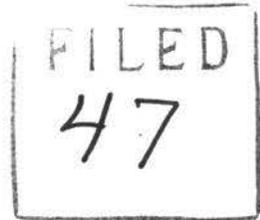


LIENS: Only a contractor who deals directly with a consumer is required to provide the notice specified in Section 429.010, House Bill 1251, 77th General Assembly. A subcontractor who further subcontracts the supplying of labor or materials is not required to provide notice. An original contractor supplying materials which its own employees install in the home of a consumer is required to give the notice provided for in Section 429.010.

OPINION NO. 47

January 15, 1975

Honorable Morris G. Westfall  
State Representative, District 133  
Rural Route 2  
Halfway, Missouri 65663



Dear Representative Westfall:

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

"Is a firm who contracts with an original contractor to perform services or labor on, or supply materials for, an improvement referred to in Section 429.010, RSMo 1969 as amended 1974, and which itself will further subcontract for the supplying of materials or labor, have to give the Notice referred to in 429.010(1) RSMo 1969 as amended 1974.

"Is an original contractor which itself is the sole supplier of materials, and that will have its regular, salaried employees to install the materials contracted for, required to give the Notice referred to in Section 429.010(1) RSMo 1969 as amended 1974."

Section 429.010(1), House Bill 1251, 77th General Assembly, Second Regular Session, provides as follows:

"1. Every original contractor, who shall do or perform any work or labor upon, or furnish any material, fixtures, engine, boiler or

Honorable Morris G. Westfall

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." (Emphasis supplied).

Such section provides that only "original contractors" are required to provide the notice provided in Section 429.010. A firm which contracts with an original contractor to perform services, labor or supply materials for an improvement covered by Section 429.010 need not supply a notice to the consumer for whom the work is being done. A subcontractor who further subcontracts the supplying of materials or labor is not required to provide notice.

Honorable Morris G. Westfall

In response to your second question, an original contractor, who is itself the sole supplier of materials, who will have those materials installed by its own employees and who contracts directly with the consumer, must provide the notice set forth in Section 429.010.

CONCLUSION

It is the opinion of this office that only a contractor who deals directly with a consumer is required to provide the notice specified in Section 429.010, House Bill 1251, 77th General Assembly. A subcontractor who further subcontracts the supplying of labor or materials is not required to provide notice. An original contractor supplying materials which its own employees install in the home of a consumer is required to give the notice provided for in Section 429.010.

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

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH  
Attorney General