

OPINION NO. 73-015

Syllabus:

1. A county recorder may not charge a recording fee upon the refiling of a state unemployment compensation lien pursuant to P.C. 4141.23, since the legislature failed to provide for such a fee and the express intent of the legislature would be defeated.

2. A county recorder may not charge a recording fee upon the filing of a notice of continuation of a state unemploy-

ment compensation lien pursuant to R.C. 2305.26, since any other interpretation would conflict with the specific intent of R.C. 4141.23.

To: William E. Garnes, Administrator, Ohio Bureau of Employment Services,
Columbus, Ohio

By: William J. Brown, Attorney General, March 6, 1973

I have before me your request for my opinion, which reads as follows:

The Bureau of Employment Services, State of Ohio, has recently been affected by the amendment of Section 4141.23, Ohio Revised Code, and the enactment of Section 2305.26, Ohio Revised Code. The amendment of Section 4141.23, supra, requires a re-filing of the Unemployment Compensation lien if it is to attach to after acquired property. Section 2305.26, supra, is a general statute requiring a notice of continuation to be filed every six years to prevent lapsing of the various state liens specified. Section 4141.23, supra, dealing specifically with the Unemployment Compensation lien does not provide for a charge for the refiling, yet Section 2305.26, supra, generally applying to the Unemployment Compensation liens appears to provide for such a charge.

The Bureau of Employment Services has never been charged for original filing of Unemployment Compensation liens. I would appreciate your opinion as to whether a county recorder can charge for the refiling of Unemployment Compensation liens, pursuant to the amendment of Section 4141.23, supra; and/or for the filing of notices of continuation of Unemployment Compensation liens, pursuant to Section 2305.26, supra. Also, if the county recorder can charge for either of these filings, what will be the fee due?

In a recent Opinion, Opinion No. 72-104, Opinions of the Attorney General for 1972, I stated that a recorder can only charge fees for his services if the statute requiring the recording explicitly grants such authority. In holding with my predecessor's reasoning, Opinion No. 817, Opinions of the Attorney General for 1929, I concluded that the authority to charge a fee must first be found in some specific Section of the Revised Code.

The unemployment compensation lien created by the 1941 amendment of G.C. 1345-4, now R.C. 4141.23, is a unique state lien given special treatment through the explicit intention of the General Assembly. There were no specific instructions as to the charging of fees for the filing of this lien. Upon request to the then Attorney General, an Opinion was rendered, Opinion No. 4351, Opinions of the Attorney General for 1941, which stated that the recorder was to charge his normal fees for

the recording of these liens. The General Assembly promptly amended G.C. 1345-4 by adding the phrase, "for which there shall be no charge." This amendment demonstrates a clear legislative intent that unemployment compensation liens are to be treated as special liens which are free from filing fees. Since 1943, county recorders have so treated them, not charging for their filings and maintaining a separate unemployment compensation book in which they are recorded.

The amendment of R.C. 4141.23 in 1972 added the language:

If the employer acquires real or personal property after notice of lien is filed such lien shall not be valid as against the claim of any mortgagee, pledgee, subsequent bona fide purchaser for value, judgment creditor, or other lienholder of record to such after-acquired property, unless the notice of lien is refiled after such property was acquired by the employer and before the competing lien attached to such after-acquired property or before the conveyance to such subsequent bona fide purchaser for value.

I must conclude, in the light of Opinion No. 72-104, *supra*, that a recorder's fee cannot be charged for the re-filing of unemployment compensation liens under R.C. 4141.23. Even if we were to disregard the clear intent of the 1943 amendment, the present amendment makes no reference to a charge, and consequently one cannot be imposed.

However, R.C. 2305.26 (C), which was enacted in 1972 at practically the same time as the amendment to R.C. 4141.23, provides as follows:

The recorder shall mark each notice of continuation of lien with a consecutive file number and with the date of filing and shall hold such notice open for public inspection. In addition, the recorder shall index such notices according to the names of the person against whom they are effective, and shall note in the index the file numbers of such notices. Except in cases of liens arising under section 5719.04 of the Revised Code, the recorder shall mark the record of the original lien "continued" and note thereon the date on which the notice of continuation of lien was filed. The recorder may remove a lapsed lien or lapsed notice of continuation of lien from the file and destroy it. For any services performed under this section, the county recorder shall charge and collect the fees set forth in section 317.0321 of the Revised Code. (Emphasis added.)

This is a general statute covering the continuation of four state lien areas. The notes of the Legislative Service Commission regarding this Section state that (Substitute Senate Bill No. 206):

The purpose of the bill is to limit the

span of time a lien in favor of the state may remain as a cloud on title to property without some affirmative action on the part of the state either to continue or enforce it.

The intent of the legislature clearly was not to change the character of the various state liens involved, but merely to restrict the length of time they should continue as clouds upon the various titles to property.

It is true that the language of the Act providing for the charging of recorder fees, if applied literally, would change the character of the unemployment compensation lien. However, since R.C. 2305.26 is a general statute affecting various state liens, I conclude that it was not intended to change the special treatment afforded unemployment compensation liens. This rule of construction was referred to recently in the following language (Opinion No. 72-029, Opinions of the Attorney General for 1972):

In construing such statutes, resort must be had to the usual rules of statutory construction. "We have held so many times that it has become axiomatic that a special statutory provision which applies to a specific matter constitutes an exception to a general statutory provision covering other subject matter as well as the specific subject matter." Fisher Bros. v. Bowers, 166 Ohio St. 191, 196 (1956).

Construing R.C. 2305.26 in the light of the clear legislative intent that unemployment compensation liens shall be free from recording fees under the explicit language of R.C. 4141.23, necessitates a finding that the filing of a notice of continuation of such liens must be free from filing fees. There is a presumption that the legislature intended the laws to be consistent and harmonious. City of Dayton v. Jacobs, 120 Ohio St. 225, 229 (1929); Street Railway Co. v. Pace, 68 Ohio St. 200, 205 (1903). Any other interpretation of the general statute, R.C. 2305.26, in light of the explicit intent of the specific statute, R.C. 4141.23, would be inconsistent and in-harmonious.

In specific answer to your questions it is my opinion, and you are so advised, that:

1. A county recorder may not charge a recording fee upon the refiling of a state unemployment compensation lien pursuant to R.C. 4141.23, since the legislature failed to provide for such a fee and the express intent of the legislature would be defeated.

2. A county recorder may not charge a recording fee upon the filing of a notice of continuation of a state unemployment compensation lien pursuant to R.C. 2305.26, since any other interpretation would conflict with the specific intent of R.C. 4141.23.