

Opinion No. 39-3033

February 21, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. J. O. Garcia, Motor Vehicle Commissioner, Santa Fe, New Mexico.

{*18} Your letter of February 7th makes inquiry as to the correct procedure for selling automobiles which are left in shops for repairs and storage.

Under Section 82-401 of Chapter 82, New Mexico Statutes, Annotated, 1929 Compilation, any person or corporation who repairs any motor vehicle or furnishes parts therefor, at the request or with the consent of any person lawfully in possession of said motor vehicle, shall have a lien upon such motor vehicle, or any part or parts thereof for the sum due for repairing the same, for the labor furnished thereon, and for all costs incurred in enforcing such lien, and may detain such motor vehicle in possession until such lien be paid.

Section 82-411 provides that in the enforcement of such liens the procedure shall be the same as in case of foreclosure of a chattel mortgage if suit be filed in court. The lien claimant when the property subject to the lien is under his control or his possession may, after the date for which the lien is claimed becomes due and payable, serve the person or persons against whom the lien is sought to be enforced with a written notice setting forth an itemized statement of the amount of the indebtedness, and if the same be not paid within ten days after the service of said notice the property may be advertised, and such property sold at public auction to the highest bidder for cash after giving twenty days' notice of such sale by at least six hand bills posted up in public places in the county in which said sale is to be made. Such notices of sale shall set forth the time and place of the sale and a description of the property to be sold, and the amount of the indebtedness claimed under such lien.

Under Section 82-413, after sale is made the proceeds of such sale shall be applied to the payment of the costs of advertising and making the sale and the satisfaction of the demand of the lien claimant, and the residue, if any, shall be refunded to the lien debtor; provided, that the lien claimant shall not be precluded from bidding on or purchasing the said property.