority to accept chattel mortgages on motor vehicles for the purpose of noting such liens on the certificates of title which are filed by him.

Therefore, inasmuch as clerks of courts have no authority to accept chattel mortgages covering motor vehicles *and* personal property, and county recorders are prohibited by law from filing any chattel mortgage covering an automobile, it would appear that such a combination chattel mortgage could be of no force or effect against third parties inasmuch as it can not be filed by either of the above officers.

It is unnecessary to relate in this discussion the authorities sustaining the validity of an unfiled chattel mortgage as between the mortgagor and the mortgagee as that is a well settled proposition of law.

Therefore, in specific answer to your inquiry, it is my opinion that encumbrances on motor vehicles joined with encumbrances on other chattel property in one chattel mortgage may not be filed with either the clerk of courts under Section 6290-9, General Code, or with the county recorder under Sections 8560 to 8572, inclusive, General Code.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*