

1975 S.C. Op. Atty. Gen. 180 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4101, 1975 WL 22397

Office of the Attorney General

State of South Carolina

Opinion No. 4101

September 9, 1975

\*1 Purchaser of an automobile at a sale authorized by Section 45–550 (lien for Repairs or Storage) must satisfy not only the Section 45–550 lien, but also any other pre-existing perfected liens to obtain clear title to the automobile.

TO: Honorable David J. McInnis

Member

S. C. House of Representatives

P. O. Box 1815

Sumter, SC 29150

Questions Presented:

You have requested an opinion concerning the priority between a purchaser who purchases an automobile pursuant to a sale authorized by Section 45–550, and a bank or finance company that holds a pre-existing perfected security interest.

Section 45–550 allows a repairman or warehouseman to sell any property left at his place of business after giving proper notice to the owner. The lien created by Section 45–550 takes priority over pre-existing liens.

When a person in the ordinary course of business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise. S. C. Code Ann. § 10.9–310 (1966 Added Vol.).

See also Opin. No. 2355, S. C. Atty. Gen. (Dec. 12, 1967).

After the sale of an automobile, the repairman or warehouseman is paid the amount of his lien by a magistrate, and the magistrate must deposit ‘the remainder of the money or proceeds of the sale, in the office of the clerk of court, subject to the order of the owner thereof, or his legal representatives.’ S. C. Code Ann. § 45–550 (1962). The purchaser, however, does not take priority over any pre-existing lienholder who has filed a financing statement covering the automobile.

(2) In the case of consumer goods . . . a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes or his own farming operations unless prior to the purchase the secured party has filed a financing statement covering such goods. S. C. Code Ann. § 10.9–307(2) (1966 Added Vol.) (Emphasis added).

Thus, a bank or finance company with a security interest in the automobile, perfected prior to its sale under Section 45–550, takes priority over the purchaser at the sale. The purchaser must satisfy the lien of the bank or finance company in order to obtain clear title to the automobile.

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