1977 S.C. Op. Atty. Gen. 331 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-404, 1977 WL 24740

Office of the Attorney General

State of South Carolina
Opinion No. 77-404
December 21, 1977

***1** Opinion To Glen S. Baldwin
Greenville City Attorney

You have indicated that pursuant to Section 6-9-10, et seq., Code of Laws of South Carolina, 1976, the City of Greenville has adopted by reference the Southern Standard Building Code subject to such amendments as are delineated in the relevant Greenville Municipal Code sections. Section 6-17 of the Greenville Code states that all unsafe buidings, as defined by this section, are illegal and specific procedures are defined which provide for repair, rehabilitation or demolition in certain instances. If the situation is not properly remedied, the City's Building Official is authorized pursuant to Sections 6–17(e) and (f) to demolish, secure or cause the particular building to remain vacant. Any costs incurred under these particular paragraphs '. . . shall be charged to the owner of the premises involved and shall be collected in the manner provided by law.' The question now posed is whether the City of Greenville may place a municipal lien which would have priority over existing liens, mortgages, or other encumbrances already affecting a particular property for costs incurred by actions taken by the City pursuant to the above Sections 6–17(e) and (f).

The relevant sections of the Greenville Code furnished this office do not refer to such a lien. Section 6–24 of this same Code reiterates basically those earlier stated facts concerning buildings erected or maintained in contravention of the Southern Standard Building Code and authorizes the City Building Administrator in the case of refusal or failure of an owner to remedy a situation to:
destroy or remove such building or remedy the defect and collect the expenses of such destruction, removal, or alteration from the owner of such building, who shall pay such expenses independent of any penalty that may be imposed and the same may be recovered from such owner on behalf of the city in the same manner as debts of like amounts are now recovered by law. (emphasis added)

Again, there is no reference to the City being specifically authorized to place a lien against a particular property for actions taken pursuant to Section 6–24 above which would have priority as earlier indicated.

You refer to the fact that there is a reference in Section 6–41 of Article III of this particular code dealing with site preparation which states that for violations of this article, the Building Administrator is to take certain actions and '. . . any reasonable costs of such shall be assessed against the responsible persons as are personal property taxes.' However, it does not appear that this particular section relates back to Article II which concerns building code violations. Therefore, there is no apparent authority in the Municipal Code itself which authorizes any priority for such a lien.

Furthermore, there is no specific authority in the to adopt the building codes which expressly authorizes the City of Greenville to place a municipal lien on certain property for costs incurred in demolishing, securing, or requiring a particular building to remain vacant which would have priority over existing liens, mortgages, or other encumbrances already on a particular property. As indicated in the South Carolina case of McKenzie v. City of Florence, 234 S.C. 428, 108 S.E.2d 825 (1959):
***2** Municipal corporations possess and can exercise only such powers as are granted in express words or those necessarily or fairly implied in or incident to powers expressly conferred, or those essential to accomplishment of declared objects and purposes of corporations. 234 S.C. at 437.

An earlier opinion of this Office, 1973 Op.Atty.Gen., No. 3565, p. 208, indicated that in the particular situation referenced in that opinion, the costs that a municipality may have incurred for repairing, demolishing, or causing a building to be vacated by virtue of a certain ordinance cannot be charged as a tax or as a special assessment or become a lien without specific legislative authority.

In City of Miami v. Thaw, 135 So.2d 902 (1961), the District Court of Appeal of Florida held that an ordinance of the City of Miami which purported to create a lien in favor of the City for its costs in demolishing a building where the owner, occupant, mortgagee, lease, or other person having an interest in the property had failed to comply with an order to do such was void and unconstitutional inasmuch as there was no apparent charter, statutory or other authority granted to the City by the Florida legislature authorizing the creation of such a lien. Furthermore, even if the City of Greenville was to place a lien for its costs in demolishing, securing or causing a building to remain vacant, the lien would not have priority over other existing liens affecting the property unless there was at a minimum specific statutory authorization for such a priority. See City of Jenkins v. Curry, 347 S.W.2d 85 (1961). In Cleveland Metropolitan Housing Authority v. Lincoln Property Management Company, Inc., 259 N.E.2d 512 (1970) an Ohio statute specifically authorized a municipality to remove unsafe buildings and stated in part that the costs for such demolition:
shall be a lien upon such lands from and after the date of entry and shall be collected as other taxes. . . . 259 N.E.2d at 513.

Here the Court ruled that such a lien would be held to be prior to an antecedent mortgage lien since it was tantamount to a general tax lien and all interests in land are acquired subject to the taxing power.

Section 5–7–80, Code of Laws of South Carolina, 1976, authorizes a municipality to:
. . . provide by ordinance that the owner of any lot or property in the municipality shall keep such lot or property clean and free of rubbish, debris and other unhealthy and unsightly material or conditions which constitute a public nuisance.

This particular section in part (b) also states that if the owner of such lot or property does not correct the condition, the municipality may authorize by ordinance that any costs incurred by it in correcting such conditions '. . . shall become a lien upon the real estate and shall be collectable in the same manner as municipal taxes.' You have asked additionally if this statutory authorization may be used in this instance to authorize a municipal lien with that priority over existing encumbrances on a particular property for the costs incurred by the City of Greenville for demolishing, securing, or causing a particular building on such property to remain vacant. However, in the opinion of this Office, those relevant sections of Article II of the Greenville Code relating to the building code were not adopted pursuant to the authority outlined in Section 5–7–80, supra, and therefore would not be able to relate to it as authority. Furthermore, this particular section refers to keeping a lot or property '. . . clean and free of rubbish, debris, or other unhealthy and unsightly material or conditions which constitute a public nuisance.' This would not appear to be directed toward unfit buildings but would be more concerned with vacant lots and other such property.

CONCLUSION:

***3** There does not appear to be any basis for the City of Greenville to place a municipal lien which would have priority over existing liens, mortgages, or other encumbrances of record on a particular property for costs incurred by the City in demolishing, securing or vacating an unsafe building on such property. Specific legislative authority would be necessary for such a lien.

Charles H. Richardson
Staff Attorney

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