

1975 S.C. Op. Atty. Gen. 22 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 3945, 1975 WL 22243

Office of the Attorney General

State of South Carolina

Opinion No. 3945

January 27, 1975

*1 The Honorable Jesse F. Stephens
Richland County Magistrate
6922 North Main Street
Columbia, SC 29203

Dear Judge Stephens:

In a recent phone conversation, you asked the following question of this office:

Is it lawful for a landlord, owning only the lot on which a mobile home is parked, to distress for rent in arrears against the mobile home and/or its contents?

Please be advised that Section 41–151 of the 1962 Code of Laws of South Carolina, as amended provides for distress for rent against the personal property of the party in default. Section 41–153 provides that the property taken must be upon the rented premises.

The problem which you have expressed to me is that the mobile home itself is not rented 'premises', therefore, does an officer have the right to enter and take articles to satisfy the existing debt. I should first point out that the mobile home itself is personal property and therefore is subject to distress proceedings. (See analogous situation, 1967–68 Op. Att'y Gen., No. 2607, p. 332—Automobile subject to distraint.)

Distress for rent is a remedy of the landlord for the collection of rent and applies wherever the relationship of landlord and tenant exists.

All goods on demised premises, by the common law . . . , may be considered as under a quasi pledge to the landlord . . . (Emphasis added.) ([West Side Paper Co.](#), 162 P. 110, 111, 89 C.C.A. 110, 15 Ann.Cas. 384).

Section 41–158 of the Code prescribes that the property taken must be reasonable in relation to the amount of the debt. It would therefore seem that in most instances, distraint against the mobile home itself would subject the landlord to liability under Section 41–159.

It follows that if the mobile home itself is subject to distraint, all goods contained therein with the exception of those prohibited by Section 41–152, are also subject to distress. Therefore, upon proper application for a distress warrant and after notice of and a preseizure hearing according to law, it is lawful to distress for rent against the property contained within the mobile home.

I hope that this sufficiently answers your inquiry. If I can be of further assistance, please feel free to contact me.

Very truly yours,

Hutson S. Davis, Jr.
Assistant Attorney General

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