

## Opinion No. 62-142

November 30, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General J. E. Gallegos, Assistant Attorney General

**TO:** Reyes R. Padilla, Commissioner, Department of Motor Vehicles, Santa Fe, New Mexico

### QUESTION

#### QUESTIONS

1. If an automobile owner signs an application for registration and certificate of title but the signature is not acknowledged (as required by §§ 64-3-3 (1) and 64-3-3 (2), N.M.S.A., 1953 Compilation) and the owner is dead or otherwise unavailable, can the Division of Motor Vehicles honor the application?
2. If an automobile owner endorses the certificate of title to transfer ownership but the endorsement is not verified under oath, (as required by § 64-4-1, N.M.S.A., 1953 Compilation), and the owner is dead or otherwise unavailable, can the Division of Motor Vehicles honor the transfer?

#### CONCLUSIONS

1. See analysis.
2. See analysis.

### OPINION

#### ANALYSIS

The New Mexico Motor Vehicle Administration Act, § 64-1-1 et seq. N.M.S.A., 1953 requires every owner of a vehicle subject to registration to apply to the Motor Vehicle Division for registration and for a certificate of title for the vehicle. Sections 64-3-3 (1) and 64-3-3 (2) state that, "The signatures on all original applications shall be **acknowledged by the owner** before a person authorized to administer oaths." (Emphasis supplied). Once a vehicle is registered and a certificate for it issued, the Act requires that upon transfer of ownership, "the owner shall endorse an assignment and warranty of title upon the certificate of title for such vehicle with a statement of all liens or encumbrances thereon, which statement shall be **verified under oath by the owner.**" (Emphasis supplied) § 64-1-1.

We are informed that sometimes the acknowledgment or verification have been omitted and the vehicle owner is dead or otherwise unavailable. How is the Division to handle instruments with such omissions?

There is nothing magical about an acknowledgment or verification. Instead of deterring fraud, such requirements often work to penalize one who in good faith has inadvertently overlooked a legal nicety. Though the Uniform Commercial Code, § 50A-1-101 et seq. N.M.S.A., 1953, does not apply to the perfection of liens or title in motor vehicles (Attorney General Opinion No. 62-30) it is analogous to note that the Code has abolished requirements that security instruments be acknowledged as a prerequisite to being recorded (See Attorney General Opinion No. 62-1). We previously held in Attorney General Opinion No. 62-30 that instruments filed pursuant to § 64-5-1 N.M.S.A., 1953 do not have to be acknowledged in order to be filed with the Division. There we concluded that the acknowledgment requirements of § 71-1-3 N.M.S.A., 1953, apply only to instruments filed with the County Clerks and not those filed with the Division.

It is a general rule that an acknowledgment is not an essential part of an instrument, and its absence does not effect the validity thereof. **Vorenberg v. Bosserman**, 17 N.M. 433, 130 P. 438; **Kitchen v. Canavan**, 36 N.M. 273, 13 P. 2d 877; 1 C.J.S. "Acknowledgments" § 6. An acknowledgment is nothing more than evidence of the proper execution of an instrument as the free act of the person named. § 43-1-11 N.M.S.A., 1953; **People ex rel Cohen v. Barrett**, 349 Ill. App. 236, 110 NE 2 452. Thus, an application for vehicle registration lacking an acknowledgment is nonetheless a valid application.

The same reasoning and conclusion necessarily follows in the case of an assignment of title lacking a verification. A verification is only "a confirmation of correctness," **Black's Law Dictionary** (4th Ed.) and not an essential part of the instrument.

Further, we note that the Act sets out specific grounds for which the Division "may refuse registration or issuance of a certificate of title or any transfer of registration . . ." § 64-3-6 N.M.S.A. 1953. Lack of an acknowledgment or lack of a verification are not one of the grounds for refusal.

We therefore conclude in answer to both of the questions posed that the Division should accept for filing and, if otherwise proper, treat as valid an application for registration or assignment of title though they are not acknowledged or verified, as the case may be.

This conclusion does not entirely dispose of the matter, however, because of the following statutes:

"§ 64-3-8. REGISTRATION INDEXES. -- The division shall file each application received and **when satisfied as to the genuineness and regularity thereof**, and that the applicant is entitled to register such vehicle and to the issuance of a certificate of

title shall register the vehicle therein described and keep a record thereof in suitable books or on index cards . . ." (Emphasis supplied)

"§ 64-4-8. WHEN DIVISION TO RE-REGISTER VEHICLE AND ISSUE NEW CERTIFICATE. -- (a) The division upon receipt of a properly endorsed certificate of title, current registration evidence and proper application for registration or transfer of registration accompanied by the required fee, and **when satisfied as to the genuineness and regularity of** said transfer and of the right of the transferee to a certificate of title, shall register the vehicle as upon a new registration in the name of the new owner and issue a new certificate of title as upon an original application." (Emphasis supplied)

A principal reason for requiring an acknowledgment or a verification is evidently to aid in establishing genuineness and regularity. When these formalities are lacking, we are of the opinion that the above statutes authorize the Division, as it sees fit, to require suitable substitutes. For example, it could insist that the defective instruments be supported by affidavits stating that the signer is unavailable and that the signature is a true one.

Exactly how much and what type of supporting evidence will be required is an administrative decision. Under the statutes quoted above, the measure is that which has "satisfied" the Division.