

Opinion No. 44-4501

April 20, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Mr. M. A. Romero, Commissioner, Motor Vehicle Division, Bureau of Revenue, Santa Fe, New Mexico. Attention: Alfonso C. De Baca, Chief Clerk

In your letter dated April 17, 1944, you enclose a letter to you from Ray C. Cowan, dated April 13, 1944, in which it is stated, that a person sold a car to another person, subject to a mortgage; that the mortgage was paid, but the mortgagee died before he had an opportunity to file a release. You inquire whether there is any method by which the lien can be released without an actual release from the mortgagee being filed.

Section 68-121 of the 1941 Compilation, Pocket Supplement, requires the holder of a lien or encumbrance upon the payment in full of the indebtedness, to deliver to the owner a written release thereof. If this is physically impossible, and the mortgagor has the cancelled note and mortgage, or makes an affidavit and submits other evidence satisfactory to you proving payment, I believe you would be justified in accepting the same in lieu of a release of the lien, and could issue a new certificate, as provided by law.

By C. C. McCULLOH,

First Asst. Atty. General