

SPECIAL ASSESSMENT LIEN ATTACHMENT TO PRIVATELY OWNED BUILDING ON STATE-OWNED LAND

This memorandum was requested to assess legal issues regarding imposition of special assessments against privately owned structures located on state-owned land. The specific question to be addressed is whether in that situation unpaid special assessments would create a lien that would apply only against the privately owned structure and not against the state-owned land.

The North Dakota Supreme Court has flatly stated that "a lien cannot attach to . . . public property." (*Ferch v. Housing Authority of Cass County*, 59 N.W.2d 849 (1953)). It appears from this statement that a lien could not attach to state-owned land. However, North Dakota Century Code Section 40-23-22 specifically makes state property subject to special assessments. This provision does not state that state property is subject to special assessment liens nor does it provide an exemption from special assessment liens for state property. Courts in some states have found that it is against public policy to allow liens to attach to public property. (51 Am. Jur. 2d, *Liens*, § 21).

It is not necessary that a lien attach to land. Liens may be acquired on virtually any form of real or personal

property, including equitable interests in property. (51 Am. Jur. 2d, *Liens*, § 19). A judgment lien is a lien only upon the interest of the debtor at the time the judgment is docketed and will not by implication be extended to the property of one who is not responsible for the debt. (51 Am. Jur. 2d, *Liens*, § 19).

North Dakota Century Code Section 40-24-01 provides that a "special assessment . . . shall be and remain a **lien upon the property upon which the assessment is levied** . . . until the assessment is paid fully." (emphasis supplied) As long as the assessment levy makes clear that it applies to only a privately owned structure, and not to the land on which it is located, it appears that current law adequately provides for creation and enforcement of a lien against only the structure.

It appears there is no provision of law that would prohibit imposition of a special assessment lien against a privately owned building on state-owned land. In addition, it appears there are public policy and other reasons that support the conclusion that such a lien would not apply to the state-owned land upon which a structure subject to a lien is located.