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PROPER METHOD FOR SECURING VALID LIEN UPON MOTOR VEHICLE WHEN ONLY EVIDENCE OF TITLE IS THE MANUFACTURER'S CERTIFICATE IS FOR MORTGAGEE TO ACQUIRE AND RETAIN POSSESSION OF SAID DOCUMENT AT THE TIME OF EXECUTION OF THE CHATTEL MORTGAGE. SECTION 4505.13, R.C.

SYLLABUS:

Pursuant to the provisions of Section 4505.13, Revised Code, the proper method for securing a valid lien upon a motor vehicle when the only evidence of title is the manufacturer's or importer's certificate is for the mortgagee to acquire and retain possession of said document at the time of the execution of the chattel mortgage.

Columbus, Ohio, December 23, 1959

Hon. C. W. Ayers, Registrar, Bureau of Motor Vehicles  
State of Ohio, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Your attention is invited to the provisions of the certificate of title law, Sections 4505.01 to 4505.19, inclusive, of the Revised Code. Specifically, we are directing your attention to the proper notation of liens held against motor vehicles.

"A bank desires to extend credit to a manufacturer of house trailers and to secure his loan by chattel mortgage on the house trailers during the time they are in finished goods inventory. The chattel mortgage would be taken on a trailer at the time the manufacturer had completed it and placed it in its lot and would be released at the time that the manufacturer delivered the trailer to a carrier for shipment to a dealer or other purchaser.

"Section 4505.01, R.C., defines motor vehicles as including house trailers. Section 4505.13, R.C., specifies a certain manner of handling chattel mortgages and other security devices covering motor vehicles.

"Your opinion is respectfully requested as to the proper procedure for noting liens wherein a manufacturer's statement of origin is still the document denoting ownership of a motor vehicle."

Section 4505.13, Revised Code, reads in part as follows :

“\* \* \* *Any mortgage, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or other similar instrument covering a motor vehicle, if such instrument is accompanied by delivery of a manufacturer’s or importer’s certificate and followed by actual and continued possession of such certificate by the holder of said instrument, or, in the case of a certificate of title, if a notation of such instrument has been made by the clerk of the court of common pleas on the face of such certificate, shall be valid as against the creditors of the mortgagor, whether armed with process or not, and against subsequent purchasers, mortgagees, and other lienholders or claimants. \* \* \**”

(Emphasis added)

The above quoted portion of the Ohio Certificate of Title Law, Chapter 4505., Revised Code, clearly indicates the answer to your question. The Ohio Certificate of Title Law changed the method of giving notice of existing liens on motor vehicles, and provides the only means for effectively securing a proper lien against a motor vehicle. *The Kelley Kar Co. v. Finkler*, 155 Ohio St., 541.

The above quoted portion of Section 4505.13, Revised Code, states that the mortgagee in the situation described in your request is protected if he acquires a chattel mortgage, then acquires and retains actual possession of the manufacturer’s or importer’s certificate. The balance of the above quoted sections indicates this is the only method whereby a lienholder may effectively secure priority and give notice of his lien when a certificate of title has not yet been acquired. Section 4505.13, Revised Code, further provides that, when the certificate of title has been issued, such matters must be noted upon the certificate of title by the clerk of courts in order that a lien be established. These two methods of securing a lien on a motor vehicle cover every situation and all that is necessary to secure the lien is to follow the appropriate procedure. The facts in your request make it obvious that the mortgages must follow the first procedure.

The United States District Court, N.D. Ohio, E.D., in the case of *In re Glass, dba Canton Cycle & Key Company, Bankrupt*, 59 O.O. 205, ruled that a valid lien was created when a chattel mortgage on a new motor vehicle is executed, and the chattel mortgage and the manufacturer’s certificate are retained by the mortgagee. The facts in the above cited case indicate that the mortgagee loaned the bankrupt \$729.03, executed a chattel mortgage on three motor scooters, obtained and kept the manufacturer’s

certificates for these vehicles. The mortgagee retained these documents until forced to give them to the United States District Court by virtue of court order. The District Court, in ruling on the validity of the lien, states at page 206 of their opinion:

“\* \* \*

“The law, as contained in Ohio Revised Code, Section 4505.01 *et seq.* (in particular Section 4505.13), appears to be clear and unequivocal in stating that a lien, as here created, need not be recorded. Further, it is plain that a valid lien is created if the chattel mortgage executed ‘\* \* \* is accompanied by delivery of a manufacturer’s or importer’s certificate and followed by actual and continued possession of such certificate by the holder of (the chattel mortgage) \* \* \*.’ The vehicles here involved were ‘new’ or (or in the possession of the bankrupt dealer to be sold at retail) as distinguished from ‘used’ (after purchase from the dealer at retail). In the former instance, the manufacturer’s statement of origin is the dealer’s evidence of title, Ohio Revised Code, Section 4505.05. \* \* \*”

The above cited decision was rendered by the United States District Court, which, in the incident case, construed Section 4505.13, Revised Code. The District Court is bound to follow the law as it exists in Ohio in this type of case, but the decisions of the District Court are not binding precedent as far as similar cases are concerned in Ohio courts. The courts of Ohio, though not bound by such decisions, may certainly consider them and, when based on sound reason and logic, follow them. The above decision appears to be such an opinion.

Accordingly, it is my opinion and you are advised that pursuant to the provisions of Section 4505.13, Revised Code, the proper method for securing a valid lien upon a motor vehicle when the only evidence of title is the manufacturer’s or importer’s certificate is for the mortgagee to acquire and retain possession of said document at the time of the execution of the chattel mortgage.

Respectfully,

MARK MCELROY  
Attorney General