County, payment of lien on property

Number: INFORMAL

Date: September 06, 2007

The Honorable Ruth Attaway
Calhoun County Clerk of Court
20859 Central Avenue, East
Room 130
Blountstown, Florida 32424

Dear Ms. Attaway:

In your capacity to pre-audit the legality of all disbursements of county funds, you question the legality of the payment of a settlement of a lien upon property purchased by the Calhoun County Commission.

You state that a $7,000.00 lien was filed against property adjacent to the Calhoun County courthouse, while the property was under contract to be purchased by the county. The owner of the property contested the lien; however, the county proceeded with the purchase of the parcel, with $10,000.00 placed in escrow with the title company to cover the lien and possible legal fees. The individual who filed the lien against the property has offered to settle it with the county for a payment of $2,500.00. Subsequently, the circuit court has issued an order discharging the lien. Moreover, the appeal of the lower court's order has been dismissed by the First District Court of Appeals on August 17, 2007.

The clerk of the circuit court is a constitutional county officer.[1] Section 125.17, Florida Statutes, makes the clerk of circuit court the "clerk and accountant of the board of county commissioners."[2] Pursuant to this section, the clerk for the commission "shall keep their minutes and accounts, and perform such other duties as their clerk as the board may direct." When not otherwise provided by county charter or special law approved by vote of the electors, the clerk also serves as the "ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds."[3]

As the ex officio auditor of county funds, the clerk is authorized to refuse to sign and deliver county warrants for payment of an illegal contract.[4] Furthermore, the clerk is both personally and criminally liable for signing illegal warrants.[5]

Given the outcome of the judicial proceedings, the lien is no longer a potential obligation of the previous owner of the property, nor would the lien continue as a "cloud" on the title of the property. It would appear that the county has no obligation to seek satisfaction of the lien. Absent any legal obligation on the part of the county to pay the lien, there is no support for the county to offer any settlement of a nonexistent claim.

I trust that these informal comments will be of assistance to you in resolving the issue.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tsh

---

[1] *See* Art. VIII, s. 1(d), Fla. Const.

[2] *See also* s. 28.12, Fla. Stat., stating:

"The clerk of the circuit court shall be clerk and accountant of the board of county commissioners. He or she shall keep the minutes and accounts and perform such other duties as provided by law. The clerk shall have custody of the seal and affix the same to any paper or instrument as required by law."

[3] *See* Art. VIII, s. 1(d), Fla. Const. *And see,* Art. V, s. 16, Fla. Const., which provides:

"There shall be in each county a clerk of the circuit court who shall be selected pursuant to the provisions of Article VIII section 1. Notwithstanding any other provision of the constitution, the duties of the clerk of the circuit court may be divided by special or general law between two officers, one serving as clerk of court and one serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds."

See Alachua County v. Powers, 351 So. 2d 32 (Fla. 1977), recognizing that the clerk's judicial functions may be separated from his or her county officer functions as auditor, accountant, custodian of county funds and official recorder.

[4] *See Mayes Printing Company v. Flowers*, 154 So. 2d 859 (Fla. 1st DCA 1963). *And see, Alachua County v. Powers, supra*, n. 4 at 36 (clerk forbidden to sign illegal warrants).

[5] *See* s. 129.09, Fla. Stat., providing:

"Any clerk of the circuit court, acting as county auditor, who shall sign any warrant for the payment of any claim or bill or indebtedness against any county funds in excess of the expenditure allowed by law, or county ordinance, or to pay any illegal charge against the county, or to pay any claim against the county not authorized by law, or county ordinance, shall be personally liable for such amount, and if he or she shall sign such warrant willfully and knowingly he or she shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083."