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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

November 6, 1998

The Honorable Elsie Rast Stuart
Member, House of Representatives
P. O. Box 38
Pelion, South Carolina 29123

Re: Informal Opinion

Dear Representative Stuart:

You have enclosed a letter concerning the title of an abandoned vehicle. Your constituent wishes to know if a third party can claim a vehicle and pay the bill while assuming the lien, providing that the charges and the owner of the vehicle also remains the same. You wish to know "whether a third party can claim the vehicle and pay the bill."

The letter from your constituent elaborates upon the matter. Your constituent writes as follows:

> [t]he law regarding seeking a title on an abandoned vehicle in the State of South Carolina is very clear. The [lien] holder in the case of a repaired or stored motor vehicle that has not been claimed after the notification of the owner of the vehicle. The proper channels of going through the local magistrate to obtain title to the formerly said vehicle in name of the [lien] holder for disposal of the vehicle and payment of the [lien] is also very clear.
>
> My question is, can a third party claim the vehicle and pay the bill while assuring the [lien], provided that the charges and the owner's [rights] to reclaim, and the location of the

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Request Letter

vehicle also remains the same. In other words, nothing has changed except, to whom the money is owed.

An example of this would be: John owes Joe's auto repair $300.00 storage. Joe wants his money but after proper notification John does not come to reclaim his vehicle. Joe does not wish to go through the magistrate to get the title for an unknown reason. Can Ed (the third party) pay Joe the $300.00 and assume the [lien] on the vehicle, and then go ahead with appropriate legal means to either collect from John or become the new legal owner of the property through the magistrate sale?

If John wants to reclaim his vehicle he would only pay the original amount owed to Joe plus any legal allowance for processing allowed under current law, Joe would then get his money without going through the red tape and paperwork. Even though all the transactions, John would still have every right to reclaim his property at the original cost.

Ed would get his money back from John in the case of reclamation or get his property in case of default.

Law / Analysis

S. C. Code Ann. Sec. 29-15-10 authorizes a lien for the repair of automobiles. Such provision reads as follows:

> [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. The magistrate shall, before selling the property, insure that any lienholder of record has been notified of the pending sale, and the magistrate shall advertise the property for at least fifteen days by posting a notice in three public places in his township. He shall, after deducting all proper costs and commissions, pay to the claimant the money due to him, taking his receipt for it, after which he shall deposit the receipt, as well as the items of costs and commissions with the remainder of the money or proceeds of the sale in the office of the clerk of court subject to the order of the owner of the article and any lienholders having perfected security interest in the article or any legal representative of the owner or the lienholder. The magistrate who sells the property is entitled to receive the same commissions as allowed by law for the sale of personal property by constables. When the value of the property repaired or stored does not exceed ten dollars, the storage owner, operator, or repairman may sell the property 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 that the repairs have been completed or storage charges are due and if a description of the article to be offered for sale and the cost of it has been from the time of the written notice advertised, together with the time and place of the proposed sale, in a prominent place in the shop or garage, on the county bulletin board at the courthouse, and in some other public place. The sale must be made for cash to the highest bidder at the shop or garage at which the repairs were made or storage incurred at ten a.m. on the first Monday of the first month after the thirty days' notice has been given and the true result of the sale must be immediately made known to the original owner of the article sold by notice addressed to the last-known address of the owner.

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]rdinarily 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 keepers becomes a bailee for hire.

61A C.J.S., Motor Vehicles, § 724.

The question you have raised, in essence, involves the assignability of a repairman's lien or other statutory lien. I am unaware of any decision by the courts in South Carolina which have addressed this issue.

In terms of general authority, there is case law extant which recognizes the ability of a garageman to assign a lien for repairs or storage. See, e.g. Gardner v. LeFevre, 180 Mich. 219, 146 N.W. 653 (1919); Triple Action Spring Co. of N.Y. v. Goyena, 93 Misc. 171, 156 N.Y.S.1064 (1916); Goyena v. Berdoulay, 154 N.Y.S.103 (1915). An annotation found at 48 A.L.R.2d 894, 926 notes that the LeFevre case "held that it was permissible for a garage keeper to assign his lien on an automobile for storage and other items to a purchaser of the garage, and pointed out that as lienor he had assigned the claims for such charges, and delivered the automobile to the assignee to hold until such time as he was paid." And in the Triple Action case, the Court reasoned:

> [t]he general rule is that upon an assignment of a debt the assignor may transfer all his rights to such collateral security as may exist. [citations omitted] . . . . And I see no reason why this principle should not apply to an ordinary artisan's lien as in the present case. An attorney's lien upon papers and other articles belonging to his client cannot be assigned, because it involves a relationship of trust and confidence which would be violated by the assignment to a third party . . . but in the case of an ordinary artisan's lien, where the debt is assigned and the chattel is transferred upon the same terms as those upon which

> the original lienor held it, the true owner is in no way prejudiced, and the assignee acquires the right to the lien.

Id.

Likewise, the Alabama Attorney General has concluded that the lien for reasonable fees for removal and storage of motor vehicles could be assigned to a third person. The Attorney General concluded as follows:

> [w]hile no Alabama case law on point is available, other authorities indicate that a cause of action created by statute is assignable where the statute imposes a contractual relation and does not exact a penalty. 6A C.J.S., Assignments, § 42. Because the cause of action created by the Act is contractual, the lien is assignable. Where a method or remedy for enforcing a statutory lien is provided for by the statute creating the lien, the statutory remedy is regarded as exclusive. Harden v. Wood Lumber Company, 178 So. 540 (1938). Therefore, any violation of the Act would bring about loss of the statutory lien. Allstate Insurance Company v. Reeves, 440 So.2d 1086 (Ala.Civ.App.1983).

Alabama Op. Atty. Gen., December 16, 1991.

By contrast, Koroleff v. Schildkraut, 179 N.Y.S.117 (1919) concluded that the garage owner's lien could not be assigned. There, the plaintiff brought an action of replevin for the two taxicabs. The defendant claimed that, by virtue of an assignment, he had the right to retain the cabs. The Court rejected this contention, reasoning as follows:

> [t]he lien of the garage keeper is purely of statutory origin, and the statute contains no provision in regard to an assignment of this kind of a lien; but it would serve no purpose to determine whether the mere absence of such provision renders a statutory lien nonassignable. It is clear that in any event a lien cannot be assigned, where such assignment would necessarily constitute a breach of contract between the parties. The plaintiff had a right to pick out any particular garage in which to store his taxicabs. If the bailment was for a definite period, then the

> garage keeper was bound to keep the taxicabs for that period, and if it was for an indefinite period he could terminate the bailment only by notice to the plaintiff. In any event, the bailment was the result of a contract, and under that contract the garage keeper was bound to keep the taxicabs in his garage, and to deliver the taxicabs to the plaintiff upon demand, and obviously the delivery of the taxicabs to a third person or their storage in another place would constitute a breach of the contract of bailment. The statute was not intended to, and could not, change the contractual rights of the parties. It merely gave the garage keeper a lien on the property so long as it remained in his possession. He had a right, of course, to enforce that lien by proper proceedings authorized by the statute; but, except for a transfer of possession or title made in pursuance of such provision, any transfer of the automobiles to another garage or to another person would constitute a breach of contract and possibly a conversion by him. The lien given by the statute cannot be separated from the right to possession of the article on which the lien exists, and since it is clear that the garage keeper could not assign to any other person his right as bailee, and since his only right to possession was created by and existed under the contract of bailment, it follows that the lien could not be assigned. The defendant is holding the plaintiff's property without authority from the plaintiff, express or implied, and he cannot enforce the lien which the original garage keeper was given by statute, so long as the taxicabs were in his possession, and no lien in defendant's favor has arisen for the storage thereafter in his own garage without the consent of the plaintiff.

179 N.Y.S. at 119.

Our own Supreme Court has held that a repairman's lien in connection with the repair of automobiles is valid only so long as the garageman maintains possession of the vehicle. In Welcome Home Center, Inc. v. Central Chevrolet Co., Inc., 272 S.C. 166, 249 S.E.2d 896 (1978), the Supreme Court wrote that

> [t]he trial court correctly awarded summary judgment to the respondent. By statute and under the common law, the vitality

> of a repairman's lien is conditioned on his continuous possession of the article. [quoting § 29-15-10] . . . .
>
> Similarly, the Fourth Circuit Court of Appeals in Clark Bros. & Co., Inc. v. Pou, 20 F.2d 74 at 76 stated:
>
> "The lien given the artisan or worker upon property upon which he worked, for the amount due him for the work done, is clearly established in common law, but possession of the property is essential to the lien. Surrender of possession and the giving of credit to the owner of the property destroyed the lien." See also Bouknight v. Headden, 188 S.C. 300, 199 S.E. 315 (1938); 8 C.J.S. Bailments § 35d; 61A C.J.S. Motor Vehicles § 747(1).

And, in an Informal Opinion, dated December 5, 1995, we commented on the situation regarding whether a person could be an agent for the garage man" to help obtain a title to the car that the garage man is holding for the non-payment of a bill . . . ." Referencing § 29-15-10, we found nothing in the statute which "appears to preclude a garage man from having an agent to assist him in recovering the amount due him for storage and/or repair." However, the Informal Opinion cautioned that the question raised the issue of whether the individual acting as an agent for the garage man was engaged in the unauthorized practice of law. We concluded that there was existing case law in other jurisdictions that such activity did constitute the unauthorized practice of law, but that only the South Carolina Supreme Court as the regulatory body for unauthorized practice could make that determination. We thus deemed a declaratory judgement advisable.

The issue raised by your request is somewhat different as it in effect concerns the assignability of the statutory lien. In any event, however, § 29-15-10 does not expressly state that the garageman's lien is assignable. No South Carolina decision has so held. Thus, I am doubtful that the lien could be assigned to a third party unless and until a court so determining or the Legislature amends the statute to make such clear. Certainly, the General Assembly could have specifically indicated, if it so desired, that the repairman's lien is assignable to a third party.

An artisan's lien, such as is recognized by § 29-15-10, is characterized by the law as a so-called "chose in action." Nat. Bond & Investment Co. v. Midwest Finance Co., 156 Kan. 531, 134 P.2d 639 (1943). The South Carolina courts have consistently concluded that

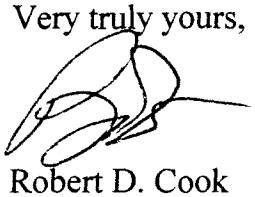
"[t]he law of South Carolina has long recognized that a chose in action can be validly assigned in either law or equity." Slater Corporation v. South Carolina Tax Commission, 280 S.C. 584, 314 S.E.2d 31 (Ct. App. 1984).

Notwithstanding this general authority, again, I am hesitant to conclude that the statutory repairman's lien can be assigned to a third party without either legislative clarification or judicial approval in the form of a declaratory judgement. Thus, I would advise that such not be done unless or until the Legislature expressly authorizes such a transfer or such is approved by a court of competent jurisdiction.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy 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.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/ph