

**Opinion No. 43-4288**

May 18, 1943

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Employment Security Commission of New Mexico, Box 1301, Albuquerque, New Mexico. Attention of Mr. A. M. Frazier, Attorney

In your letter dated May 15, 1943, you state that under the provisions of Section 57-815 (b) of the 1941 Compilation the Commission issued a tax lien against the owner and operator of a cafe in Albuquerque for delinquent contributions and recorded the lien on June 14, 1940. Prior to that date, however, the owner and operator of the cafe had executed a contract to sell certain real estate and placed the contract, with a warranty deed, in escrow, for delivery to the purchaser upon full payment of the purchase price. This contract was recorded and, on the same date, the owner and his wife assigned their interest in the contract to a third person, which assignment was not recorded. The entire purchase price has subsequently been paid and warranty deed was delivered to the purchaser.

You inquire whether the lien of the Commission is enforceable against the real estate of the vendor and, also, whether a court action should be required before releasing the Commission's lien.

In answer to your first question: You have cited several authorities in your letter which were submitted to you by attorneys for the vendee of the real estate involved. I have examined all of these authorities and find that most of them sustain the general principles of law that the lien of a judgment is limited to the actual interest the debtor owns in the property and does not extend to his apparent interest. The lien for delinquent contributions, under the act involved here, is analogous to the lien of a judgment and the same general rule would apply. The authorities which seem to bear on this question are as follows:

34 C. J. Sec. 933 (i), at page 614;

87 A. L. R. 1506;

Richardson v. Estle (Iowa), 243 N. W. 611;

Hearne v. Miliken (Colo.), 1986, 432; and

Heath v. Dodson, 110 Pac. (2) 845.

In view of these authorities I am of the opinion that the vendor had no interest in the real estate to which the lien of the Commission would attach on the date the same was recorded.

In answer to your second question, it seems that it is a matter of policy for the Commission to determine whether it wishes to release the lien or to require a court order before releasing the same.

Since the vendor and delinquent taxpayer had no interest in the real estate involved I see no reason why a release could not be made as to that particular real estate, although until the amount is paid I do not believe the lien should be released generally.

By C. C. McCULLOH,

First Asst. Atty. General