

1976 WL 30663 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 11, 1976

*1 The lien for taxes upon a mobile home, the value of which generates the tax, is first and preferred, and follows the property when repossessed and in possession of a finance company or any other person with knowledge, actual or constructive, of the lien.

Honorable Tom Elliott
Treasurer of Richland County

QUESTION

You advise as follows:

'This office has recently had its method of collecting personal property taxes on mobile homes questioned. It has been our practice that if the mobile homes on which the delinquent taxes are due can be found they are levied on, even though they may no longer be in the possession of the defaulting taxpayer. However, some finance companies contend it is unlawful for us to apply our lien or levy on personal property that has been repossessed by a finance company. They further contend that once ownership of the personal property has been transferred away from the defaulting taxpayer our lien is no longer valid, therefore levying on the property would be unlawful.'

The request is for the opinion of this office of whether your office is authorized to execute and levy upon this property when in possession of a finance company.

STATUTE INVOLVED

Section 65-2701.

DISCUSSION

It is assumed for purposes of this opinion that the tax liability was created by reason of the value of the mobile home and under such circumstances the tax is a first lien upon the mobile home.

'All taxes, assessments and penalties legally assessed shall be considered and held a debt payable to the State by the person against whom they shall be charged and such taxes, assessments and penalties shall be a first lien in all cases whatsoever upon the property taxed * * *.' Section 65-2701. (Emphasis added)

The lien by operation of law attached to the property that generates the tax and would follow the property until paid.

'A lien is binding upon all persons who acquire the property with notice of the lien, or who have constructive notice of the lien by reason of its recordation * * *.' 51 Am. Jur., Liens, Section 14, page 153.

We are not informed as to the basis for the finance company's contention, however, call attention that the tax lien is not a security interest within the intent and meaning of the Motor Vehicle Title Act, Section 46-139(14), (29) and (30) or the Uniform Commercial Code, Section 10.1-201(37) and (44).

CONCLUSION

The lien for taxes upon a mobile home, the value of which generates the tax, is first and preferred, and follows the property when repossessed and in possession of a finance company or any other person with knowledge, actual or constructive, of the lien.

Joe L. Allen, Jr.
Deputy Attorney General

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