

The State of South Carolina

4968 Liberty



Office of the Attorney General

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October 27, 1992

Karen S. Baughman
Circuit Court Representative
S. C. Court Administration
Box 50447
Columbia, SC 29250

Dear Ms. Baughman:

You have requested the opinion of this Office as to two matters concerning the filing of Notices of Liens of the Workers' Compensation Uninsured Employers' Fund pursuant to S. C. Code Ann. § 42-7-200 (Supp. 1991). This statute provides, in part, as follows:

...When the Fund is notified of a claim, the Fund may place a lien on the assets of the employer by way of lis pendens or otherwise so as to protect the Fund from payments of costs and benefits. If the Fund is required to incur costs or expenses or to pay benefits, the Fund has a lien against the assets of the employer...and may file notice of the lien with the Clerk of Court of any county in which the employer has assets and with the Secretary of State in the same manner as utilized under Title 36 (Uniform Commercial Code)....(emphasis added).

Your first question is whether this statute requires the lien to be filed as a lis pendens. The following rules of statutory construction are applicable to this question:

...Where the terms of a statute are clear and unambiguous, there is no room for interpretation and [a

Karen S. Baughman
October 27, 1992
Page Two

Court] must apply them according to their little meaning.
S. C. Department of Highways and Public Transportation v.
Dickinson, 288 S.C. 134, 341 S.E.2d 134 (1986).

Moreover, ordinary rules of grammar apply to the construction of statutes. See Busching v. Superior Court of Ventura County, 115 Cal. Rptr. 241, 524 P.2d 369, 374 (1974). Here, because the manner of placing the lien is "by way of lis pendens or otherwise", (emphasis added), and because the word "or" ordinarily suggests alternatives,¹ the plain meaning of the statute appears to be that methods of placing the lien may be used other than a lis pendens. This conclusion is supported by the fact that a lis pendens applies to an action affecting title to real property (See § 15-11-10 (1976)) and § 42-7-200 is directed more broadly to "the assets of the employer".

You have also asked whether the lien may be filed with tax liens. Section 42-7-200 does not state where the lien must be filed within the Clerk of Court's Office, and, therefore, does not appear to preclude filing the lien under § 42-7-200 with the tax liens;² however, any files where the liens are kept should clearly indicate that those liens are included in those files. The permissibility of filing § 42-7-200 liens with the tax liens is supported by the comparative references to § 42-7-200 liens and tax liens in other parts of that statute.

Your final question relates to the appropriate filing fee for these instruments. No statute expressly addresses this particular lien, but § 8-21-310 (3) (Supp. 1991) provides for a \$6.00 fee for a "lien for the payment of money", among other instruments. This provision appears to be more specifically related to the lien in question than the \$10.00 fee for "...any other paper affecting

¹George Hyman Construction Co. v. Occupational Safety and Health Review Commission, 582 F.2d 834 (4th Cir. 1978); Sutherland Statutory Construction, Vol. 2A, § 21-14.

²Although the statute does obtain language concerning filing the lien "in the same manner as utilized under Title 36 (Uniform Commercial Code)", this language appears to be directed to filings with the Secretary of State. Filings of security interests under the Uniform Commercial Code are limited to interests in personal property or fixtures and would not include the broader range of real property interests that appear to be encompassed by § 42-7-200. See § 36-1-201 (37) (1976) and § 36-9-401 (Supp. 1991).

Karen S. Baughman
October 27, 1992
Page Three

title or possession of real estate or personal property..." under Paragraph 9 of this statute or the \$5.00 fee for filing tax liens under Paragraph 20. Of course, if the lien were placed by a lis pendens as permitted by § 42-7-200, the fee would be \$5.00 under § 8-21-310 (11)(b).

In conclusion, § 42-7-200 neither requires that the lien thereunder be placed by lis pendens nor does it prohibit the filing of that lien with tax liens; however, you may want to consider seeking legislative clarification to provide for a uniform place of filing. The appropriate fee for filing the lien under § 42-7-200 appears to be \$6.00 under § 8-21-310 (3).

If you need other information, please let me know.

Yours very truly,


J. Emory Smith, Jr.
Assistant Attorney General

JESjr:lt

cc: Mr. Brooks Shealy
Chief Counsel, Second Injury Fund

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