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September 18, 1985

ATTORNEY GENERAL OPINION NO. 85- 124

The Honorable Eric Yost
Senator, Thirteenth District
104 Post Oak Road
Wichita, Kansas 67206

Re: Civil Procedure -- Liens for Labor and Material --
Liens of Subcontractors; Limitations With Respect
to Residential Property

Synopsis: Pursuant to K.S.A. 60-1103(d), the owner of
residential property is subject to double
liability for work done on that property only for
the amount of payments made to the general
contractor after receipt of the required warning
statement, or, if no warning statement is required,
for payments made prior to the expiration of the 3
month period for filing lien claims. Cited
herein: K.S.A. 60-1103.

* * *

Dear Senator Yost:

You request our opinion on a question concerning the effect of
the mechanic's lien law, K.S.A. 60-1103, and the 1982
amendments thereto. Specifically, you request our
interpretation of subsection (d), which regards the extent to
which a homeowner can be required to pay twice for the work
done on residential property.

K.S.A. 60-1103(d) states in part:

"(d) Rights and liability of owner. The owner of the real property shall not become liable for a greater amount than the owner has contracted to pay the original contractor, except for any payments to the contractor made:

"(1) Prior to the expiration of the three-month period for filing lien claims, if no warning statement is required by subsection (c); or

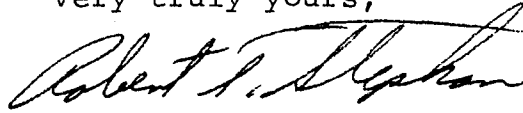
"(2) subsequent to the date the owner received the warning statement, if a warning statement is required by subsection (c)."

The 1982 amendment to K.S.A. 60-1103 gives the owner of residential property greater protection from being required to pay an obligation twice than had previously existed. Under K.S.A. 60-1103(d) (2), such an owner is subject to double liability for work done only in the amount of payments made to the general contractor after receipt of the statutory warning statement set forth at K.S.A. 60-1103(c) (2). Under subsection (c), the giving of such a statement is a pre-condition for a supplier or subcontractor to claim a lien for materials or work done on residential property where the claim is more than \$250. The statement, which is designed to put owners on notice of the possibility of double liability, also alerts them to: (1) the fact that, by obtaining waivers of lien, they may avoid such liability; and (2) that in the event of a claim being filed, they have the right to withhold further payments from the contractor until the dispute is settled.

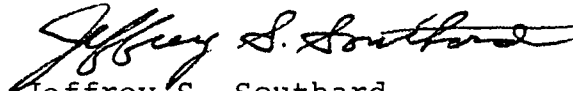
In conclusion, pursuant to K.S.A. 60-1103(d), the owner of residential property is subject to double liability for work done on that property only for the amount of payments made to the general contractor after receipt of the required warning

statement, or, if no warning statement is required, for payments made prior to the expiration of the 3 month period for filing lien claims.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:BJH:crw