



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

July 31, 1969

Honorable Robert R. Barton  
District Attorney  
Second Judicial District  
Kerrville, Texas 78028

Opinion No. M-440

RE: Whether a conditional  
sale contract consti-  
tutes a "security in-  
terest in writing"  
under 4 V.T.C.A., Bus.  
& C., Sec. 25.02.

Dear Mr. Barton:

Your opinion request to this office asks "whether a conditional sale contract or a retail installment contract, under the terms of which the seller retains title to personal property, constitutes a 'security interest in writing' so that, should the purchaser of the property remove or fraudulently dispose of same, there is a violation of Section 25.02, Business and Commerce Code." Since your question refers to the Business and Commerce Code, we will assume for the purpose of this opinion that the conditional sale contract or retail installment contract to which you referred was executed after the effective date of the Code and is otherwise in compliance with the provisions thereof.

Section 25.02, Business and Commerce Code, which became effective on September 1, 1967, provides that

"(a) A person who has given a security interest in writing on personal property or a growing crop of farm produce may not, with intent to defraud the secured party,

(1) remove the property or crop from the county in which the property or crop was located when the security interest attached;

(2) sell the property or crop; or

(3) otherwise dispose of

of the property or crop."

The Business and Commerce Code superseded existing legislation dealing with such security devices as chattel mortgages, conditional sales, trust receipts, and factor's liens. Gone are the definitional difficulties and transactional fictions of the chattel mortgage, the conditional sale, the trust receipt. In their stead is a general set of rules for the creation of a security interest in the secured party. Therefore, to answer your question, the provisions of the Code that are pertinent to your question must be examined.

Texas Business and Commerce Code, Sec. 1.201 (37), states that:

"'Security interest' means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Section 2.401) is limited in effect to a reservation of a 'security interest.'"

Texas Business and Commerce Code, Section 9.202 states:

"Each provision of this chapter with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor."

Therefore, it is the opinion of this office that a conditional sale contract or retail installment contract, under the terms of which the seller retains title to personal property, constitutes a "security interest in writing", so that, should the purchaser of the property remove or fraudulently dispose of same, there is a violation of Section 25.02, Business and Commerce Code.

Honorable Robert R. Barton, page 3, (M-440 )

SUMMARY

A conditional sale contract or a retail installment contract, under the terms of which the seller retains title to personal property, constitutes a 'security interest in writing' so that, should the purchaser of the property remove or fraudulently dispose of same, there is a violation of Section 25.02, Business and Commerce Code.

Very truly yours,



CRAWFORD MARTIN  
Attorney General of Texas

Prepared by Dunklin Sullivan  
Assistant Attorney General

APPROVED:

OPINION COMMITTEE:  
Kerns Taylor, Chairman  
George M. Kelton, Vice-Chairman

Roy W. Mouer  
Ed Esquivel  
Malcolm Quick  
Harold Kennedy

W. V. GEPPERT  
Staff Legal Assistant

HAWTHORNE PHILLIPS  
Executive Assistant