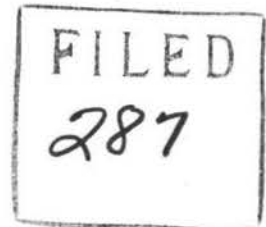


LIENS: Section 429.010 (S.C.S.H.S. House Bill No. 1251, 77th General Assembly, Second Regular Session) with respect to mechanic's liens requires the "NOTICE TO OWNER" to be printed in "ten point bold type." The normal typewriter is not capable of printing a typeface in "ten point bold type." The underlining of type which is not "bold" or bold-face does not make it so. There is no requirement that lien waivers be provided a consumer by an original contractor as a condition precedent to the filing of a mechanic's lien.

OPINION NO. 287

November 14, 1974

Honorable George E. Murray
Representative, District 90
3 Williamsburg Road
Creve Coeur, Missouri 63141



Dear Representative Murray:

This is in response to your request for an official opinion from this office on the following questions:

S.C.S.H.S. House Bill No. 1251, 77th General Assembly, Second Regular Session, amended Section 429.010, RSMo. The amendment provides in part a requirement for a written disclosure of certain information to be printed in "ten point bold type." Your first question is "will the statutory requirement of ten point bold type be fulfilled by the use of standard typewriter lettering consisting of all capital letters, and if not, will the underlining of the statutory language meet the requirement of bold type?"

Section 1, subsection (a) of the amendment provides that compliance with subsection 1 shall be a condition precedent to the creation, existence or validity of any mechanic's lien. Your second question is "does the refusal by a contractor to give a lien waiver in a case of a disputed bill constitute a failure to comply with subsection 1, so as to invalidate a lien, assuming that the contractor had previously given the required notice in proper form?"

Honorable George E. Murray

Subsection 1 of Section 429.010 provides:

"Every original contractor, who shall do or perform any work or labor upon, or furnish any material, fixtures, engine, boiler or machinery for any building, erection or improvements upon land, or for repairing the same, under or by virtue of any contract shall provide to the person with whom the contract is made prior to receiving payment in any form of any kind from said person, (a) either at the time of the execution of the contract, (b) when the materials are delivered, (c) when the work is commenced, or (d) delivered with first invoice, a written notice which shall include the following disclosure language in ten point bold type:

NOTICE TO OWNER

FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANIC'S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429, RSMo. TO AVOID THIS RESULT YOU MAY ASK THIS CONTRACTOR FOR 'LIEN WAIVERS' FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIAL TWICE.

(a) Compliance with subsection 1 hereof shall be a condition precedent to the creation, existence or validity of any mechanic's lien in favor of such original contractor.

(b) Any original contractor who fails to provide the written notice set out in subsection 1. hereof shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$500 nor more than \$1000."

In response to the first question presented for our consideration, although normal typewriter lettering with pica typeface

Honorable George E. Murray

is larger than ten points, it is not "bold" or boldface type as required by subsection 1(d) of the amendment to Section 429.010, RSMo. A special mechanism is available from some companies which manufacture typewriters, but the typeface of normal office or home typewriters is not capable of producing lettering which is "ten point bold type." The underlining of typewritten material does not create "bold type."

In response to your second question, the amendment to Section 429.010, RSMo, only requires that the "NOTICE TO OWNER" printed in the amendment itself be provided the consumer by the original contractor ". . . prior to receiving payment in any form of any kind from said person (a) either at the time of the execution of the contract, (b) when the materials are delivered, (c) when the work is commenced, or (d) delivered with first invoice, . . ." There is no requirement that lien waivers be provided the consumer as a condition precedent to the filing of a valid mechanic's lien on the subject property.

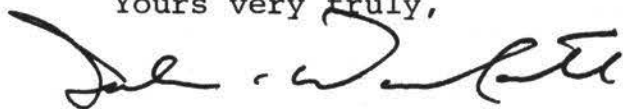
CONCLUSION

It is the opinion of this office that Section 429.010 (S.C.S.H.S. House Bill No. 1251, 77th General Assembly, Second Regular Session) with respect to mechanic's liens requires the "NOTICE TO OWNER" to be printed in "ten point bold type." The normal typewriter is not capable of printing a typeface in "ten point bold type." Further, the underlining of type which is not "bold" or boldface does not make it so.

There is no requirement that lien waivers be provided a consumer by an original contractor as a condition precedent to the filing of a mechanic's lien.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Harvey M. Tettlebaum.

Yours very truly,



JOHN C. DANFORTH
Attorney General