



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

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FILE NO. S-682

OFFICERS:

Counties:

**Recorders of Deeds shall
continue to record federal
tax lien notices**

**Honorable C. Joseph Cavanaugh
State's Attorney
Sangamon County
Room 404 - County Building
Springfield, Illinois 62701**

Dear Mr. Cavanaugh:

**I have your letter of November 20, 1973, wherein you
state:**

**" * * * Public Act 78-527, with an effective
date of January 1, 1974, provides that no
Recorder of Deeds shall record an instrument
affecting title to real estate unless the name
and address of the person who prepared the
document is printed, typewritten or stamped
on the face of the document.**

Under Int. Rev. Code of 1954, Sec. 6321 (hereinafter referred to as Code), when an assessment is made against a person for unpaid federal taxes, a federal tax lien arises against all property, real or personal, belonging to such person. In order for the federal tax lien to have priority as against certain classes of creditors of the taxpayer, a notice of the federal tax lien must be filed. Code, Sec. 6323. For years Notices of Federal Tax liens in Illinois have been filed with the Recorder of Deeds for the county in which real estate belonging to the taxpayer is located. * * * We anticipate that after January 1, 1974, some Recorders of Deeds may refuse to record such Notices of Federal Tax Liens on the ground that they do not comply with Public Act 78-527.

* * *

(1) May the Notice of Federal Tax Lien be interpreted as containing the essential information required by Public Act 78-527?

(2) May Public Act 78-527 be held inapplicable to Notices, the form and content of which are prescribed by federal statutes and regulations?
* * *

In "AN ACT in relation to liens payable to the United States of America" (Ill. Rev. Stat. 1971, ch. 82, pars. 66 et seq., hereinafter referred to as The Lien Act), the state legislature has specifically provided for the place and manner in which notices of federal tax liens will be

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filed. Section 1 of the Act (Ill. Rev. Stat. 1971, ch. 82, par. 66) reads in pertinent part:

"Notices of liens for Internal Revenue taxes payable to the United States of America, * * * shall be filed in the office of the Recorder of Deeds in the County within which the property subject to lien is situated."

Section 2 details the manner in which a tax lien notice is to be filed:

"The recorder of deeds of each county shall procure at the expense of the county a file labeled 'Federal Tax Lien Notices' and an index book labeled 'Federal Lien Tax Index.' When a notice of any such tax lien is presented to him for filing, he shall file it in numerical order in the file and shall enter it alphabetically in the Federal lien tax index. The entry shall show the name and residence of the taxpayer named in the notice, the collector's serial number of the notice, the date and hour of filing and the amount of tax and penalty imposed."

Section 3 states that the purpose of this Act is to authorize, " * * * the filing of notices of liens and certificates and notices affecting liens in accordance with the provisions of the Federal Tax Lien Act of 1966."

As you point out in your letter, the place for filing

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a notice of federal tax lien with respect to real property is set forth in the Int. Rev. Code of 1954, 26 U.S.C., Section 6323 (f), (hereinafter referred to as Code), which provides that:

"(1) Place for filing. The notice referred to in subsection (a) shall be filed--

(A) Under state laws.

* * *

(1) Real property. In the case of real property, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated;

* * *

(B) With clerk of district court. In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated one office which meets the requirements of subparagraph (A); or * * *

The Code further provides in Section 6323 (f)(3), *supra*, that the form and contents of a notice of federal tax lien shall be prescribed by the Secretary or his delegate (the Commissioner

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of Internal Revenue) and that such notice shall be valid notwithstanding any other law regarding form or content of a notice of lien. You then ask in your letter whether, by adopting Public Act 78-527, Illinois no longer has designated one office within the State for filing notices so that notices would thereafter be filed with the Clerk of the United States District Court, requiring a title searcher to travel to this court to complete this search.

However, if one considers The Lien Act, supra, your question regarding the applicability of Public Act 78-527 to the recording of notices of tax liens can be answered. It is clear by the provisions of this Act, summarized supra, that it is meant to conform to the Code, Sec. 6323, supra, and all subsequent regulations thereto, with regard to the designation of the Recorder of Deeds in each county to record the notice of tax liens and the manner of recording such notices.

Thus, the applicability of Public Act 78-527 to notices of federal tax liens depends on the validity of The Lien Act,

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supra. The possible conflict herein arises because Public Act 78-527 instructs the Recorder of Deeds not to record a document affecting title to real estate unless the document contains certain information. In The Lien Act, supra, the legislature adopted the federal law as to the manner and form of recording notices of federal tax liens. Although it is not decided that the present form of the notice of federal tax lien does not contain the essential information required by Public Act 78-527, this is a present and future possibility, as the forms of notices are subject to the regulation of the Commissioner of Internal Revenue. For these reasons, the Recorder of Deeds may be confronted with statutes prescribing conflicting actions.

From a reading of Public Act 78-527, one can detect no overt intention of the legislature either to invalidate or supercede The Lien Act, supra. One must, therefore, assume that Public Act 78-527 was passed by the legislature with full knowledge of the above Act.

The primary purpose of statutory construction is the

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ascertainment of legislative intent. (People ex rel. Cason v. Ring, 41 Ill. 2d 305.) The general rule of construction, applicable herein, states that specific statutory provisions control as against general provisions on the same subject either in the same or other acts. (People ex rel. Siekman v. Pennsylvania R. Co., 385 Ill. 350.) Therefore, when we have two possibly conflicting statutes, the earlier a special enactment and the later a general one, the special controls the general. The special provisions in the statute are operative against the general provisions on the same subject either in the same act or in the general laws relating thereto. (Aston v. Cook County, 384 Ill. 287.) It is clear, therefore, that The Lien Act, supra, as a specific enactment, is operative as against the general provisions in Public Act 78-527.

The validity of the form of the federal tax lien notice may also be discussed in the context of a federal enactment controlling a state statute. I have already pointed out that the Code in Section 6323 (f) (3), supra, provided that the contents of the notice will be prescribed by the Commissioner

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of Internal Revenue. Pursuant to this law, Rev. Rul. 466,

1971-2 Cum. Bull. 409, provides as follows:

"Section 6323(a) of the Code, which provides that a notice of lien shall not be valid unless filed in the office in which its filing is authorized by State law, does not purport to give a State authority to do more than designate a place for filing the notice. Section 6323 (f) (3) of the Code, relating to the form and content of the notice, provides that the notice shall be valid notwithstanding any other provision of law regarding the form or content of a notice of lien. Accordingly, general provisions of State laws requiring the recording of documents, or otherwise requiring the acknowledgement of instruments relating to title to real property are not applicable. Section 6323 (f) of the Code should be construed as setting up a specific filing procedure which is complete in and of itself and which is not affected by general provisions of State laws relating to recording, filing, or title to property."

As a general rule, where there is an unreconcilable conflict between a state and a federal law, the federal law will prevail over any conflicting state legislation. (United States v. Wrightwood Dairy Co., 127 F. 2d 907, 912, rev. 314 U.S. 605; 82 C.J.S., Statutes, Sec. 386.) Accordingly, by adopting The

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Lien Act, supra, Illinois has complied with the federal law by designating the place for the filing of tax lien notices. The power to designate their form and content lies exclusively with the Internal Revenue. Any attempt to apply the form of recording prescribed by Public Act 78-527 to such notices might contradict the pertinent federal law which must be seen as paramount to a state statute in this situation.

In view of the foregoing, I find it unnecessary to answer your first question. However, it is my opinion that Public Act 78-527 is inapplicable to notices of federal tax liens. I would, therefore, instruct the Recorder of Deeds in your county to continue to record the federal tax lien notices as he has done in the past.

Very truly yours,

A T T O R N E Y G E N E R A L