

Office of the Attorney General
State of North Dakota

Opinion No. 82-72

Date Issued: October 18, 1982

Requested by: Stark County State's Attorney Owen Mehrer

--QUESTION PRESENTED--

Whether the method for the cancellation of mechanic's liens set forth in Section 35-27-25 of the North Dakota Century Code applies to those mechanic's liens filed prior to July 1, 1981.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that the method for the cancellation of mechanic's liens set forth in Section 35-27-25, N.D.C.C., does not apply to those mechanic's liens filed prior to July 1, 1981.

--ANALYSIS--

Prior to the amendment enacted by the 1981 Legislative Assembly, Section 35-27-25, N.D.C.C., provided that a mechanic's lien could be canceled if the complaint was not filed within three years after the date of the last item of a claim as set forth in the recorded lien account, or within three years after the date of the last item of a claim as set forth in the recorded lien account, or within three years after it became due if the lien account showed that it was not then due. The amended statute as found in 1981 N.D. Session Laws 361, § 5, requires that a complaint be filed within three years after the date of the recording of the verified notice of intention to claim a mechanic's lien. The statute also now provides that if no complaint is filed within the time period provided, the lien is deemed satisfied. The clerk of court shall then certify to the register of deeds that no summons and complaint has been filed and that the lien is deemed satisfied under this section. This amendment became law on July 1, 1981.

Section 1-02-10, N.D.C.C., does not allow for the retroactive application of this amendment. That section states as follows:

1-02-10. CODE NOT RETROACTIVE UNLESS SO DECLARED.--No part of this code is retroactive unless it is expressly declared to be so.

In *Reiling v. Bhattacharyya*, 276 N.W.2d 237 (N.D. 1979), our Supreme Court stated that all statutes enacted by the legislature are to be applied prospectively. In other words, such statutes ought to be applied only to causes of action that arise after the

effective date of the statute unless the legislature clearly expresses that they ought to be applied retroactively. In addition, in *Monson v. Nelson*, 145 N.W.2d 892 (N.D. 1966), the court stated that an amendment, like other legislative enactments, does not take effect prior to the time of passage and the new or changed portions of the law have no application to prior transactions unless an intent to the contrary is clearly expressed.

Since the amendment to this statute is silent as to application, it can only be applied prospectively and, thus, applies only to mechanic's liens filed on or after July 1, 1981. To apply the amended portion of Section 35-27-25, N.D.C.C., to those liens filed prior to July 1, 1981, would amount to the retroactive application of the amendment in violation of statutory and case law.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

Robert O. Wefald
Attorney General

Prepared by: Terry L. Adkins
Assistant Attorney General