

1975 S.C. Op. Atty. Gen. 25 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 3951, 1975 WL 22249

Office of the Attorney General

State of South Carolina

Opinion No. 3951

January 28, 1975

***1 The lien created by Section 36–503(6) does not have priority over existing liens.**

Assistant City Attorney
City of North Charleston

Your letter of January 23, 1975 to Mr. McLeod has been handed this writer for attention and reply. You advise that the Public. Safety and Housing Office of the City of North Charleston is proceeding under the provisions of Chapter 5 of Title 36 that relates to dwellings that are unfit for human habitation in municipalities of over five thousand. You refer specifically to Section 36–503(6) and request the opinion of this office of whether the lien created by the statute is entitled to priority. The language of the statute is as follows:

‘That the amount of the cost of such repairs, alterations or improvements, vacating and closing or removal or demolition by the public officer shall be a lien against the real property upon which such cost was incurred.’

The lien is created by statute and under the general rule it is subordinate to all existing liens:

‘Common-law liens, as a general rule, attach to property itself without any reference to ownership, and override all other rights in the property, whereas liens created by contract or statute are subordinate to all existing rights therein.’ *51 Am. Jur., Liens, Sec. 51, page 185.*

The priority of the statutory lien would therefore be dependent upon the date of existence.

‘In absence of statutory regulation, common law establishes liens in order of their acquisition; prior lien ordinarily giving prior right entitled to prior satisfaction out of subject it binds.’ *Powers v. Fidelity & Deposit Co. v. Maryland*, 180 S. C. 501, 186 S. E. 523.

Your inquiry is addressed primarily to the cost incurred for demolishing unfit dwelling and in this connection your attention is called to Section 36–509 that expressly provides for the sale of ‘the materials of such dwelling’ and the ‘credit of the proceeds of such sale to the cost of removal or demolition.’ Such appears to be in addition to the lien and would satisfy the costs before any surplus could be distributed to others.

Should a situation exist where the City must repair (improve) the property and there are prior liens, it is possible that equity will give priority for the reimbursement for improvements and in this connection your attention is called to *51 Am. Jur. 2d., Liens, Sec. 22, et seq.* that treats equitable liens. An action in equity would, however, be necessary to establish such priority.

Joe L. Allen, Jr.
Assistant Attorney General

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