



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 2

The Honorable Marvin E. Smith
State Representative, Fiftieth District
123 N.E. 82nd
Topeka, Kansas 66617

Re: Civil Procedure -- Liens for Labor and Material --
Liens on Residential Property; Limitations

Synopsis: K.S.A. 1981 Supp. 60-1103 (as amended by L. 1982, ch. 248, §2) provides that a warning statement must be given to an owner of residential property before a lien may be claimed by a supplier or subcontractor for the furnishing of labor or materials, providing the claim is in excess of \$250. Such a statement informs the owner that a lien may be filed against the property unless a waiver of lien form is obtained from the supplier or subcontractor. In cases where a warning statement is required, an owner of real property is not liable for an amount greater than that originally contracted for, except for payments made after the date the statement is received. Cited herein: K.S.A. 1981 Supp. 60-1103 (as amended by L. 1982, ch. 248, §2).

* * *

Dear Representative Smith:

As State Representative for the Fiftieth District, which includes portions of Shawnee and Jackson Counties, you request our opinion on a question concerning liens on residential property. Specifically, you wish to know the circumstances under which one of these

liens, commonly known as mechanics' liens, may attach, and how an owner of residential property may protect himself from such an occurrence.

Before reviewing the applicable statute, it would be helpful to set out the particular facts contained in your letter. You inform us that one of your constituents paid a contractor in full for concrete work to be performed at his residence. The contractor paid the subcontractor who furnished the materials (supplies) only two-thirds of the amount due, with the result that the latter has threatened to file a lien against the property owner's residence. Further, you inform us that the material involved was worth in excess of \$250.

The relevancy of this dollar amount is evident when reference is made to the recently-amended mechanics' lien statute which applies to residential property. That statute, K.S.A. 1981 Supp. 60-1103 (as amended by L. 1982, ch. 248, §2), sets forth general provisions regarding mechanics' liens at subsections (a) and (b). Subsection (c) contains additional requirements for such liens on residential property, and states:

"(1) A lien may be claimed pursuant to this section for the furnishing of labor, equipment, materials or supplies for the improvement of residential property only if the claimant has:

"(A) Mailed to any one of the owners of the property a warning statement conforming with this subsection; or

"(B) in the claimant's possession a copy of a statement signed and dated by any one owner of the property stating that the general contractor or the claimant had given the warning statement conforming with this subsection to one such owner of the property.

"(2) The warning statement provided for by this subsection, to be effective, shall contain substantially the following statement:

"Notice to owner: (name of supplier or subcontractor) is a supplier or subcontractor providing materials or labor on Job No. _____

at (residence address) under an agreement with (Name of contractor). Kansas law will allow this supplier or subcontractor to file a lien against your property for materials or labor not paid for by your contractor unless you have a waiver of lien signed by this supplier or subcontractor. If you receive a notice of filing of a lien statement by this supplier or subcontractor, you may withhold from your contractor the amount claimed until the dispute is settled.'

"(3) The warning statement provided for by subsection (c)(1) shall not be required if the claimant's total claim does not exceed \$250."

Subsection (d) further provides that an owner is not liable for any amounts beyond that originally contracted for, except these payments made after the warning statement is received. Only to this limited extent may an owner be subjected to the double liability which is historically the effect of a mechanic's lien.

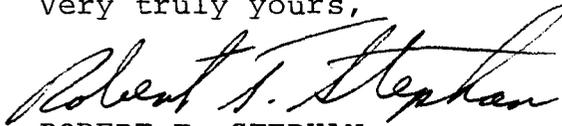
An application of the above to your constituent's situation would indicate that a lien may be taken only if the subcontractor who supplied the contractor provided the required warning statement or, alternatively, could show that the general contractor had already done so. Assuming this was done, the homeowner could be liable for amounts in addition to that in the initial contract only if payments were made to the contractor after the warning statement was provided. For example, if the homeowner paid the contractor in full, with the latter providing no warning statement, the subcontractor could not, by subsequently sending a warning statement, obligate the owner for any additional amounts. However, if the warning was contained in or attached to the initial contract, with payment made later, the lien could attach for those amounts which the contractor ought to have paid to the subcontractor but which were not paid. To this extent the homeowner could pay for the same material twice.

In conclusion, K.S.A. 1981 Supp. 60-1103 (as amended by L. 1982, ch. 248, §2) provides that a warning statement must be given to an owner of residential property before a lien may be claimed by a supplier or subcontractor for the furnishing of labor or materials, providing the claim is in excess of \$250. Such a statement informs the owner that a lien may be filed against the property

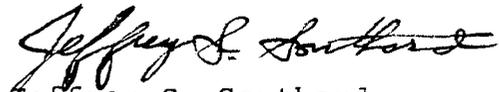
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unless a waiver of lien form is obtained from the supplier or subcontractor. In cases where a warning statement is required, an owner of real property is not liable for an amount greater than that originally contracted for, except for payments made after the date the statement is received.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:hle