

1976 WL 30927 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

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*1 The lien is created by Section 59-615 when the charge is not paid when due and the statute constitutes notice to any purchaser or creditor of the existence of the lien.

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QUESTION

Is it necessary to record the liens provided by Section 59-615 and, if not, what are the rights of purchasers of property subject to such liens?

STATUTE INVOLVED

Section 59-615.

DISCUSSION

The language of the statute is that:

‘All such rates or charges if not paid when due shall constitute a lien upon the premises served by such works. If any service rate or charge so established shall not be paid within thirty days after it is due, the amount thereof, together with a penalty of ten per cent and a reasonable attorney's fee, may be recovered by the board in a civil action in the name of the district and in connection with such action such lien may be foreclosed against such lot, parcel of land or building, in accordance with the laws relating thereto.’

The lien is created by statute and exists by operation of law.

‘It is within the power of the legislature, subject to constitutional limitations, to provide for liens to secure the payment of debts and other obligations, and legislative authority exists to create by statute a right of a lien where no such right existed at common law. * * *.’ 51 Am. Jur. 2d, Liens, Sec. 25, p. 174.

The statute likewise controls the conditions of the lien

‘The terms of the statute are controlling with respect to the character, conditions and extent of the lien, the fund to which it attaches, the person who may be held liable, the amount recoverable, and the duration of the lien.’ 51 Am. Jur. 2d, Liens, Sec. 38, p. 177. See also 13 S. C. D., Liens.

The statute does not require that the lien be recorded and it therefore is created when the rates or charges are not paid when due. The statute also is notice of the lien as to subsequent purchasers or creditors. [Embassy Men's Apparel, Inc. v. Lyman Printing & F. Co.](#), 247 S. C. 471, 148 S. E. 2d 158.

CONCLUSION

It is the opinion of this office that the lien is created when the charge is not paid when due and the statute constitutes notice to any purchaser or creditor of the existence of the lien.

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