

ARE UNPAID REGISTRATION FEES A MUNICIPAL LIEN?

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OPINION NO.: 2017-001

I have been requested to render a legal opinion on whether or not an unpaid vacant property registration fee is a municipal lien. This opinion does not address the issue of whether or not a vacant property registration fee is lawful. The author of this opinion acknowledges that the legality of these fees are currently being challenged in the Superior Court and the author is actually involved in challenging property registration fees for abandoned or vacant properties.

Assuming that the registration fee is lawful, the question that has been posed to me is whether or not it is a municipal lien on the property. **For the reasons set forth below, assuming that municipalities have the lawful authority to assess vacant property registration fees, it is the opinion of the undersigned that there is no statute that makes these charges a municipal lien.**

The question here is whether or not an unpaid registration fee is a municipal charge capable of being converted into a municipal lien. A municipality within the State of New Jersey has numerous charges. However, in order to convert a municipal charge into a municipal lien, there must be an express statute. “Under our law, taxes or assessments do not become liens except by virtue of express legislation.” City of Bayonne v. East Coast Shipyards, 137 N.J. Eq. 165, 166 (Ch. 1945). “Rights and liabilities under tax sale proceedings rest upon statute.” Nelson v. Naumowicz, 1 N.J. 300, 302 (1949). “the procedure to bar right of redemption is prescribed by the statute must be strictly pursued.” Sichel v. Willett, 104 N.J. Eq. 393, 394 (Ch. 1929). “The existence of a tax lien must not be left to doubtful construction.” Archibald v. Maurath, 92 N.J. Eq. 357, 361 (Ch. 1921). “Municipal liens are statutory in origin and rights arising therefrom are

fixed and determined by the statute creating them.” Gasorek v. Gruber, 126 N.J. Super. 511, 515 (App. Div. 1974).

Most recently, in Pitman v. Monroe Savings Bank, 425 N.J. Super. 245 (App. Div. 2012), the Borough of Pitman attempted to turn fire code violation penalties into a municipal lien. The Appellate Court rejected the argument of the Borough that somehow these unpaid penalties could become liens on real estate. Since there was no statute that allowed Pitman to convert unpaid fire code penalties into municipal liens, Pitman’s actions were illegal.

Here, my legal research failed to disclose any statute that would allow a municipality to convert an unpaid registration fee (assuming same was lawful) into a municipal lien. Therefore, a tax collector should not show unpaid registration fees as a municipal lien. The municipality should not be advising attorneys or title companies that these fees are liens on real estate that must be paid in order to transfer title free and clear of liens. Assuming that the registration ordinances are lawful, it is an unpaid charge that is owed by the entity that owned the property at the time the charge was assessed. It is not a municipal lien on the property since there is no statute that provides for same.