



University of Nevada System

OFFICE OF THE CHANCELLOR
405 Marsh Avenue Reno Nevada 89509
702 784-4901

Certified Mail

July 24, 1985

Don Lockman
President
Alpine Industries
P.O. Box 1632
Zephyr Cove, NV 89448

Re: Mechanics' Lien, Recorded Douglas Co., Nev.,
No. 119885, Book 785, Pg. 703 (7/10/85)

Dear Mr. Lockman:

This office has received your recorded Mechanics' Lien on the 4-H Camp located in Stateline, Nevada. As you may be aware, the 4-H Camp is owned by the University of Nevada System. The University of Nevada System operates as a branch of the government of the State of Nevada. Johnson v. University of Nevada, 596 F.Supp. 175, 178 (D. Nev. 1984). Therefore, all of the property of the University of Nevada System constitutes public property.

It is well established that the placing of liens upon public property is against public policy and, in fact, is forbidden unless expressly authorized by statute in express terms. Ferch v. Housing Authority of Cass County, 59 N.W.2d 849, 866 (N.D. 1953); Town of Farmerville v. Commercial Credit Company, 173 La. 43, 136 So. 82 (1931); Phillips v. University of Virginia, 97 Va. 472, 34 S.E.66 (1899). Property dedicated to the public use is not owned by any state agency, county or municipality, but is owned by the public at large. As such, it has been held that property owned in the name of the public cannot be seized and sold to pay the debts of a municipality. Town of Farmerville, supra.

Public property used for public purposes is thus not liable for sale for the payment of debts. To allow this would allow parties to seize public property and destroy it for public uses. For this reason, as stated above, public policy forbids the filing of a mechanic's lien upon public property. Phillips v. University of Virginia, supra; see also Marsh, California Mechanics Lien Law Handbook, 2d Ed., §6.2. As a general rule, execution cannot be levied against the property of the State. State v. Olson, 75 Nev. 75, 344 P.2d 847 (1959).

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The only exception to these principles would be if a lien on state property was expressly authorized in express terms. However, a reading of Chapter 108 of NRS, relating to liens, will show there is no specific mention whatever throughout the chapter of the state or any other governmental agency. Those statutes simply refer to the "owner" of the property on which a lien is sought. This is not sufficient to include the state within the ambit of the statute.

Furthermore, 82 CJS, Statutes, § 317 states as follows:

"Neither the government, whether federal or state, nor its agencies are considered to be within the purview of a statute unless an intention to include them is manifested; and the rule applies or applies especially to statutes which would impair the rights, titles or interests of the government."

For case law on this same point, see United States v. Fox, 94 U.S. 315, 321 (1876); United States v. United Mine Workers, 330 U.S. 258, 275 (1947); United States v. Cooper Corporation, 312 U.S. 600, 604 (1941). Those particular cases stated that a statute merely utilizing the word "person" could not be construed to include the state.

Finally, as was stated in United States v. Miller, 229 F.2d 839 (1956), legislative enactments presumptively affect only private rights and do not embrace the rights of a sovereign unless clearly designated or clearly intended.

Accordingly, I would conclude that no lien may be filed upon state property, or if filed, may not be executed. In my opinion, therefore, the Mechanics' Lien recorded on behalf of your firm is void and of no effect whatever.

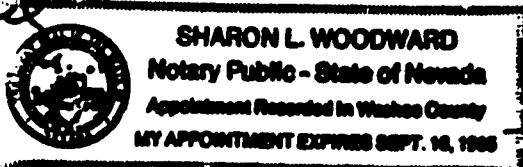
Sincerely,

Donald Klasic

Donald Klasic
General Counsel

Subscribed and Sworn to before me this 27th day of July, 1985.

Sharon L. Woodward
Notary Public



DK/sw
cc: Dr. Bernard Jones

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