

LETTER OPINION
93-L-16

January 27, 1993

Mr. Daniel G. Diemert
Dickey County State's Attorney
309 Second Street
Ellendale, ND 58436

Dear Mr. Diemert:

Thank you for your letter asking whether information on an agricultural supplier's lien form that has been filed in the Central Notice System can be changed by a register of deeds or by the Secretary of State's Office upon being informed that the initial information was incorrect. I apologize for the delay in this response.

Agricultural supplier's liens are created pursuant to N.D.C.C. ch. 35-31. As amended by the 1991 Legislature, N.D.C.C. ? 35-31-02 requires the Secretary of State to prescribe one form that can be used to obtain a lien and to gain protection under the Central Notice System. Under N.D.C.C. ? 35-31-02, a lien does not exist until the proper document is filed with the register of deeds or with the Secretary of State's Office in a timely manner. The statute specifies that the filing must be within 120 days after the supplies are furnished or the services performed, unless the supplies furnished were petroleum products in which case the person has 180 days after the petroleum products were furnished or delivered to file.

The North Dakota Supreme Court, in addressing statutory liens, has distinguished between liens which do not exist or become valid until a statement is filed and those which exist based on other circumstances and for which filing is required only to give notice of the lien. Rolla Community Hosp. v. Dunseith Com. N. Home, 354 N.W.2d 643 (N.D. 1984). Seed liens under N.D.C.C. ch. 35-09 were included as ones which did not exist until the filing was made. Agricultural supplier's liens pursuant to N.D.C.C. ch. 35-31 are similar to seed liens under former N.D.C.C. ch. 35-09 which was repealed in 1987. 1987 N.D. Sess.

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Laws ch. 412, ? 7.

The court in In Re Glinz, 46 B.R. 266 (Bkrtcy 1984) cited Murie v. National Elevator Co., 236 N.W. 269 (1931) as holding that inadvertent mistakes or errors contained in a lien statement which would not mislead one examining the records would not invalidate the claimed statutory lien. If the mistake, however, was misleading, the lien would be held invalid. Lavin v. Bradley, 47 N.W. 384 (1890). Consequently, if a lien were not seriously misleading, no need exists for an amendment. If the statement as filed was seriously misleading, and the time for filing has expired, no lien exists which could be amended. No provision exists either within N.D.C.C. ? 35-31-02 or elsewhere within N.D.C.C. ch. 35-31 which would authorize amending the agricultural supplier's lien after it has been filed. Should the error be discovered within the initial time period for filing the lien, a new lien could be filed with the corrected information. If the error is discovered at a date beyond the time frame during which the agricultural supplier's lien could be filed, the statutes contain no provision which would authorize the correcting of the information.

In contrast to the provisions regarding agricultural supplier's liens, the provisions governing the filing of financing statements into the Central Notice System pursuant to N.D.C.C. ch. 41-09 specifically provide for filing amendments to the financing statement. N.D.C.C. ? 41-09-41(4). Absent statutory authority to do so, it is my opinion that neither the Secretary of State's Office nor a county register of deeds is authorized to change information in the central notice system from that submitted on an agricultural supplier's lien form timely filed.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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