

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 112

COUNTIES - Authority of counties to execute on liens for welfare payments against property bearing a homestead declaration;

LIENS - Authority of counties to execute on liens for welfare payments against property bearing a homestead declaration;

PROPERTY, REAL - Authority of counties to execute on liens for welfare payments against property bearing a homestead declaration;

PUBLIC ASSISTANCE - Authority of counties to execute on liens for welfare payments against property bearing a homestead declaration;

MONTANA CODE ANNOTATED - Sections 70-32-201, 70-32-202;

MONTANA CONSTITUTION - Article XI, section 4;

MONTANA LAWS OF 1973 - Chapter 299.

HELD: A county may not execute on a lien for welfare payments against residential property owned by welfare recipients where there has been a homestead declaration recorded on the property.

27 September 1988

J. Allen Bradshaw
Granite County Attorney
P.O. Box 490
Philipsburg MT 59858

Dear Mr. Bradshaw:

You have asked my opinion on the following question:

May the county assert a lien for welfare payments against residential property owned by welfare recipients where there has been a homestead declaration recorded on the property?

A dwelling declared to be a homestead is generally exempt from execution, § 70-32-201, MCA. Execution is allowed in satisfaction of judgments obtained on debts secured by construction liens or certain mortgages,

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§ 70-32-202, MCA. Homestead exemption laws should be liberally construed in favor of the debtor. Oregon Mortgage Co. v. Dunbar, 87 Mont. 603, 289 P. 559 (1930). Liens for welfare payments are not enumerated among the exceptions to the general homestead exemption, and I find no statutory authority for counties of any type to execute on judgments obtained on liens for welfare payments. Moreover, it is questionable whether a county with general powers, such as Granite County, has authority to assert a lien for welfare payments. Neither Title 53, MCA, pertaining to general assistance programs, nor Title 7, MCA, pertaining to county law, nor Title 71, chapter 3, MCA, pertaining to the creation of liens by operation of law, gives authority to assert such liens. See Mont. Const., Art. XI, § 4. I note that where the State has assumed all responsibilities for public assistance programs pursuant to sections 53-2-801 to 822, MCA, it lacks authority to assert such a lien because that authority was rescinded in 1973. 1973 Mont. Laws, ch. 299 (repealing sections 71-241 and 71-243 to 246, R.C.M. 1947, which gave the Department of Social and Rehabilitation Services authority to assert liens against recipients of public assistance).

THEREFORE, IT IS MY OPINION:

A county may not execute on a lien for welfare payments against residential property owned by welfare recipients where there has been a homestead declaration recorded on the property.

Very truly yours,

MIKE GREELY
Attorney General