

Opinion No. 15-1598

July 26, 1915

BY: H. S. BOWMAN, Assistant Attorney General

TO: Mr. Linus L. Shields, Justice of the Peace, Jemez Springs, N. M.

Lien upon horses for pasturage provided.

OPINION

{*171} Your letter of the 22nd inst. addressed to Mr. Frank W. Clancy, Attorney General, has been received and referred to the writer for attention.

{*172} Under the facts as stated in your letter, there is considerable difficulty in answering the inquiry contained therein because you do not advise whether or not the party claiming the proceeds derived from the sale of the horses for pasturage of the same ever filed a notice of his claim of lien.

Section 2239 of the Compiled Laws of 1897, which appears as Section 3339 of the codification of 1915, provides:

"Innkeepers and livery stable keepers, and those who board others for pay, or furnish feed or shelter for the property and stock of others, shall have a lien on the property and stock of such guest or guests, or of those to whom feed or shelter has been furnished while the same is in their possession, and until the same is paid."

The section following, both in the Compilation and Codification, reads as follows:

"In order to enforce said lien, those who are entitled to the same, as provided by this article, may, after the debt for which the lien is claimed becomes due and payable, serve the party or parties against whom the lien is sought to be enforced, with a written notice, setting forth the amount of the indebtedness, upon what account or cause the same accrued, and that if the same is not paid within ten days after the service of said notice, the property will be advertised and sold to satisfy said indebtedness."

Under the first section above quoted there is no doubt but what the party furnishing the pasturage would be entitled to a lien if he complied with the latter section, but the lien does not become effective until the claimant has complied with the statute and perfected his claim by giving the notice provided for. Your letter does not state whether or not such notice was ever given and until it is given, the claimant has no right which he can legally enforce.

There is another feature which enters into the matter and that is the fact, whether upon the attachment of the horses by an officer, the lien claimant voluntarily surrendered

possession of the animals or if he did so under protest. By voluntarily giving over the possession of the horses to any other person, the lien claimant loses all right to a lien and unless he was divested of his possession without his consent, he has no further right of lien against the animals.

Under no circumstances, however, would he be entitled to the proceeds from the sale of the animals under the attachment process as he is not a party to that suit, and he would have to make himself such a party before he could in any way demand that the proceeds from the sale be paid over to him.

I trust that the above answers your question satisfactorily.