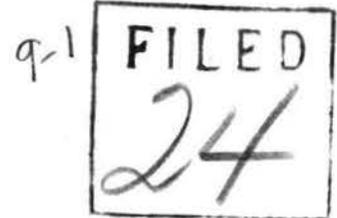


UNEMPLOYMENT COMPENSATION: "Notice of Lien" may be filed and not recorded by the Commission. County Court should furnish a number book for the purpose of checking an employer as to his liability under a "Notice of Lien".

August 28, 1939

Hon. Herbert H. Douglas
Prosecuting Attorney
Newton County
Neosho, Missouri



Dear Sir:

We are in receipt of your request for an opinion, under date of August 21st, 1939, which reads as follows:

"Will you please let me have your opinion on the following:

"Where will a 'Notice of Lien' under Unemployment Compensation Law as amended to become effective July 1, 1939, being subsection (g) of Section 15 of said Unemployment Compensation Law be recorded and in what record book. In other words, one of these Notices has been sent to the Recorder here in Newton County, and he tells me that he has no book in which to record them and does not know what to do with it."

Senate Bill 346 of the Sixtieth General Assembly which amended the original Unemployment Act of 1937, became effective on July 1st, 1939. Par. (g) of Sec. 15, thereof, reads as follows:

"If any case in which any contribution, interest or penalty imposed under this Act is not paid when due, the Commission may file for record in the Recorder's Office of the county in which the employer owing said contribution, interest or penalty resides, or has his place of business, or any other county in which he has property, a

notice of lien specifying the amount of the contribution, interest or penalty due and the name of the employer liable for the same. From the time of filing any such notice, the amount of the contribution specified in such notice shall have the force and effect of a lien of a judgment against the employer named in said notice of lien for the amount specified in such notice. Such lien may be released by filing for record in the office of the county recorder a release thereof executed by the Commission upon payment of the contribution, interest and penalties or upon receipt by the Commission of security sufficient to secure payment thereof, or by final judgment holding such lien to have been erroneously imposed."

It will be noticed that paragraph (g), supra, does not require the recording of the "Notice of Lien", but states "filed for record", and further states "from the time of filing any such notice * * *." It will also be noticed that no reference is made to the indexing of the "Notice of Lien". That can be accounted for because the "Notice of Lien" does not require a description of the real estate of the employer and for that reason does not need indexing.

You ask in which record the "Notice of Lien" should be recorded. Since the "Notice of Lien" should only be filed in the Recorder's office, the next query is how should the "Notice of Lien" be filed for record.

The "Notice of Lien" as set out and the contents thereof defined do not require the description of the property to be set out, but only states that it should contain the name of the employer, the amount of the contribution, and the interest or penalty due.

The next question is, does this "Notice of Lien" relate to the same procedure as a *lis pendens*. Section 3155 R. S. Missouri, 1929, reads as follows:

"In any civil action, based on any equitable

right, claim or lien, affecting or designed to affect real estate, the plaintiff shall file for record, with the recorder of deeds of the county in which any such real estate is situated, a written notice of the pendency of the suit, stating the names of the parties, the style of the action and the term of the court to which such suit is brought, and a description of the real estate liable to be affected thereby; and the pendency of such suit shall be constructive notice to purchasers or encumbrancers, only from the time of filing such notice. The recorder shall note the time of receiving such notice, and shall record and index the same in like manner as deeds of real estate are required to be recorded and indexed."

It is very evident that since the "Notice of Lien" under paragraph (g) does not require a description of the real estate and does not require indexing, it is not considered the same as a lis pendens. A further reason that the "Notice of Lien" is not a lis pendens is the fact that the "Notice of Lien" may be filed before a suit is filed, after the Commission arrives at the amount that the employer owes the Commission. A lis pendens cannot be filed before an action is filed effecting real estate. A Recorder is not required to file a lis pendens unless it is presented in conformity with the statute. Under this situation it cannot be said that the "Notice of Lien" is a lis pendens and should be recorded and indexed in the regular land conveyance book as is done by a lis pendens.

The next question is whether or not the "Notice of Lien" could be held to be the same as a transcript of a judgment and be filed in the office of the Recorder of Deeds. Judgment liens, under the general law, are filed in the office of the Clerk of the Circuit Court, as provided under Section 1142, Laws of 1935, p. 207, but this must be a judgment of a court of record. The finding of the Commission is not a judgment, although the paragraph (g) describes the "Notice of Lien" as a judgment lien. In construing paragraph (g) to the effect that the holding of the Commission is not a judgment, one must read the last clause of the paragraph, which reads as follows:

" * * * or by final judgment holding such lien to be erroneously imposed."

In construing this sentence it will readily be seen that the holding of the Commission stating that an employer owes the Commission is not a judgment, but merely an order.

General judgments where the title to real estate is involved, are filed in the office of the Recorder of Deeds, as provided in Section 1134 and 1135 R. S. Missouri, 1929; but under the "Notice of Lien" under paragraph (g) the real estate is not a matter involved in the suit proper. Paragraph (g) of Section 15, Senate Bill No. 346, is a special law enacted this year for the purpose of enforcing the collection of contributions from the employer under the Unemployment Compensation Act, and is taken and patterned from the same procedure as set out in Section 29, of the Missouri Sales Tax Act. Both Section (g) of the Unemployment Act and Section 29 of the Missouri Sales Tax Act, specifically say that the "Notice of Lien" may be filed in the Recorder's office and does not mention the Circuit Clerk's office. Being a later and special act it takes precedent over the general law of judgment liens, which require the filing in the office of the Circuit Clerk. It is well settled that later and special statutes take precedent over a general act and was so held in *State v. Brown*, 68 S. W. 2d 55, l.c. 59, where the court said:

"It will be observed that section 4556, except the last proviso which is not pertinent to the matter here in controversy, relates to corporations in general, while section 5613 relates only to a particular class of corporations, to wit, building and loan associations. In such case the rule applicable is that 'where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and

where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication.' Tevis et al. v. Foley, 325 Mo. 1050, 30 S. W. (2d) 68, 69; State ex rel. Buchanan County v. Fulks, 296 Mo. 614, 626, 247 S. W. 129; State ex inf. Barrett v. Imhoff, 291 Mo. 603, 617, 238 S. W. 122. If there be any repugnancy between these two statutes, the general statute, section 4556, must yield to the special statute, section 5613."

Section 11543 R. S. Missouri, 1929, partially reads as follows:

"It shall be the duty of recorders to record: First, all deeds, mortgages, conveyances, deeds of trust, bonds, covenants, defeasances, or other instruments of writing, of or concerning any lands and tenements, or goods and chattels, which shall be proved or acknowledged according to law, and authorized to be recorded in their offices; * * * "

Paragraph (g) of Section 15, should be considered as an amendment to that part of section 11543, supra, in that it does not require or set out any specific acknowledgment, but does authorize the filing of the "Notice of Lien", as set out in paragraph (g) by the Commission.

Filing for record means filing in a certain office to be kept on file and since paragraph (g) does not require that the "Notice of Lien" contain the description of the property in the notice or does not require that it be acknowledged in any manner, it clearly means filing the notice and leaving it in the possession of the Recorder until properly released as set out in paragraph (g).

In the case of Dawson v. Cross, 88 Mo. App. 1.c. 299, the court said:

"'File' meant at common law, a thread, string, wire, upon which writs and other exhibits of courts and offices were fastened or filed for the more safe keeping and ready turning the same. A paper is said to be filed when de-

livered to the proper officer and received by him to be kept on file. This, which we take to be the present ordinary sense of the word 'filed,' would be presumed to be the legislative sense unless the contrary is made to appear which it does not. *Gorham v. Summers*, 25 Minn. 81. *Jones v. Parker*, 73 Maine 248, was where the agreed statement of facts showed that the mortgage, though left with the recorder to be recorded, was withdrawn by the mortgagee before it was actually recorded, and while away the creditor's attorney made proper examination of the records and, finding no mortgage on file or on record, made an attachment. The statute which was construed in the case above referred to is very similar to ours. * * "

Section 11527 R. S. Missouri, 1929, reads as follows:

"The recorder shall keep his office at the seat of justice, and the county court shall provide the same with suitable books, in which the recorder shall record all instruments of writing authorized and required to be recorded. If there is no courthouse or other suitable county building at the seat of justice, the county court shall provide an office for the recorder at any other place in the county where there is a courthouse and courts of record are held."

Although this section only mentions suitable books in which to record instruments it can be construed to mean other books for the convenience of the public.

In the case of *Ewing v. Vernon Co.* 216 Mo. 681, 1.c. 692, the court said:

"Turning to the sections of the statutes regulating the office of recorder of deeds, we find them so meager as to cry out for help by construction. Their terms, then, must be read in the light of cognate sections and of the general policy of our laws. By Revised Statutes 1899, section 9055, it is or-

dained that the recorder of deeds 'shall keep his office at the seat of justice in each county' and that he 'shall provide the same with suitable books;' by section 9061 it is ordained that the county court shall 'audit and settle the accounts of recorders for books for the use of their offices.' There is not a word in the chapter (chap. 147), relating to providing chairs, desks, pens, ink, stationery, stoves, racks, tables, spittoons, or other office paraphernalia. There is even no word relating to a room in which to keep his office or fuel to heat it. But when we read other provisions of the general statutes relating to building a courthouse and heed the underlying theory that county offices should be kept there, all questions relating to a room vanish; and when we read in section 9057 that the recorder of deeds must give a bond conditioned that he will deliver up to his successor among other things 'the furniture and apparatus belonging to the office, whole, safe, and undefaced,' we but gather (what we knew before) that the furniture and apparatus do not belong to the recorder, but to the county, and under Revised Statutes 1899, section 1777, are under the control and management of the county court. Turning to other cognate sections it becomes plain that unless the Legislature deliberately planned to legislate against recorders and in favor of other county officers (an unthinkable position), it becomes plain that the county is to furnish the necessaries in furniture, fixtures, etc., to preserve the county records and make them usable by and useful to the general public. No one reading statutes relating to clerks, probate judges, etc., can come to any other conclusion.

* * * "

Under the holding in the above case the county court shall furnish suitable books and supplies which are meant for the convenience of the public and the officer.

Paragraph (g), of section 15, does not set out the procedure of filing a "Notice of Lien". Since the "Notice of Lien" cannot be recorded in the real estate record and the act does not provide for the indexing of the "Notice of Lien" and because the "Notice of Lien" does not contain a description of real estate it can

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only be filed under a serial number. For the convenience of the public the county court should provide a book on unemployment compensation commission liens, which should contain a space for the filing number of the "Notice of Lien", with the name of the employer so that the public, or an abstractor can run the record on this newly enacted lien, through the number book, without referring to the original or copy of the "Notice of Lien".

CONCLUSION

In view of the above authorities it is the opinion of this department that a "Notice of Lien" under the Unemployment Compensation law, as amended by the Senate Bill 346 of the last general assembly, does not require recording, as the term is generally used, but all that is necessary for the Unemployment Commission to do, is to file and leave with the Recorder of Deeds the "Notice of Lien" containing all of the statutory information required under paragraph (g).

It is further the opinion of this department that the county court of each of the counties should furnish the Recorder of Deeds with a book in which to set out the serial number stamped upon the "Notice of Lien" as filed by the Commission, which book should be so prepared as to show the name of the employer owing the contribution to the Unemployment Commission. If such a book is not furnished by the county court, it would be necessary for the public, attorneys and abstractors, who are running the record of an employer to handle all of the original "Notices of Lien" in order to ascertain whether or not a lien has been filed against an employer.

Respectfully submitted,

APPROVED:

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J. E. TAYLOR
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WJB:RW