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Potato Lien Law
10 MRSA 3321

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October 27, 1976

The Honorable Luman P. Mahany
House Chairman, Committee on Agriculture
Easton, Maine 04740

Re: Chapter 606 of the Public Laws of 1975 - Potato Lien Law

Dear Representative Mahany:

In answer to your inquiry addressed to this Office in which you seek clarification as to the meaning of our recently enacted Potato Lien Law (P.L. 1975, c. 606), please be advised that it is my opinion that the provisions of said law do not provide for enforcement of a producer's lien against subsequent purchasers of processed potatoes who are bona fide purchasers of same. It is also my opinion, however, that the provisions of P.L. 1975, c. 606, do not prohibit the enforcement of producers' liens against subsequent bad faith purchasers of processed potatoes, who possess knowledge of the pre-existing lien or encumbrance at time of purchase.

For the sake of clarity, it might be helpful to set forth the exact phraseology of the two questions posed in your letter, which read as follows:

"In particular, how does the lien affect the following.

1. Persons or firms which have purchased frozen processed potatoes wholesale for resale purposes? Would a 'chain-store', for example, which unknowingly or knowingly purchased frozen processed potatoes with a producer lien attached to the product from a processor, be liable for payment of the lien?

2. Persons or firms which have purchased frozen processed potatoes from a retail store? Would an individual or firm which unknowingly purchased frozen processed potatoes with a producer lien attached to the product from a retail store be liable for payment of the lien?"

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You are correct in emphasizing that the statute does not provide any procedures or guidelines which a lien claimant may pursue, other than the institution of an action against the processor to whom he has delivered potatoes.

The purpose of the Potato Lien Law is defined in pertinent part (10 M.R.S.A. § 3321) as follows:

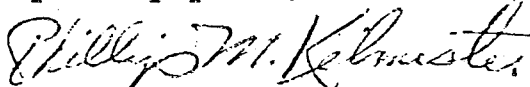
". . .The Legislature intends through this legislation to provide producers of potatoes with a limited guarantee of payment for the raw product contracted by and delivered to a processor. This legislation is designed to afford limited protection for producers and thereby promote the general welfare of the State which is dependent upon the potato industry and the producer."

The "limited guarantee of payment" referred to in the above-quoted statutory language should not be strictly construed to imply in any manner, that the vitality of a potato lien is dependent upon retention or possession of the subject matter of the lien by the processor.

It would be unreasonable to conclude that the Legislature intended that a processor, by his own wrongdoing, could cause an extinguishment of the lien by selling or otherwise disposing of the subject matter of the lien to a third party, who has knowledge of the lien.

In closing, I would answer both of your questions in the negative, with the important exception as to that portion of the first question relating to purchasers who possess knowledge of liens. In the latter instance, I believe a lien claimant may successfully pursue his claim against a subsequent bad faith purchaser who has knowledge of the existence of the lien.

Very truly yours,


PHILLIP M. KILMISTER
Assistant Attorney General

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