



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 81- 250

The Honorable Denny D. Burgess
State Representative - Sixtieth District
Rt. 1, Box 292
Wamego, Kansas 66547

Re: Personal Property -- Liens -- Provision of Feed to
Livestock

Synopsis: Pursuant to K.S.A. 58-207, a person who provides feed to livestock has a lien upon such livestock to the extent of the value given, but only if such person remains in actual possession of the animals. A merchant who sells feed to a livestock producer on open account has no such statutory lien, and has the status of an unsecured creditor until such time as the merchant perfects a security interest under the provisions of Article 9 of the Kansas Uniform Commercial Code, K.S.A. 84a-9-101 et seq. Cited herein: K.S.A. 58-201, 58-203, 58-207, 58-208, 58-218, 58-220, 84-9-109, K.S.A. 1980 Supp. 84-9-301, K.S.A. 84-9-310, K.S.A. 1980 Supp. 84-9-312, 84-9-401, 84-9-402.

* * *

Dear Representative Burgess:

You request our opinion on a situation involving the creation of liens on livestock. Specifically, you wish to know whether any lien is created through the sale of feed by a merchant to a livestock producer. (Presumably this lien would attach to the livestock.) You further inquire as to the priority of any lien so created, and whether it would be necessary to file any document or instrument to perfect the lien.

Those Kansas statutes which create liens on personal property are found in Article 2 of Chapter 58 of the Kansas Statutes Annotated. Therein are found statutes which provide for the creation of liens for materials or services provided (K.S.A. 58-201), for threshing or husking (K.S.A. 58-203), for charges incurred in the possession of bailed goods (K.S.A. 58-208), for pasturing livestock (K.S.A. 58-520) and for baling hay (K.S.A. 58-218). Although the liens differ as to the manner of their creation and filing, they are alike in the respect that, being purely statutory in nature, the requirements for their creation must be clearly met. National Bond and Investment Co. v. Midwest Finance Co., 156 Kan. 531 (1943), and cases cited therein at 537. Failure to do so results in the voiding of the lien, with the resulting loss of any priority over other creditors. If the lien is valid, however, even perfected security interests are subject to it. K.S.A. 84-9-310.

Also contained therein is a lien for the feeding and care of livestock, K.S.A. 58-207. There, it is provided:

"The keepers of livery stables, and all others engaged in feeding horses, cattle, hogs, or other livestock, shall have a lien upon such property for the feed and care bestowed by them upon the same, and if reasonable or stipulated charges for such feed and care be not paid within sixty (60) days after the same becomes due, the property, or so much thereof as may be necessary to pay such charges and the expenses of publication and sale, may be sold as provided in this act: Provided, however, That any lien created by this act may be assigned."

While this section may initially appear to create a lien in the situation you posit, judicial interpretations have rendered it inapplicable. Specifically, in Loader v. Bank of Idana, 113 Kan. 718 (1923), it was held that the lien claimant under this statute must be a bailee in possession of the livestock, and that no lien was created where such possession did not occur. In the more recent case of Chasteen v. Childers, 218 Kan. 519 (1976), surrender of possession was likewise held to have terminated the lien.

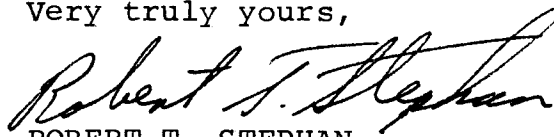
Accordingly, in our opinion neither K.S.A. 58-207 nor any other statute contained in Article 2 of Chapter 58 serves to create a lien in the situation here, where feed is sold to a livestock producer for consumption by the latter's livestock, which remain in his possession. As a result, the merchant would be in the position of a mere creditor, and would have an unsecured claim against the producer, subject to all other

Denny D. Burgess
Page Three

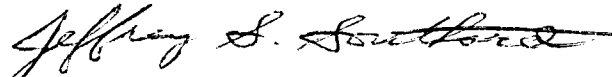
claims which have been secured through the taking of a security interest, whether on the livestock or on other property owned by the producer. If the merchant wished to secure this debt, he would need to employ the procedures set out by K.S.A. 84-9-101 et seq., which govern the taking of security interests in personal property. As defined by K.S.A. 84-9-109(3), "farm products" include livestock, leaving any security interest naming them as collateral to be filed with the register of deeds in the county of the debtor's residence. K.S.A. 1980 Supp. 84-9-401(1)(a). Formal requisites of the financing statement are contained at K.S.A. 1980 Supp. 84-9-402, and it is only when these requirements are met that the merchant would have a perfected security interest which would be entitled to priority over subsequent filers and unsecured creditors. K.S.A. 1980 Supp. 84-9-301. Of course, even when perfected the security interest is subordinate to those interests filed or perfected earlier in time which cover the same property. K.S.A. 1980 Supp. 84-9-312.

In conclusion, pursuant to K.S.A. 58-207, a person who provides feed to livestock has a lien upon such livestock to the extent of the value given, but only if such person remains in actual possession of the animals. A merchant who sells feed to a livestock producer on open account has no such statutory lien, and has the status of an unsecured creditor until such time as the merchant perfects a security interest under the provisions of Article 9 of the Kansas Uniform Commercial Code, K.S.A. 84a-9-101 et seq.

Very truly yours,



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RTS:BJJ:JSS:hle