

MILES LORD
ATTORNEY GENERAL
STATE CAPITOL
ST. PAUL 1, MINNESOTA

May 26, 1955

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Mr. Joseph L. Donovan
Secretary of State
Capitol

Dear Mr. Donovan:

I have reviewed your motor vehicle File No. 17238 on the Morris automobile which Mr. Daniel D. Graham is seeking to register in the name of Ardis M. Graham, and have considered the statutes and the former attorneys general opinions which relate to the problems raised by that file.

After reviewing the file, I understand these to be the

FACTS:

For the year 1953, a Morris Minor Sedan was registered, for taxation and licensing purposes, by a Mrs. Virgene Donney. The same automobile was the subject of a chattel mortgage on which Mrs. Donney was the mortgagor and the Citizens State Bank of Waverly was the mortgagee. Mr. Graham, with whom you have been corresponding, is the president of the Citizens State Bank of Waverly. The Morris automobile was not registered with your office for 1954, nor did your office receive any information as to its status or whereabouts. Sometime in December, 1954, a resident of New Brighton, Minnesota telephoned Mr. Graham and reported that the Morris automobile had been left at the home of the New Brighton resident by Mrs. Donney, who had not been heard from since sometime around Christmas of 1953.

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Mr. Graham, presumably acting under authority granted to his bank as mortgagee under the terms of the chattel mortgage, took possession of the Morris automobile in New Brighton in December, 1954, reinflated the tires of that automobile and had it towed behind another motor vehicle to Waverly, Minnesota. In January, 1955, proceedings for a foreclosure sale under the terms of the mortgage were instituted and a sale was effected by the sheriff of Wright County to Ardis Graham on January 29, 1955. On January 31, 1955, an application for registration of the Morris automobile for 1955 was prepared for Ardis M. Graham. This application was based upon payment of 1955 taxes in the amount of \$15.00 and 1955 late registration fee in the amount of \$1.50 for a total of \$16.50. The application, which was received by the Motor Vehicle Department of the office of the Secretary of State on February 13, 1955, did not indicate arrearages for taxes or fees for the year 1954, for which the Motor Vehicle Department had no record of this automobile. With the application were copies of the mortgage foreclosure papers and an affidavit by Daniel D. Graham. This affidavit reads as follows:

"This is to certify that to my knowledge the 1951 Morris Sedan, serial 64947 could not have been used during the year 1954. It was necessary for me to repossess this car in December of 1954. At that time the tires were all flat and the motor and battery were in such a condition that it was evident that the car had not been in operation for over a year.

Signed: Daniel D. Graham"

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I understand that the problems which have arisen in this matter, in the correspondence which has resulted, to revolve around this

QUESTION:

May you, as Registrar of Motor Vehicles for the State of Minnesota, accept the application for registration of the Morris automobile for 1955 without the payment of 1954 taxes and fees?

OPINION

With respect to this question, M. S. 1953, § 168.012, in its part here material, provides as follows:

"Subd. 7. Motor vehicles which during any calendar year are not operated on a public highway shall be exempt from the provisions of this chapter requiring registration, payment of tax and penalties for nonpayment thereof, provided that the owner of any such vehicle shall first file his verified written application with the registrar, correctly describing the vehicle and certifying that it has not been and will not be operated upon a public highway. ****"

Section 168.11 provides, in part, as follows:

"The registrar shall file such application and, upon approval thereof and upon payment of the motor vehicle tax, as herein provided, together with all arrears and penalties, *** shall assign to it a distinctive number and issue to the owner a registration certificate ***."

Section 168.28 provides, in part, as follows:

"Every motor vehicle (except those exempted in section 168.02) shall be deemed to be one using the public streets and highways and hence as such subject to taxation under this act if such motor vehicle has since April 23, 1921, used such public streets or highways, or shall actually use them, or if it shall come into the possession of an owner other than as a manufacturer, dealer, warehouseman, mortgagee or pledgee."

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The provisions of § 168.28, above quoted, establish a presumption that the Morris automobile, which is the subject of this opinion and which was registered with your office in 1953, continued to be subject to the licensing and taxing provisions of c. 168 in 1954. By the terms of § 168.28, such a presumption could be rebutted by a certification, in compliance with § 168.02, Subd. 7, that the vehicle was not to be used on a public highway in 1954.

It is my opinion that you were correct in telling Mr. Graham that, under the terms of § 168.012, the rejection of his affidavit had nothing to do with a questioning of his veracity; the question rather is whether any affidavit from Mr. Graham, who did not obtain possession of the automobile until December, 1954, and who was never its owner or "registered owner", could meet the requirements of the certification which is contemplated by that statute. Mr. Graham's certification, while representing his knowledge of the matter, was based upon hearsay and upon opinion. The certification contemplated by § 168.012 is that of a person who was the registered owner for the time for which exemption is sought and who has independent knowledge of the facts on which such a certification would be based. Since your authority and that of Mr. W. E. Howes, Assistant Motor Vehicle Registrar, comes solely from the statutes adopted by the Minnesota Legislature, you and Mr. Howes had no other alternative but to reject Mr. Graham's affidavit.

Under the terms of § 168.11, you, as Registrar of Motor Vehicles, have no authority to file an application for registration

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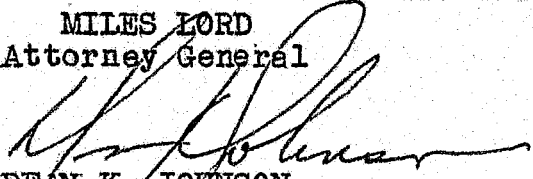
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unless all arrearages and penalties to which the state is entitled under c. 168 are paid, together with the payment of the motor vehicle tax for the year for which registration is sought. See M. S. 1953, § 168.31, Subd. 8; also, opinion dated February 2, 1938 (file 520-H), copy enclosed, in connection with § 168.11. (Section 168.11 was derived from Mason's Minn. Stats. 1927, § 2679, cited in the opinion; § 168.31, Subd. 8 was derived from Mason's Minn. Stats. 1927, § 2690.)

You may accept Mr. Graham's application for registration of the Morris automobile in 1955 when that application is accompanied by the payment of taxes and fees which are due the state for 1954.

Sincerely,

MILES LORD
Attorney General



DEAN K. JOHNSON
Special Assistant
Attorney General

DKJ:DK

MOTOR VEHICLES--Delinquent taxes--Lien--Lien for may be enforced against dealer who has purchased vehicle from one who was record owner at the time the tax became delinquent -- Sec. 2690, 1936 Suppl. to M. St.; Sec. 2679, M. M. St., 1927.

Copy
February 2, 1938.

Hon. Mike Holm
Secretary of State
Division of Motor Vehicles
Building

Dear Mr. Holm:

In re your File Nos. 21215 and 40871

This is to acknowledge receipt of your request for an opinion of this office in connection with your above file numbers, together with a photostatic copy of a letter dated December 31, 1937, which your department received from Mr. Knight E. Wilson of Park Rapids, Minnesota, an attorney representing Houghton & Smith, automobile dealers at Park Rapids, Minnesota.

You inquire:

"Kindly advise us as to whether a lien for delinquent taxes on a motor vehicle can be enforced against a dealer who has purchased the vehicle from the one who was the record owner at the time that tax became delinquent."

We answer your inquiry in the affirmative. The lien may be enforced against the dealer under Section 2690, 1936 Supplement to Mason's Minnesota Statutes of 1927, because such lien is enforceable against the motor vehicle under the provisions thereof, or the lien may be enforced against the dealer under Section 2679, Mason's Minnesota Statutes of 1927, when the dealer makes and files his application for registration of the motor vehicle involved, because the provisions of said

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Section 2679 prohibit your Department from approving the Dealer's application for registration of such motor vehicle and from issuing of license plates therefor unless the dealer or the previous record owner of such motor vehicle pays the delinquent taxes due thereon before the approval of the dealer's application for registration. See Section 2690, 1936 Supplement to Mason's Minnesota Statutes of 1927, and Section 2679, Mason's Minnesota Statutes of 1927.

You state that the question here submitted has arisen in a particular case, the facts of which are set forth in the letter which your Department received from Mr. Knight B. Wilson, the attorney representing Houghton & Smith, dealers who purchased a truck from Edward Siepelt. The facts are, in substance, as follows: On May 4, 1936, Edward Siepelt was the owner of a tractor and semi-trailer registered in class "X" with licenses X-46002 and X2-2727. On said day, Henry Siepelt, driver for said owner Edward Siepelt, was arrested by the Highway Patrol when the aforesaid vehicles were operated outside of their permitted zone of operation and while transporting a load of lumber weighing 22,485 pounds, thereby subjecting the said vehicles to reclassification from class "X" to class "Y," that is, thereby subjecting said vehicles to the gross weight use tax provisions of the Motor Vehicle Registration and Taxation laws; in other words, thereby subjecting the said

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vehicles to the payment of \$148.27 as balance of the 1936 tax, no part of which has been paid to date. It is indicated in Mr. Wilson's letter that Edward Siepelt transferred the truck to Houghton & Smith on November 14, 1936, and that the transfer of title and application for registration of the truck for the year 1937 was mailed to your Department on or about February 15, 1937, by Houghton & Smith; that when the application was to be approved your department found a letter dated December 28, 1936, which you received from the Highway Patrol in the files in your department relating to Mr. Siepelt, advising your department of the violation and conviction aforementioned; that your department notified Houghton & Smith on March 29, 1937, of the violation and conviction and of the balance of the amount of the tax due on the said truck for the year 1936 and that the law requires you to refrain from issuing 1937 registration to them until the balance for the year 1936 due the state on said truck is paid.

Relative to the particular case we submit that under the facts and circumstances thereof your department advised Houghton & Smith correctly that the law requires you to refrain from issuing 1937 registration to them until the balance for the year 1936 due the state on said truck is paid. The lien for the delinquent taxes with respect to the truck sold and transferred to Houghton & Smith can be enforced against Houghton & Smith in the manner hereinabove stated in our answer to your inquiry, notwithstanding the

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fact that your department did not receive notice of the violation and conviction referred to from the Highway Patrol until December 28, 1936, and notwithstanding that you first notified Houghton & Smith on March 29, 1937, of such violation and conviction and that there was a balance of the tax for the year 1936 due the State upon said truck by reason thereof.

Yours very truly,

WILLIAM G. ERVIN
Attorney General

By LOUIS F. BOURKUP
Special Assistant Attorney General

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