

LETTER OPINION
98-L-82

July 1, 1998

Honorable Merle Boucher
State Representative
PO Box 7
Rolette, ND 58366-0007

Dear Representative Boucher:

Thank you for your letter requesting an opinion regarding the agricultural supplier's lien arising from N.D.C.C. ch. 35-31. Specifically you ask whether the term livestock in N.D.C.C. § 35-31-01 includes cows and breeding bulls and whether a lien under this chapter on livestock has the same priority as a lien under this chapter on crops or other agricultural products.

N.D.C.C. ch. 35-31 entitles any person who furnishes supplies used in the production of crops, agricultural products, or livestock to an agricultural supplier's lien on the crops, products produced by the use of the supplies and livestock and their products. Under N.D.C.C. § 35-31-02 the person claiming the lien must file a verified statement with a county register of deeds or with the office of the Secretary of State which, among other things, describes the crops, agricultural products or livestock, and their amount, if known, subject to the lien.

"Livestock" is not defined in N.D.C.C. ch. 35-31. However, "livestock" is defined in N.D.C.C. §§ 36-05-01 and 36-05.1-01 as "horses, mules, cattle, swine, sheep, and goats." When a word is defined by any statute, that definition is applicable to the same word wherever it occurs in the same or subsequent statutes. N.D.C.C. § 1-01-09. See also Moses v. Burleigh County, 438 N.W.2d 186, 193 (N.D. 1989) (holding words defined in one part of the Code are a guide in interpreting the same words in another part where not defined). Subsection 11 of N.D.C.C. § 57-39.2-04 provides that livestock includes breeding stock. Consequently, it is my opinion that livestock, as used in N.D.C.C. ch. 35-31, includes breeding bulls as well as all cows.

N.D.C.C. § 35-31-03 provides that an agricultural supplier's lien obtained under chapter 35-31 "has priority, as to the crops or agricultural products covered thereby, over all other liens or encumbrances except any agricultural processor's lien." Section 35-31-03 on priority mentions only "crops or agricultural products covered thereby" while Section 35-31-01 states the lien can be on

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"crops, products produced by use of the supplies, and livestock and their products, including milk." Based on this difference in language, you ask whether the priority recognized in Section 35-31-03 applies to agricultural supplier's liens on livestock obtained under chapter 35-31.

The term "agricultural products" is not defined in the North Dakota Century Code. Therefore, the term must be understood in its ordinary sense unless a contrary intention plainly appears. N.D.C.C. § 1-02-02. The American Heritage Dictionary defines agriculture as: "The science, art, and business of cultivating the soil, producing crops, and raising livestock" American Heritage Dictionary 88 (2d coll. ed. 1991). Therefore, the plain meaning of "agricultural products" includes both livestock and its products. At most an ambiguity is created by the use of different language in N.D.C.C. §§ 35-31-01 and 35-31-03. Aids to construing ambiguous statutes include the object sought to be obtained, the legislative history, and the consequences of a particular construction. N.D.C.C. § 1-02-39.

A review of the legislative history of N.D.C.C. ch. 35-31 does not indicate any intent that an agricultural supplier's lien on livestock would have a different priority than an agricultural supplier's lien on other agricultural products or on crops. During the 1997 Legislative Assembly, the priority given agricultural supplier's liens was considered and N.D.C.C. § 35-31-01 was amended by Senate Bill 2324. That amendment specifically excluded from the priority granted in Section 35-31-03 agricultural supplier's liens "filed as a security interest created by contract to secure money advanced or loaned for any purposes." 1997 N.D. Sess. Laws ch. 306, § 3. The amendment provided that such supplier's liens were not effective to secure priority over crop liens filed under Section 35-05-01. Id. In testimony presented to a legislative committee which heard Senate Bill 2324, the point was made that the change in priority should affect all farm products including livestock. Hearing on S. 2324 Before the Senate Comm. on Industry, Business and Labor, 55th Leg. (Feb. 6, 1997) (Testimony of Charles McCay, Farm Credit Services). This has been the common understanding of the agricultural supplier's lien as indicated in the Journal of Agricultural Taxation & Law article "Modernizing Agricultural Statutory Liens After the Federal 'Clear Title' Law - The North Dakota Experience." David M. Saxowsky et al., Modernizing Agricultural Statutory Liens After the Federal "Clear Title" Law - The North Dakota Experience, 11 Journal of Agricultural Taxation & Law 30 (1989). The authors point out that an overlap can exist between the agister's lien and the agricultural supplier's lien which can both apply to a supplier of feed or

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pasturage services for livestock. The supplier's lien offers more protection, however, due to its priority. Id. at 35.

If the agricultural supplier's lien obtained under N.D.C.C. ch. 35-31 on livestock was not covered by the priority provision of N.D.C.C. § 35-31-03, its priority would be unclear. This is inconsistent with the manner in which the Legislature has specifically set forth the priority to be given each of the agricultural liens.

Based on the above analyses, it is my opinion that the term "agricultural products" as used in N.D.C.C. § 35-31-03 includes livestock and their products and, therefore, a lien upon livestock obtained under N.D.C.C. ch. 35-31 has the same priority as a lien obtained under N.D.C.C. ch. 35-31 on crops or other agricultural products.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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