05-5578

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

March 29, 1995

The Honorable Thomas Ed Taylor
Magistrate
8150 Augusta Road
Piedmont, South Carolina 29673

Re: Informal Opinion

Dear Judge Taylor:

You have questioned whether a lienholder can be held responsible for storage charges when the lienholder has not been notified that a vehicle is in storage, nor do they have any knowledge of that fact. You state that a deputy sheriff arrested the driver of the vehicle and the vehicle was then towed. For unknown reasons, the owner did not recover the vehicle, nor did the garage owner advise the lienholder on the vehicle that the vehicle was in storage. You further state that some months later the owner advised the lienholder that the car was being held by this storage company. The lienholder "immediately contacted the storage company and was advised that they would be responsible for storage charges."

The relevant statutory provision to resolve your question is found in S.C. Code Ann. Section 29-15-10 which provides in pertinent part:

> [i]t is lawful for any proprietor, owner, or operator of any storage, place, garage or repair shop of whatever kind or repairman who makes repairs upon any article under contract or furnishes any material for the repairs to sell the property as provided in this section. When property has been left at his shop for repairs or storage, and after the completion of these repairs or the expiration of the storage contract, and the article has been continuously retained in his possession, the property

> may be sold at public auction to the highest bidder upon the expiration of thirty days after written notice has been given to the owner of the property and to any lienholder with a perfected security interest in the property that the repairs have been completed or storage charges are due. The property must be sold by any magistrate of the county in which the work was done or the vehicle or thing was stored. However, only those storage charges which accrued after the day on which written notice was mailed to the lienholder constitutes a lien against the vehicle or property to be sold. [emphasis added].

This Office has previously concluded that the foregoing statutory provision "has been construed as merely providing a method of enforcing the old common law lien and shortens the time within which the lien might be enforced." 1963-64 Op. Atty. Gen., Op. No. 1764, p. 277 (December 10, 1964), citing, Nesbitt Auto. Co. v. Whitlock, 113 S.C. 519, 101 S.E. 822 (1919). It has also been stated generally elsewhere that

> [o]rdinarly, where a motor vehicle is left with, and received by a garage keeper for storage, a bailment, mutually benefitting the parties is created, and the garage keeper becomes a bailee for hire.

61A C.J.S., Motor Vehicles, § 724.

Well recognized also is the basic principle that

> [s]tatutes granting liens to garage keepers for storage of motor vehicles usually require certain things to be done before a lien can be claimed or enforced. Liens have been denied in some instances because of the garage keeper's failure to meet the statutory requirements.

Anno., "Lien for Storage of Motor Vehicle," 48 A.L.R.2d 894, 904. By its express terms, Section 29-15-10 provides that "only those storage charges which accrued after the day on which written notice was mailed to the lienholder constitutes a lien against the vehicle or property to be sold." Until such time as is there is compliance with the statute, no lien exists.

Moreover, even where a lien has been perfected, we have previously construed the statute as giving priority to a properly recorded chattel mortgage over a subsequently

acquired lien for repairs by a mechanic. Op. No. 1764 (December 10, 1964) supra. There, we stated:

> The artisan's remedy would seem to be satisfaction of the chattel mortgage and then a judicial sale of the chattel if he feels that he can recoup a sufficient amount to cover the outstanding balance on the mortgage and at least some of the amount due under the lien.

This opinion is in accord with the general law in this area. In the above-cited annotation, contained at 48 A.L.R.2d 894 supra at 921, it is stated, for example:

> [m]any courts support the view that in the absence of contrary statutory requirement or special circumstances, the lien of a properly executed and recorded chattel mortgage is superior to a lien for storage charges accruing after execution and recordation of the mortgage.

See also, Glover v. Lewis, 299 S.C. 44, 382 S.E.2d 242 (Ct. App. 1989) [when mortgagee perfected mortgage, it had no knowledge or notice of mechanic's lien].

Finally, it has also been recognized that "[a] chattel mortgagee of a motor vehicle is not personally liable for storage charges ..." 61A C.J.S., Motor Vehicles, § 725. In Goodrich Silvertown Stores of the B. F. Goodrich Co. v. Valentine et al, 10 N.Y.S.2d 447 (1939), a chattel mortgagee, brought an action in replevin against the alleged owner of the vehicle and a garageman. Upon default by the truck owner demand was made of the garageman who held the truck by virtue of the purported lien for storage and repairs. The lower court found against the plaintiff for the amount of storage. On appeal, the Court reversed, concluding that the chattel mortgagee was not personally liable to the garageman:

> [t]he exact situation as it exists in the instant case was passed upon in Fidelity & Casualty Co. of New York v. Peckett, 220 App.Div. 118, 220 N.Y.S. 612, wherein it was held that because of a lack of a contractual relationship existing between the chattel mortgagee and the garageman, assuming he had a valid lien, the mortgagee is not made personally liable to the garage keeper, but, as against the mortgagee the judgment may only impress a lien on the chattel for the amount due.

10 N.Y.S.2d at 448.

Based upon the foregoing, it is my opinion that, because the lienholder was not given proper written notice by the garageman in accord with Section 29-15-10, a lien on an automobile for storage costs was not perfected; even if such lien were perfected, however, the garage lien remains junior to a prior recorded chattel mortgage on the automobile. Finally, because the lienholder did not contract for storage with the garage owner, the general authority is that such lienholder is not personally liable to the garage owner, but must seek his recourse through perfection of his statutory lien.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

I trust this information responds to your inquiry. With kind regards, I remain

Very truly yours,

Robert D. Cook
Assistant Attorney General

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