

**LETTER OPINION**  
**93-L-39**

February 11, 1993

Honorable Alvin A. Jaeger  
Secretary of State  
State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505

Dear Secretary of State Jaeger:

This letter is in response to a request from former Secretary of State Jim Kusler for an opinion regarding unpaid earned property or casualty insurance premium liens.

Secretary of State Kusler indicated that situations have arisen where registers of deeds have received filings on the statutory agricultural supplier's lien form which, although on their face are correctly completed, are actually liens for unpaid insurance premiums. A number of specific questions were asked surrounding this situation.

The first question was whether one may obtain an agricultural supplier's lien for the furnishing of insurance. Statutory authority for agricultural supplier's liens is found in North Dakota Century Code (N.D.C.C.) ch. 35-31. This chapter is substantially similar to former N.D.C.C. ch. 35-09 dealing with fertilizer, farm chemicals, and seed liens.

Pertinent is N.D.C.C. ? 35-31-01 which provides:

**Agricultural supplier's lien authorized.** Any person who furnishes supplies used in the production of crops, agricultural products, or livestock is entitled to a lien upon the crops, products produced by the use of the supplies, and livestock and their products including milk. As used in this chapter, the term "supplies"

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includes seed, petroleum products, fertilizer, farm chemicals, insecticide, feed, hay, pasturage, veterinary services, or the furnishing of services in delivering or applying the supplies. The agricultural supplier's lien is effective from the date the supplies are furnished or the services performed.

Under this section, the question essentially becomes whether providing insurance can fairly be seen as the furnishing of "supplies" used in the production of crops, ag products, or livestock. In my opinion it cannot.

It is difficult to see how insurance can be used directly in the production of crops, agricultural products, or livestock. Insurance coverage is not a tangible item such as seed or fertilizer nor is it a service in delivering or applying a tangible item. Where a statute lists specific examples, other items which fairly can be said to come within the statute must be of the same general type. See generally Resolution Trust Corp. v. Dickinson Econo Storage, 474 N.W.2d 50 (N.D. 1991). In this case, money owed for insurance is not similar to the specific items listed in section 35-31-01.

Additionally, N.D.C.C. ?? 35-20-15 and 35-20-16 in tandem provide liens for unpaid insurance premiums. Under N.D.C.C. ? 35-20-16, a "person entitled to an unpaid earned property or casualty insurance premium lien [must] within ninety days after termination of coverage" file the required statement with the register of deeds, whereas under N.D.C.C. ch. 35-31, the agricultural supplier's verified statement must be filed within 120 days (180 days for petroleum products) after the supplies are furnished or the services rendered. Given the unique and continuous nature of insurance, the Legislature has declared that a lien for unpaid earned insurance premiums can only arise after the termination of coverage. Under N.D.C.C. ch. 35-31, an agricultural supplier's lien can arise, if a filing has occurred, from the date the supplies are first furnished or the service is first performed. A construction that the term supplies encompasses providing insurance would conflict with

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N.D.C.C. ?? 35-20-15 and 35-20-16.

It is therefore my opinion that a person may not obtain an agricultural supplier's lien for unpaid earned insurance premiums. Liens for unpaid earned insurance premiums may only be obtained by meeting the requirements of N.D.C.C. ?? 35-20-15 and 35-20-16.

Due to the computerized central notice system developed pursuant to N.D.C.C. ? 41-09-46, further questions arise as to the rights of a statutory lienholder. The computerized central notice system includes a UCC index, a CNS index, an agricultural statutory lien index, an agricultural statutory lien notice index, and a federal lien index. North Dakota Administrative Code (N.D. Admin. Code) ? 72-01-02-11(2). Two further questions have been presented regarding the computerized central notice system: (1) whether a party is entitled to have an insurance premium lien entered on the computerized agricultural statutory lien index, and (2) whether a person seeking to have an insurance premium lien entered on the computerized agricultural statutory lien notice must comply with the requirements of N.D.C.C. ch. 41-09 including obtaining the signature of the debtor.

N.D.C.C. ? 41-09-46(3) provides:

3. The secretary of state shall develop and implement a computerized central notice system which must contain the information filed with the office of the secretary of state or with any of the offices of the registers of deeds in this state pursuant to sections 35-17-04, 35-30-02, 35-31-02, and 41-09-40. The system must connect each registers of deeds' office to the secretary of state's office through the information services division. The system must allow access to financing statement information by equipment that conforms to requirements determined by the information services division. The system must have safeguards to allow access to information that is in the system relating to security interests or liens and to prevent unauthorized alteration or deletion of that information and to allow access to other information in the system as prescribed by the secretary of state. Within one working day of receipt of a financing statement, continuation statement, amendment, or termination statement filed pursuant

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to this chapter or a statement filed pursuant to section 35-17-04, 35-30-02, or 35-31-02, the register of deeds or secretary of state shall record the information contained in the statement in the computerized central notice system. A computer printout of information from the system is prima facie evidence of the existence or nonexistence of the filing of a financing statement or lien. From the computerized central notice system, the secretary of state or a designee shall produce each month one list for crops and one list for livestock which contain the information as filed on the forms pursuant to section 41-09-40. The secretary of state shall also include the information filed for crops and livestock pursuant to sections 35-17-04, 35-30-02, and 35-31-02. The list must be in alphabetical order according to the last name of, or in numerical order according to the social security number of, the person engaged in farming operations. The lists may be prepared in categories according to county, regions as designated by the secretary of state, or on a statewide basis. If requested, the lists must be in printed form and on microfiche. Each list must conspicuously note its effective date.

N.D.C.C. ? 41-09-41 provides in relevant part:

1. A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor, and contains a statement indicating the types, or describing the items, of collateral; except a financing statement that is to be filed to gain protection under the central notice system must include any additional information required by the Food Security Act of 1985 [Pub. L. 99-198; 99 Stat. 1535; 7 U.S.C. 1631], as prescribed by the secretary of state. The secretary of state shall prescribe one form that can be used to perfect a security interest in farm products or gain protection under the central notice system, or both. . . .

N.D.C.C. ? 41-09-28(9) provides:

9. If a secured party who has perfected a security interest in crops or livestock, or if a lienholder who has created a lien by statute or otherwise; which includes liens for threshing; crop or agricultural product processing;

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crop production; fertilizer, farm chemicals, and seed; agricultural supplies; and landlord's lien; intends to impose liability for such security interest or lien against a crop or livestock buyer, the name of the secured party or lienholder must appear on the most current list or lists distributed by the secretary of state pursuant to subsection 4 of section 41-09-46. In order to appear on the list or lists, secured parties or lienholders must file with the secretary of state or in the office of the register of deeds in any county in this state a form prescribed by the secretary of state which contains the information prescribed by the secretary of state under section 41-09-41 or contained on a form prescribed by the secretary of state under section 35-17-04, 35-30-02, or 35-31-02.

It is clear from the above-referenced statutes that it is contemplated that only agister's liens, N.D.C.C. ch. 35-17; agricultural supplier's liens, N.D.C.C. ch. 35-31; and agricultural processor's liens, N.D.C.C. ch. 35-30, will be included within the agricultural statutory lien index or within the agricultural statutory lien notice. See N.D. Admin. Code ? 72-01-02-01 (defining agricultural statutory lien). Liens other than these can only be entered into the central notice system through the filing of a document under chapter 41-09. Thus, it is my opinion that a person is not entitled to have an insurance premium lien entered in the computerized agricultural statutory lien index or the agricultural statutory lien notice. Protection through the computerized central notice system can be gained only by filing a document with the information required by N.D.C.C. ? 41-09-41, including the debtor's signature.

Given that one cannot validly obtain an agricultural supplier's lien for unpaid insurance premiums, the question is presented whether the register of deeds must file a document purporting to be an agricultural supplier's lien but which identifies unpaid insurance premiums as the underlying obligation. It is the register of deeds' duty to accept and record such documents as are entitled to be recorded by law. See N.D.C.C. ch. 11-18. Generally speaking, such duties are essentially ministerial in nature, notwithstanding that in carrying out such duties, the register of

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deeds may be required to exercise some judgment.

Previously, this office has determined that a register of deeds may refuse to file common law liens against real property. See 1982 N.D. Op. Att'y Gen. 80. Additionally, this office has suggested that a register of deeds may refuse to file a UCC financing statement which does not include the debtor's signature or a description of the collateral. See letter from Deputy Attorney General Calvin Rolfson to John R. Gregg, May 17, 1984. However, in this case, a determination that the underlying obligation is for unpaid insurance premiums goes to the instrument's validity rather than whether the document contains the information required either by statute, or by administrative rule. Generally, "in the absence of a statute to the contrary, it is not [the register of deeds'] province to determine whether the parties have made valid instruments or to add notations with respect to their validity." 76 C.J.S. Register of Deeds 10 (1952). I find no authority for the register of deeds to look to the underlying obligation and make a determination as to whether the document is valid. Therefore, in my opinion, the register of deeds may not refuse to file an otherwise correctly completed agricultural supplier's lien because the underlying obligation is for unpaid insurance premiums. The same holds true whether the agricultural supplier's lien form is presented for filing in the agricultural statutory lien index or in the agricultural statutory lien notice.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

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