

Opinion No. 6416

January 9, 1987

LANDLORD AND TENANT:

Lease imposing duty on tenant to pay city water supply bills

WATER SUPPLY:

Lien on premises for unpaid city water supply bills

A city may not place a lien upon premises for nonpayment of city water supply bills for which the tenant is responsible where the landowner has executed a lease with the tenant containing a provision that the lessor shall not be liable for payment of the water supply bills and has filed an affidavit with respect to the execution of such lease with the appropriate city officer.

Honorable Mitch Irwin  
State Senator  
The Capitol  
Lansing, Michigan

You have requested my opinion on the following question:

May the City of Sault Ste. Marie place a lien on premises for nonpayment of the city's water bill when the premises is rented or leased and the tenant is responsible for paying the bill?

MCL 123.162; MSA 5.2531(2), states:

"A municipality which has operated or operates a water distribution system or a sewage system for the purpose of supplying water or sewage system services to the inhabitants of the municipality, shall have as security for the collection of water or sewage system rates, or any assessments, charges, or rentals due or to become due, respectively, for the use of sewage system services or for the use or consumption of water supplied to any house or other building or any premises, lot or lots, or parcel or parcels of land, a lien upon the house or other building and upon the premises, lot or lots, or parcel or parcels of land upon which the house or other building is situated or to which the sewage system service or water was supplied. This lien shall become effective immediately upon the distribution of the water or provision of the sewage system service to the premises or property supplied, but shall not be enforceable for more than 3 years after it becomes effective." [Emphasis added.]

There is no question but that a city is expressly subject to this requirement. MCL 123.161(a); MSA 5.2531(1)(a).

MCL 123.165; MSA 5.2531(5), however, provides, in pertinent part:

"[T]his act shall not apply if a lease has been legally executed, containing a provision that the lessor shall not be liable for payment of water or sewage system bills accruing subsequent to the filing of the affidavit provided by this section. An affidavit with respect to the execution of a lease containing this provision shall be filed with the board, commission, or other official in charge of the water works system or sewage system, or both, and 20 days' notice shall be given by the lessor of any cancellation, change in, or termination of the lease. The affidavit shall contain a notation of the expiration date of the lease." [Emphasis added.]

In MCL 123.167; MSA 5.2531(7), the Legislature has provided:

"This act shall not repeal any existing statutory charter or ordinance provisions providing for the assessment or collection of water or sewage system rates, assessment, charges, or rentals by a municipality, but shall be construed as an additional grant of power to any power now prescribed by other statutory charter or ordinance provisions, or as a validating act to validate existing statutory or charter provisions creating liens which are also provided for by this act."

The Revenue Bond Act of 1933, MCL 141.121; MSA 5.2751, dealing with the ability of cities and other public corporations to charge rates for services for public improvements, including a water supply system, provides, in part:

"Charges for services furnished to a premises may be a lien on the premises, and those charges delinquent for 6 months or more may be certified annually to the proper tax assessing officer or agency who shall enter the lien on the next tax roll against the premises to which the services shall have been rendered,.... However, in a case when a tenant is responsible for the payment of the charges and the governing body is so notified in writing, the notice to include a true copy of the lease of the affected premises, if there be one, then the charges shall not become a lien against the premises after the date of the notice."

The Revenue Bond Act of 1933, MCL 141.102; MSA 5.2732, provides, in pertinent part:

"This act shall be construed as cumulative authority for the exercise of the powers herein granted and shall not be construed to repeal any existing laws with respect thereto, it being the purpose and intention of this act to create full and complete additional and alternate methods for the exercise

of such powers. The powers conferred by this act shall not be affected or limited by any other statute or by any charter, except as otherwise herein provided."

Sault Ste. Marie Code, Sec. 27-9(a), in pertinent part, provides:

"In addition to other remedies possessed by the city for the collection of water and sewage disposal rates, assessments, charges or rentals for the use of the water supply and sewage disposal system by any house or building or any premises, lot, or lots, or parcel, or parcels of land, the city shall have as security for the collection thereof a lien upon such house or other building, and upon the premises or lot, or lots, or parcel, or parcels of land, upon which such house or other building shall be situated, or to which such water has been supplied."

Further, Sault Ste. Marie Code, Sec. 27-9(c), provides:

"The provisions of this section shall not apply in any instance where a lease has been or is legally executed, containing a provision that the lessor shall not be liable for payment of water supply and sewage disposal bills; provided an affidavit with respect to the execution of such lease shall be filed with the officer in charge of accounting in the city, and twenty (20) days' notice shall be given to the city by the lessor of any cancellation, change in or termination of the lease."

It is my opinion, therefore, that a city may not place a lien on premises for nonpayment of the city water supply bills for which the tenant is responsible where the landowner has executed a lease with the tenant containing a provision that the lessor shall not be liable for payment of the water supply bills and has filed an affidavit with respect to the execution of such lease with the appropriate city officer.

Frank J. Kelley

Attorney General