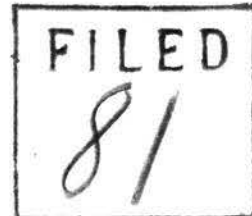


**UNEMPLOYMENT
COMPENSATION:**

"Notice of Lien" need not be acknowledged for filing in the office of the Recorder of Deeds.

September 5, 1939

Mr. Oliver Senti
Associate City Counselor
Law Department
St. Louis, Missouri



Dear Sir:

We are in receipt of your request dated August 24, 1939, which reads as follows:

"The Recorder of Deeds has submitted an inquiry to this department as to whether notice that an assessment has been made under Section 15-g of the Compensation Law of the State, effective July 1, 1939, against an employer for non-payment of contributions due and the lien thereby created under the Act must be acknowledged before it is recorded.

"As the question involves the construction of a State statute, we feel that the matter should be passed upon by your office, and I would thank you to give us your opinion whether in view of the provisions of Section 11543, R. S. Mo. 1929, any instrument affecting title to real estate and not proved or acknowledged according to law can lawfully be recorded."

In answer to your above request, I am herein enclosing copy of an opinion rendered by this office on

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August 28th, 1939, to the Honorable Alfred H. Douglas, Prosecuting Attorney of Newton County, Missouri. This opinion does not fully answer your request, so we are supplementing it with the following.

We realize that conveyances and other written instruments affecting real estate should be acknowledged and proven according to law before being recorded in the office of the Recorder of Deeds. In our opinion above described, we held that "Notice of Lien" may be filed and not recorded by the Commission. In view of that holding, the question of recording a "Notice of Lien" is not at issue. The filing of a "Notice of Lien" is analogous with the filing of a chattel mortgage, or a true copy of a chattel mortgage. The method is set out in the statutes as to the filing of a copy of the chattel mortgage, and does not require that it be acknowledged as in deeds of real estate.

Section 3021 R. S. Missouri, 1929, partially reads as follows:

"The proof or acknowledgment of every conveyance or instrument in writing affecting real estate in law or equity, including deeds of married women, shall be taken by some one of the following courts or officers:
* * *."

This section sets out the specific manner in which certain instruments should be acknowledged.

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 record-

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ed in their offices; * * * . "

This section provided that it was the duty of the Recorder to file certain instruments which were properly proved or acknowledged.

Section 15, par.(g), Senate Bill 346, of the Sixtieth General Assembly, 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." (Underscoring ours.)

This Section 15, par. (g) in a way amends Section 11543, *supra*, in that it does not specify that the lien should

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contain a description of the real estate, but only states that the lien should specify the amount of the contribution, interest or penalty due, and the name of the employer liable for the same. It does not specify that the Commission should acknowledge the "Notice of Lien" before filing. It has always been the law that a later and special statute takes precedence over a general act and was so held in *State v. Brown*, 68 S. W. 2d 55, l.c. 59.

In our opinion to Herbert H. Douglas, prosecuting attorney, we held that all that was necessary was the filing, and not the recording, of the "Notice of Lien". This means the filing and leaving of the "Notice of Lien" in the office of the recorder of deeds. The fact that we held it was the leaving of the instrument to be considered as filing was upheld in the case of *Dawson v. Cross*, 88 Mo. App. l.c. 299. Section 15, par. (g), supra, also upholds us in this opinion, for the reason that at the latter part of the paragraph the following appears:

" * * * * *

*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."

By that clause the release could be executed by the Commission filing for record a proper release, where, if the "Notice of Lien" had been recorded all that would have been necessary would have been the stamping of the release on the margin of the record in which the "Notice of Lien" was recorded.

CONCLUSION

In view of the above authorities, and also under our

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opinion to Herbert H. Douglas, prosecuting attorney, which we have enclosed to you, this department is of the opinion 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 the statutory information required under paragraph (g).

We are further of the opinion that it is not necessary for the "Notice of Lien" to be acknowledged or proven in any other manner except as set out in paragraph (g) of Section 15, Senate Bill 346.

Respectfully submitted,

W. J. BURKE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

WJB:RW