

1973 WL 27701 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 5, 1973

***1 Re: City of Abbeville Ordinance Lien Against Real Estate for Repair or Demolition of Dangerous Buildings by City**

A municipal ordinance that provides that the cost of repair, etc. of a dangerous building shall constitute a lien on the real property so repaired, etc. is invalid unless enacted by reason of Title 36, Chapter 5 and here it is limited to dwellings.

Robert L. Hawthorne, Jr., Esq.
Abbeville City Attorney
200 E. Pinckney Street
Abbeville, South Carolina 29620

Dear Mr. Hawthorne:

Reference is made to your letter of June 20, to Mr. McLeod for the opinion of this office of the validity of a lien provided for by City Ordinance, Section 5-14(e). The Ordinance provides that the City building inspector shall, upon the failure of the owner, occupant, mortgagee or lessee, cause a dangerous building or structure to be repaired, vacated or demolished and charge the cost to the land on which the building existed as a municipal lien or to the tax duplicate as an assessment or as a special tax against the land or to recover the cost in a suit at law against the owner.

The General Assembly has, in Section 47-61, conferred upon municipalition the right to make and enact regulations or ordinances not inconsistent with State law respecting roads, streets, markets, police, health, etc. Section 47-66 provides the power to abate nuisances and Chapter 11 of Title 47 provides authority for building permits, inspections, etc. Section 47-1151 thereof provides for the municipalities to be covered by the Chapter, and Sections 47-1189 through 47-1192 provide the penalty for failure to repair unsafe buildings.

The provisions of Chapter 5 of Title 35 provide authority to a municipality with reference to the repair and demolition of dwellings that are unsafe for human habitation and subparagraph 6 of Section 36-503 provides that the cost of the repairs, alterations or demolition shall be a lien against the real property upon which such cost was incurred. This Chapter has been before our Court in the case of [Richards v. Columbia](#), 227 S. C. 538, 88 S. E. 2d 683, and was upheld, however, there is no authority found to otherwise constitute the cost of a lien on the property.

‘Generally, 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 corporation.’ [McKenzie v. City of Florence](#), 234 S. C. 428, 108 S. E. 2d 825.

The cost cannot therefore be charged as a tax or as a special assessment, nor will the same constitute a lien without specific legislative authority. It is doubtful, therefore, that the City would have a lien on the land unless the same was by reason of Chapter 5 of Title 36 of the Code.

Yours very truly,

Joe L. Allen, Jr.
Assistant Attorney General
South Carolina Tax Commission

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