

Opinion No. 53-5846

November 18, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. A. M. Frazier Employment Security Commission of New Mexico P. O. Box 1301
Albuquerque, New Mexico

{*265} On October 1, 1953, you addressed an inquiry to this office concerning the filing of warrants for unpaid contributions of your department against the property of the delinquent tax payers. Specifically your request dealt with the filing of the warrants with the Motor Vehicle Division of the Bureau of Revenue of the State of New Mexico.

The law dealing with titles to motor vehicles in this state contemplates the endorsement of all liens upon the title issued. When the lien appears noted on the copy of the title, it is notice to any purchaser that an encumbrance is on file against the vehicle. There is no provision for enforcing a lien against a motor vehicle by filing anywhere besides the Motor Vehicle Division of the Bureau of Revenue. Section 68-2034, sub-section b, N.M.S.A., 1941 Compilation, 1953 Supplement, reads as follows:

"There shall be deposited with the division the original or a copy of the instrument creating and evidencing the lien or encumbrance which instrument shall be executed in the manner required by the laws of the state. When a copy of the instrument is filed there shall be attached to or endorsed upon the instrument a certificate of a notary public stating that the same is a true and correct copy of the original. **The instrument deposited with the division shall be accompanied by the certificate of title last issued for the vehicle named in the instrument** (Emphasis ours.)

The above section contemplates the filing of the title with the lien and upon such filing having the encumbrance endorsed thereon prior to returning the title to the lawful holder.

If the Bureau of Revenue did not require the title to be filed with the lien, the law as it is set up would be ineffective. The person purchasing the vehicle with a title, on the face, clear and unencumbered, but a lien having been placed against the vehicle, the enforcement of that lien against the vehicle would be in violation of the dealers of bona fide purchaser for value.

Therefore it is the opinion of this office that the Motor Vehicle Department may require the title to accompany any lien to be filed in the Department.

We sincerely hope that this answers {*266} your inquiry.

By: Fred M. Standley

Assist. Attorney General