

LIENS:  
VOCATIONAL REHABILITATION:

State-owned equipment used by person receiving vocational rehabilitation aid is not subject to a lien in favor of the owner of a building in which such equipment is used by the rehabilitation client.

October 18, 1950.

10/19/50

Mr. Joy O. Talley, Director  
Vocational Rehabilitation  
State Department of Education,  
Room 1, Hotel Governor,  
Jefferson City, Missouri.



Dear Sir:

This will acknowledge receipt of your recent letter requesting an opinion from this office. Your request reads as follows:

"Would you please give us an opinion on the following: Would past due rent be considered as the basis for a lien against State-owned equipment, such as placement equipment for Rehabilitation clients? Say, for instance, such as equipment for a shoe repair shop where the State owns the repair equipment and the Rehabilitation client is responsible for the rent on the building and other incidentals relative to the operation of the shop."

The "Vocational Rehabilitation Act" (U.S.C.A. Title 29, sections 31 - 41,) is a federal law, making available a program for the rehabilitation of disabled individuals who could become employable through the correction of, or training to overcome, a disability which constitutes a vocational handicap. Through a cooperative federal-state plan, the supervision, control and operation of the program rests with the State Board for Vocational Education administered under the Division of Public Schools. The provisions and benefits of this act of Congress were accepted by the Missouri General Assembly and the federal-state cooperative plan for vocational rehabilitation is administered under Missouri Revised Statutes, 1939, Sections 10549 to 10553 as amended by Laws of Missouri, 1944, Ex. Sess. p. 48.

The Vocational Rehabilitation Act reads in part as follows:  
(U.S.C.A. Title 29, Section 33):

"(a) From the sums made available pursuant to section 32 of this title, the Secretary of the Treasury shall pay to each State which has an approved plan for rehabilitation, for each quarter or other shorter payment period prescribed by the administrator the sum of amounts he determines to be \* \* \*

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"(3) One-half of necessary expenditures under such plan for \* \* \*

"(c) Transportation, occupational license and customary occupational tools and equipment not mentioned elsewhere in this section."

This department recognizes that in the administration of this state-federal cooperative rehabilitation plan the State Board for Vocational Education purchases customary occupational tools and equipment for the use of vocationally handicapped persons who are financially unable to purchase such tools and equipment. The State retains title to such tools and equipment, i.e. the individual for whose use they are provided does not acquire title to the tools or equipment. The vocationally handicapped person makes no payment to the state for rent for such tools or equipment and does not make any payment for the original purchase price of such tools and equipment, acquires no rights of ownership thereto, and if such individual ceases to use such tools or equipment they are retaken into the possession of the State Board of Vocational Training to be used by other vocationally handicapped individuals, sold, or otherwise disposed of by the said Board.

Your question presents a situation in which this state-owned equipment is used by a rehabilitation client in a building for which the client is responsible for the rent for the use of such building. You ask if past-due rent on such a building could ever be considered as the basis for a lien against such state-owned equipment.

We read at 53 C.J.S. p. 852, Section 7:

"One cannot create a contractual lien on the property of another without the owner's consent, and a person can give a lien on property only to the extent of his interest therein unless he creates the lien as agent of the owner. A statute conferring a lien should not be construed so as to impose the lien, by implication, on the property of one who is not responsible for the debt."

Since the rehabilitation client does not become the owner of the tools and equipment provided for his use by the State he could not, by contract, create a lien on the state-owned equipment without the consent of the State.

While as a general rule a lien may arise or be created only with the consent of the owner of the property to which the lien attaches,

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it may be created by the operation of some positive rule of law in which event it may arise without his consent (53 C.J.S., p.834, Sec. 2). We know of no rule of law which would impose upon the property of the state a lien to discharge the obligation of a rehabilitated client for rent incurred in the operation of his business on a building in which the state-owned equipment was used. Assuming a judgment had been rendered by a court, the officer of the court could not levy execution on the state-owned equipment to satisfy the judgment obtained against the rehabilitation client. It is our opinion the landlord would have no lien which could be enforced by attachment proceedings.

As a matter of practice the state does not guarantee the payment of rent for the rehabilitation client and in nowise assumes the obligation of paying rent for such person.

In the case of *Brooks v. One Motor Bus*, 3 S.E. (2d) 42, 190 S.C. 379, the court said:

"It is also the law that no execution can be levied against the property of a county, state, or any political subdivision of the state, in the absence of a statute expressly granting such right in express terms.

"\* \* \* the principle is adhered to that property held for public uses \* \* \* is not subject to levy and sale under execution against public corporations. The compelling reason underlying the rule is that levying upon and selling property used for governmental purposes, such for instance, as a school district bus, engaged in the transportation of school children, might work irreparable injury, and could destroy the public school system of a district.

"\* \* \* No lien is created by express provision upon the property of the state, and none can be established thereon by implication."

In the case of *Town of Farmerville v. Commercial Credit Co.*, 136 So. 82, 173 La. 43, the court said:

"The granting of liens on public property is against public policy. \* \* \* It is a well settled rule that public property used for public purposes is not liable for sale for the payment of debts. To allow it to be done would thereby annihilate the public uses. For this reason public policy forbids a lien on public property."

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CONCLUSION.

It is the opinion of this office that state-owned equipment held for use by a rehabilitation client would not be subject to a lien in favor of the owner of a building for the payment of rent incurred by the rehabilitated person.

Respectfully submitted,

JOHN E. MILLS,  
Assistant Attorney General.

APPROVED:

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J. E. TAYLOR,  
Attorney-General

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