

**An engineer who furnishes engineering plans and specifications and supervises construction is entitled to a mechanic's lien:**

TO: Secretary, State Board of Registration for  
Professional Engineers and Land Surveyors

FROM: Richard B. Kale, Jr.  
Senior Assistant Attorney General

QUESTION: Whether an engineer can file a mechanic's lien on property for labor furnished for the improvement of real estate?

DISCUSSION:

Section 29-5-10 provides in part that:

Any person to whom a debt for labor performed or furnished . . . in the erection, alteration or repair of any building or structure upon any real estate . . . by virtue of an agreement with, or by consent of, the owner of such building or structure, or any person having authority from, or rightfully acting for, such owner in procuring or furnishing such labor or materials shall have a lien upon such building or structure and upon the interest of the owner thereof in the lot of land upon which it is situated to secure the payment of the debt so due to him. . . . As used in this section, labor performed or furnished in the erection, alteration or repair of any building or structure upon any real estate shall include the work of making of such real estate suitable as a site for such building or structure. . . .

In a 1918 decision, the South Carolina Supreme Court held that an architect who furnished the plans and specifications and supervised the construction of a building had furnished labor within the meaning of South Carolina's mechanic's lien statute. *Williamson v. Hotel Melrose*, 110 S.C. 1, 96 S.E.2d 407 (1918). In so holding, the Court ruled that "labor furnished" was not limited to manual labor but also encompassed mental labor. In a more recent case, *Sea Pines Company v. Kiawah Island Company*, 268 S.C. 153, 232 S.E.2d 501 (1977), the Court reaffirmed the *Williamson* case by holding that the Sea Pines Company was entitled to a mechanic's lien for labor furnished in supervising the planning, development, and construction of Kiawah Island into a luxury resort.

However, the Court has also held that the labor performed or furnished must go into something which has attached to and become a part of the real estate, adding to its value. In *Johnson v. Barnhill*, 279 S.C. 242, 306 S.E.2d 216 (1983), the Court held that a surveyor was not entitled to a mechanic's lien for surveying work in subdividing a tract of land into smaller lots for sale. The Court rejected the claim, not because it involved mental labor, but because the surveyor's work did not involve the prepa-

ration of the actual site for a building or other improvement and therefore did not attach to or become a part of the realty.<sup>1</sup>

It seems clear that the "mental labor" rationale of *Williamson* applies as well to the work performed by an engineer who, for example, prepares structural, mechanical or electrical plans and specifications and supervises those aspects of the construction. See, *Dunham Associates, Inc. v. Group Investments, Inc.*, 301 Minn. 108, 223 N.W.2d 376 (1974). Therefore, it is the opinion of this Office that when an engineer furnishes engineering plans and specifications for a building and supervises the engineering work on the building, he is entitled to a mechanic's lien under Section 29-5-10 of the South Carolina Code of Laws (1976).<sup>2</sup>

#### CONCLUSION:

An engineer who furnishes plans and specification of engineering work for a building and supervises the engineering work during construction is entitled to a mechanic's lien to secure the payment of the debt due him.

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<sup>1</sup> The Court noted that the surveying agreement and work performed predated Section 29-5-21 of the Code and, therefore, that Section did not apply in the *Johnson* case. Section 29-5-21 now specially provides that surveying work shall be considered as material furnished for the improvement of real estate within the meaning of Section 29-5-20 of the Code.

<sup>2</sup> Obviously, the work performed by an engineer can vary widely from project to project. Therefore, it is impossible to offer an opinion that would apply to every situation. This opinion does not address the issue of whether an engineer would be entitled to a mechanic's lien for services which do not include both the preparation of plans and specifications and supervision of construction. The South Carolina Supreme Court in *Williamson, supra* and *Sea Pines, supra*, recognized a lien because there was both preparation of plans and specifications and supervision of construction. There is no preponderance of authority among the various jurisdictions with regard to the right to a lien based solely upon the furnishing of plans and specifications without supervision. See, *Gastra, Gladding & Johnson v. Bishop's Lodge Co.*, 35 N.M. 396, 299 P. 347 (1931). While *Williamson* and *Sea Pines* would seem to indicate that South Carolina would follow those jurisdictions which require not only the furnishing of plans and specifications but also the supervision of construction, the absence of any court decision prevents any definite conclusion in this regard.