

Opinion No. 22-3234

January 17, 1922

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. J. B. Atkeson, Town Attorney, Artesia, New Mexico.

Priority of Paving Liens.

OPINION

{*111} In reply to your letter without date asking for my opinion regarding the priority of the liens of certificates issued against abutting property in municipalities to pay for the expenses of paving of streets thereof, as against prior recorded mortgages upon such property, I wish to advise:

If the paving of your town should be done under the authority of the provisions of Sections 3665 to 3671, Code 1915, as amended by Chapter 152, Laws 1919, I am of the opinion that the paving certificate liens will be prior to any previously recorded mortgages.

You will note that Section 3070, Code 1915, which was a part of Chapter 42, Laws 1903, provided that the lien was prior to all subsequent purchasers', mortgagees or incumbrances of such lot or parcel of land. The act as amended, however, provides that,

{*112} "And all purchasers, mortgagees or incumbrancers of such lot or parcel of land shall take the same subject to such lien,"

leaving out the word "subsequent," contained in the former act.

It is apparent, therefore, that it was the intent of the legislature to make a paving lien a lien prior and superior to all other liens.

If your town should proceed under the provisions of Sections 3672 to 3683, being Chapter 22 of the laws of 1913, it would appear as if Section 3677, amended by Section 2, Chapter 40, Laws 1915, specifically makes the lien of the paying certificates a lien superior to all other liens and claims except state, county and municipal taxes.

It will appear, therefore, that under either act the liens of the paving certificates would be superior to all other liens if there is no general objection that such laws are unconstitutional because they deprive owners of their property without due process of law.

Statutes such as the foregoing have been uniformly upheld in the face of attacks upon the ground mentioned.

My opinion, therefore, is that the paving lien certificates, whether accruing prior or subsequent to the date of the recording of other incumbrances, would be superior to all such other liens.