

## Opinion No. 43-4391

October 6, 1943

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. Benj. D. Luchini, Chairman-Executive Director, Employment Security Commission of New Mexico, P. O. Box 1301, Albuquerque, New Mexico

In your letter dated October 4, 1943, you request an opinion construing Section 57-815 (e) of the 1941 Compilation, which provides as follows:

"(e) Successive Employers' Liability. -- Any person, group of individuals, partnership, or employing unit, which acquires the organization, trade or business, or substantially all the assets thereof from an employer shall notify the commission in writing by registered mail not later than five (5) days prior to the acquisition. Unless such notice is given such acquisition shall be void as against the commission, if, at the time of the acquisition, any contributions are due and unpaid by the previous employer; and the commission shall have the right to proceed against such employer either in personem (personam) or in rem and the assets so acquired shall be subject to attachment for such debt."

You state that a mining corporation is delinquent in the payment of contributions to the commission for the last quarter of 1941. Sometime in 1942 all of the property of the mining corporation was foreclosed under a mortgage and sold. The purchaser thereafter sold all of the property to another person. At the time of each sale the notice prescribed by the foregoing section was not given to the commission and the contribution of the mining corporation is still unpaid.

You wish to know whether the second purchaser and present owner of the property may be required to pay the delinquent contribution of the former employer by holding the property liable for that amount.

It is noted that the section quoted above does not create a lien on the property of the employer which can be followed into the hands of a subsequent purchaser, but merely creates the right to establish a lien by attachment. Section 57-815 (b) of the 1941 Compilation provides the method whereby a lien may be created against the property of an employer, but apparently no lien was ever filed under this section.

Since the property was not acquired from an employer, but was actually acquired at a Special Master's Sale by the original purchaser, in my opinion the Commission cannot now legally follow the property into the hands of the purchaser or his successors in interest, and the right to establish a lien by attachment has been lost. The only remedy remaining would be a suit against the original employer, against whom a judgment may or may not be worthless.

By C. C. McCULLOH,

First Asst. Atty. General