

Industrial Accident Board — Claims Due to — Whether Property of Lessor Liable Therefor.

Unpaid assessments due to the Industrial Accident Board do not constitute a lien upon property of the lessor.

Jerome G. Locke, Esq.,

Chairman of Industrial Accident Board,
Helena, Montana.

My dear Mr. Locke:

You have submitted to this office the question of whether the property of a lessor is liable for payments of claims due to the Industrial Accident Board from the lessee by reason of assessments to cover compensation carried by him.

The only provision of the statutes that I find on this question is Section 2928, Revised Codes of 1921, which provides:

"In case of bankruptcy, insolvency, liquidation, or the failure of an employer or insurer to meet any obligations imposed by this act, every liability which may be due under this act, shall constitute a first lien upon any deposit made by such employer or insurer, and if such deposit shall not be sufficient to secure the payment of such liability in the manner and at the times provided for in this act, the deficiency shall be a lien upon all the property of such employer or insurer within this state, and shall be prorated with other lienable claims, and shall have preference over the claim of any creditor or creditors of such employer or insurer except the claims of other lienors."

Compensation for injuries is purely statutory, and unless some provision can be found in the Workmen's Compensation Act, itself authorizing a lien upon property held under lease, then no such authority exists.

No rule is better settled than that liens can only be created by agreement or by some fixed rule of law (*Frost v. Atwood*, 73 Mich. 67, 41 N. W. 96), and in either case the effect is the same.

A lien can generally be created only by the owner or by some person by him authorized. (*Lowe v. Wood*, 100 Cal. 408, 34 Pac. 959.)

Statutory liens cannot be extended by the courts, the cases not being provided for by the statute, and they have only such duration as the statute gives.

Gile v. Atkins, 193 Me. 223, 44 Atl. 896.

While a lessee may by his contract subject his leasehold interest to a mechanic's lien, his contract cannot as a rule give rise to a lien against the leased property itself, unless the lessor authorized or consented to the making of the improvements or repairs.

27 Cyc. 56;

Stenberg v. Liennemann, 20 Mont. 457.

In this case the court quoted the following from Jones on Liens with approval:

"Lien not Extended Beyond Lessee's Interest. A statute authorizing a lien against a building erected by a lessee and his interest under the lease should not be extended in its operation by implication. It should be construed to embrace only such buildings as the lessee might himself, at common law, remove at any time during his term, before surrendering possession."

There being no provision in the statute for a lien on the property of the lessor, it is my opinion that no lien extends to this property by virtue of unpaid assessments due to the Industrial Accident Board.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.