



**OFFICE OF  
THE ATTORNEY GENERAL**

**AUSTIN, TEXAS**

PRICE DANIEL  
ATTORNEY GENERAL

June 30, 1947

Honorable D. C. Greer  
State Highway Engineer  
Texas Highway Department  
Austin 26, Texas

Opinion No. V-288

Re: The effect to be accorded the existence of a lien recorded on a previous certificate of title when issuing a new certificate of title to a purchaser at a sheriff's sale.

Dear Sir:

Your request for our opinion is on the following question:

"When title has been issued on a motor vehicle and when such title records a lien, should this Department obtain a release of that lien in the event the motor vehicle is sold at a sheriff's sale?"

In connection with this question, you state that you have heretofore asked the question of this Department: "What evidence was needed to issue title to the purchaser of a motor vehicle which was sold at sheriff's sale?" That question applied to: (1) motor vehicles on which no title had been issued; (2) motor vehicles on which title had been issued and no lien recorded and; (3) motor vehicles on which title had been issued and a lien recorded. In response to that question, Opinion No. 0-3842 was rendered. You were advised to issue a certificate of title to a purchaser of the automobile at a sheriff's sale made pursuant to a court order. This answer was made on the assumption that a lien against a motor vehicle had been foreclosed by judicial process and that the rights of all the parties had been fully adjudicated by the court. You advise that pursuant to said opinion your policy has been to issue a clear title to a purchaser of a motor vehicle at a sheriff's sale regardless of whether there was or was not a lien recorded on the previous title.

Opinion 0-3842 assumed that any lien against the motor vehicle had been foreclosed by judicial process. The conclusion in the former opinion that, "it is the duty of your Department to issue a certificate of title to the purchaser at a sheriff's sale made pursuant to the court's order," is correct. But where the motor vehicle has been seized under execution, not to foreclose a lien against the automobile but to satisfy a judgment debt of the mortgagor to a third party, a different situation arises. Your question involves the effect of a prior lien recorded upon a certificate of title when your Department is requested to issue a new certificate of title, on a motor vehicle sold at a sheriff's sale where the prior lien remains outstanding on the record.

It may be stated as a general rule that prior lien holders have the right of protection against subsequent judgment or execution liens. In 18 Texas Jurisprudence, page 766, paragraph 193, we find:

"Where the property of the defendant in execution has been mortgaged, its sale under execution conveys only the interest of the mortgagor, subject to the rights of the mortgagee."

Rule 643 of Vernon's Texas Rules of Civil Procedure, replaces, but does not change, Art. 3797, V.C.S., and reads as follows:

"Goods and chattels pledged, assigned or mortgaged as security for any debt or contract, may be levied upon and sold on execution against the person making the pledge, assignment or mortgage subject thereto; and the purchaser shall be entitled to the possession when it is held by the pledgee, assignee or mortgagee, on complying with the conditions of the pledge, assignment or mortgage."

Section 35 of Article 1436-1 V.P.C., provides in part:

"Whenever the ownership of a motor vehicle registered or licensed within this State is transferred by operation of law, as upon \* \* \* judicial sale or any other involuntary divestiture of ownership, the Department shall issue a new certificate of title upon being provided with

certified copy of \* \* \* order, or bill of sale from the officer making the judicial sale. \* \* \* \*"

Section 42 of the same Article provides:

"No lien on any motor vehicle shall be valid as against third parties without actual knowledge thereof or enforceable against the motor vehicle of any such third parties as the issuance of a certificate of title thereof, unless an application for a new title is made as prescribed in this Act and all first and subordinate liens noted by the Department thereon."

Thus, under the rule that a prior lien holder is entitled to protection as against the purchaser of the automobile under a sheriff's sale, we conclude that it is the duty of your Department in issuing a new certificate of title on a motor vehicle sold at a sheriff's sale to satisfy a judgment debt owing to a third party to record thereon the prior recorded lien or liens. You are not charged with the duty of obtaining a release of any lien; your duty in issuing a new certificate of title is to record thereon the prior existing liens in order to protect the rights of the lien holders.

SUMMARY

Where a purchaser of a motor vehicle sold at a sheriff's sale to satisfy a judgment debt owing to a third party makes application for a certificate of title, it is the duty of the Texas Highway Department to issue a new certificate of title and record on the new certificate all prior liens recorded on a previous certificate of title. Article 1436-1, Sections 35 and 42, V. P. C.; Rule 643, Vernon's Texas Rules of Civil Procedure.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

APPROVED:

*Price Daniel*  
ATTORNEY GENERAL

By

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