OPINION NO. 81-030

Syllabus:

1. Where charges made by a board of county commissioners for county refuse disposal service under R.C. 343.08 go unpaid, a lien will attach to the property served when such delinquent charges are certified to the county auditor and placed upon the tax duplicate. Where a subsequent purchaser has acquired and recorded his interest prior to the attachment of the lien, he takes the property free of the encumbrance.

2. Where charges made by a board of county commissioners for county sewerage and disposal services under R.C. 6117.02 go unpaid, a lien will attach to the property served when such delinquent charges are certified to the county auditor and placed upon the tax duplicate. Where a subsequent purchaser has acquired and recorded his interest prior to the attachment of the lien, he takes the property free of the encumbrance.

3. Where charges made by the board of trustees of a regional water and sewer district under R.C. 6119.09(V) go unpaid, a lien will attach to the property served when such delinquent charges are certified to the county auditor. Where a subsequent purchaser has acquired and recorded his interest prior to attachment of the lien, he takes the property free of encumbrance.

4. Charges made by the legislative authority of a municipal corporation for the operation of a municipal sewerage works under R.C. 729.49 are a lien against the property served as soon as the charges are incurred, and remain a lien until such time as they are paid. Such charges are in the nature of an obligation of the land itself, and a subsequent purchaser of the land takes the property subject to the obligation for any unpaid charges. Until such charges are paid, continued sewerage service may be refused.

5. Where charges made by a board of public affairs of a village for utility charges under R.C. 735.29 go unpaid, a lien will attach to the property served when such delinquent charge is certified to the county auditor, and when such charge is included on the delinquent tax list delivered by the county auditor to the county recorder on the first day of December, annually, in accordance with R.C. 5719.04. Where a subsequent purchaser has acquired and recorded his interest prior to attachment of the lien, he takes the property free of the encumbrance.

6. Where charges made by the director of public service of a city for municipal water service under R.C. 743.04 go unpaid, the city may not certify such unpaid rental charge to the county auditor

for collection with other city taxes, and the county auditor may not place such unpaid rental charge upon the tax duplicate for collection. Such charges can never be the source of a tax lien. (1912 Op. Att'y Gen. No. 357, vol. I, p. 243; 1929 Op. Att'y Gen. No. 1203, vol. III, p. 1788; 1934 Op. Att'y Gen. No. 2636, vol. I, p. 612; 1936 Op. Att'y Gen. No. 6214, vol. III, p. 1546 approved and followed.)

7. A government-operated utility may not refuse services to a purchaser of real property for the non-payment of utility charges by a prior owner of the property where the purchaser has acquired and recorded his interest prior to the time a lien for such unpaid utility charges attaches to the real property.

To: William L. Thomas, Belmont County Pros. Atty., St. Clairsville, Ohio
By: William J. Brown, Attorney General, June 2, 1981

I have before me a request from your predecessor, Edward T. Sustersic, for my opinion as to whether a lien of a government-operated utility (or the right of the utility to refuse services) will attach to real estate in the following fact situation:

1. While "A" owns real estate, he or his tenant receives the benefit of a utility service from a government-operated utility, incurring liability therefor, payment for which becomes delinquent.

2. "A" then conveys the real estate to "B" who is a good faith purchaser and records his deed.

3. The delinquency is certified to the County Auditor and placed upon the County Treasurer's General Tax Duplicate after "B" records his deed.

Your request actually relates to two aspects of the same problem. The first concerns the attachment of a lien, while the second concerns the right to refuse services.

You make reference to six statutes, all of which confer authority upon various public bodies to charge individual users for utility services and to collect those charges. Each of these statutes will be treated separately. The first portion of this opinion will address the initial question raised by your request, namely the point at which a lien attaches. The second portion will address your second and related question as to when a government-operated utility may refuse services.

Before addressing your questions specifically, certain preliminary matters can be established. As a general rule, unpaid utility charges are a debt of the user rather than a debt of the property served.[1] Support for this proposition is found in Western Reserve Steel Corp. v. Village of Cuyahoga Heights, 118 Ohio St. 544, 161 N.E. 920 (1928), wherein the Supreme Court of Ohio held that a municipal waterworks could not refuse service to a property owner, even though the previous owner's bill had not been paid, and that absent a lien the city could not look to the present owner for payment of the bill. The debt of the property owner may, therefore, become chargeable against his property by virtue of a lien. Thus, as a general rule, it can be said that until a utility lien is "perfected," an intervening good faith purchaser takes the land free of encumbrance. Home Owners' Loan

---

[1]Among the statutes cited in your request, the lone exception to this rule would appear to be a charge made under R.C. 729.49 which is discussed at length, infra.

Corp. v. Tyson, 133 Ohio St. 184, 12 N.E.2d 478 (1938); Lewis v. Ball, 8 Ohio Law Abs. 625 (1930). Since in your hypothetical "B," the purchaser, both acquired and recorded his interest in the property prior to the time the delinquent charges were certified to the county auditor, it is unnecessary to discuss what consequences might result from a failure to record an interest in real property.[2] Thus, in general terms, under your hypothetical example, once "B" has acquired and recorded his interest, he would take the property free of any obligation, unless the government-operated utility had previously perfected a lien. Therefore, as you indicate in your request, the key factor is a determination of when a lien attaches. With these general principles in mind, I now turn to the statutes specifically referenced in your opinion request.

The first statute which you mention specifically is R.C. 343.08. It states, in pertinent part, as follows:

> The board of county commissioners may fix reasonable rates or charges to be paid by every person, firm, corporation, board of township trustees, or board of education which is the owner of premises to which the collection or disposal of garbage and refuse, refuse recycling, or resource recovery service is made available, and may change such rates or charges whenever it deems it advisable. . . . When any such charges are not paid, the board shall certify them to the county auditor, who shall place them upon the real property duplicate against the property served by such collection or disposal, or both, and such charges shall be a lien on such property from the date they are placed upon the real property duplicate by the auditor, and shall be collected in the same manner as other taxes. (Emphasis added.)

Thus, with respect to this statute, it is clear that once the county commissioners certify a delinquency to the auditor, and the auditor places the delinquency upon the real property duplicate, the charges become a lien upon the property served. You indicated in your request that "B" acquired and recorded his interest prior to the time when the delinquency was certified to the county auditor. Thus, "B" would take the land free of any obligation to pay the delinquent charges, and the county must look to "A" for payment. See Western Reserve, supra.

The next statute referred to in your request is R.C. 6117.02. That section deals with assessments for sewerage treatment and disposal works operated by a county. Like R.C. 343.08, it makes provision for the county commissioners to fix rates for the properties served. R.C. 6117.02 further provides:

> When any rents or charges are not paid when due, the board shall certify the same together with any penalties to the county auditor, who shall place them upon the real property tax list and duplicate against the property served by such connection. Such rents and charges shall be a lien on such property from the date the same are placed upon the real property tax list and duplicate by the auditor and shall be collected in the same manner as other taxes. (Emphasis added.)

Thus, pursuant to R.C. 6117.02, the lien attaches to the property served when the auditor places the delinquent charge upon the tax duplicate. Again, since purchaser "B" acquired and recorded his interest prior to the action of the auditor, the land escapes encumbrance.

---

[2]See generally R.C. 5301.25 (until instruments for the conveyance or encumbrance of lands are recorded, "they are fraudulent, so far as relates to a subsequent bona fide purchaser having, at the time of purchase, no knowledge of such former. . .instrument").

The third statute referenced in your request is R.C. 6119.06(V). R.C. 6119.06 generally authorizes the formation and operation of a regional water and sewer district. Division (V) provides that the trustees of the district may:

> Charge, alter, and collect rentals and other charges for the use of services of any water resource project as provided in section 6119.09 of the Revised Code. Such district may refuse the services of any of its projects if any of such rentals or other charges, including penalties for late payment, are not paid by the user thereof, and, if such rentals or other charges are not paid when due and upon certification of nonpayment to the county auditor, such rentals or other charges constitute a lien upon the property so served, shall be placed by him upon the real property tax list and duplicate, and shall be collected in the same manner as other taxes. (Emphasis added.)

Under this statute, the lien attaches to the property served "upon certification of nonpayment to the county auditor." Thus, as in your hypothetical, where the purchaser has acquired and recorded his interest prior to such certification, he takes the property free of the obligation. I note in passing that this section would appear to place a duty upon the county auditor to extend such a delinquency upon the tax list and duplicate as soon as the nonpayment is certified by the trustees of the district. However, under the express language of the statute, the lien attaches "upon certification of nonpayment."

The fourth statute to which you refer is R.C. 729.49. That section relates to the collection of charges for municipal sewerage systems, and provides, in relevant portion, as follows:

> The legislative authority of a municipal corporation which has installed or is installing sewerage, a system of sewerage, sewerage pumping works, or sewerage treatment or disposal works for public use, may, by ordinance, establish just and equitable rates or charges of rents to be paid to the municipal corporation for the use of such services, by every person, firm, or corporation, whose premises are served by a connection thereto. Such charges shall constitute a lien upon the property served by such connection and if not paid when due shall be collected in the same manner as other municipal corporation taxes. (Emphasis added.)

The language of this section is unique among the statutes you cite for the reason that it states that the charges themselves "constitute a lien upon the property served by such connection." The statute goes on to make provision for collection of the charges, "in the same manner as other municipal corporation taxes." In Union Properties, Inc. v. City of Cleveland, 38 Ohio Law Abs. 246, 49 N.E.2d 571 (Ct. App. Cuyahoga County 1943), aff'd, 142 Ohio St. 358, 52 N.E.2d 335 (1943), it was held that charges made under this section were not a mere indebtedness of the user, but were an obligation of the property served. Therefore, in order to resolve your hypothetical example, detailed scrutiny of Union Properties is required.

The facts recited by the court in Union Properties indicate that the City of Cleveland had enacted an ordinance under the authority of G.C. 3891-1 (presently R.C. 729.49), which provided that when payment of municipal sewerage charges became delinquent, the city would certify such delinquency to the county auditor who would then place such unpaid charges upon the tax duplicate for collection. The plaintiff in the case had purchased certain properties at a foreclosure sale. Prior to the sale, the city had certified unpaid sewerage charges from those properties to the auditor who had in turn placed them on the duplicate, in accordance with the procedure set forth in the ordinance. When the plaintiff took possession, the city threatened to discontinue service unless payment of the unpaid sewerage charges was remitted. Plaintiff paid the charges, but then brought suit claiming that the payment was made under duress, and that the sewerage charges were not its legal obligation. Plaintiff asked that the money be returned.

The plaintiff rested its case upon Western Reserve Steel, supra, arguing that the city could not collect from it an indebtedness of the previous owner. The court disagreed. The court noted first that Western Reserve was distinguishable on its facts because in that case the municipality had not certified nonpayment to the county auditor prior to transfer. The court went on to state that unlike the water charges considered in Western Reserve, which were by the language of the enabling statute an indebtedness of the user, municipal sewerage charges were, by virtue of the language of the statute, "a lien upon the property served by such connection." Thus, the court concluded, the sewerage charges were more than an indebtedness of the user; such charges were an indebtedness of the property.

In reaching that conclusion, the court also considered the language of G.C. 5671 (presently R.C. 5719.01), which now states: "[t]axes charged on any tax duplicate, except those upon real estate, shall be a lien on real property of the person charged therewith from the date of the filing of a notice of such lien as provided by law" (emphasis added). The Union Properties court reasoned that since, in its view, municipal sewerage charges, imposed under the authority of G.C. 5671 (presently R.C. 729.49), were in the nature of a tax on real property, such charges were excepted from the notice of lien requirement of G.C. 5671 (R.C. 5719.01).

As is discussed in greater detail infra, a lien for non-real estate taxes may be created under R.C. 5719.04. Under R.C.5719.01, the lien of the state for real property taxes attaches to all property on the first day of January annually. Thus, with respect to your hypothetical example, one might conclude that a lien for unpaid sewerage charges would attach to the property each year on that date. However, under R.C. 729.49, a more specific and thus controlling statute, the lien attaches as soon as the charges are incurred. In the language of that statute, the charges themselves "shall constitute a lien upon the property served." I differentiate between the lien for municipal sewerage charges and real property tax liens generally on the basis that the attachment provisions of R.C. 5719.01 assume a valid tax levy for each given year. A lien for the upcoming tax obligation attaches automatically at the start of the year and continues until paid. See State ex rel. Summit Board of Education v. Medina County Board of Education, 45 Ohio St. 2d 210, 343 N.E.2d 110 (1976); State ex rel. Donahey v. Roose, 90 Ohio St. 345, 107 N.E. 760 (1914). Thus, there is no manner in which an intervening purchaser can escape from the liability. Such a system comports with the underlying obligation of the land itself for the real property tax. Since Union Properties concludes that municipal sewerage charges are an obligation of the land, a similar "automatic" lien mechanism must operate to insure an automatic and continuing liability upon the land for the payment of such charges.

Thus, in your hypothetical example, if municipal sewerage charges are incurred while "A" owns the property, the land itself is subject to a lien at the instant that the charges are incurred. Thus, even if "B" acquires and records his interest before the charges are certified to the county auditor, the land itself remains subject to liability for the charges. Thus, "B" would not escape the encumbrance.

The fifth statute to which your request makes reference is R.C. 735.29. That section relates to charges for village-operated utilities. It provides, in pertinent part, as follows:

> For the purpose of paying the expenses of conducting and managing such water works, plants, and public utilities or of making necessary additions thereto and extensions and repairs thereon, the board may assess a water, light, power, gas, or utility rent, . . .upon all tenements and premises supplied therewith. When such rents are not paid the board may certify them to the county auditor to be placed on the duplicate and collected as other village taxes. . . . (Emphasis added.)

Unlike any of the previous statutes mentioned, this section makes no special provision for a lien. It merely provides that unpaid utility charges are to be certified to the county auditor for collection in the identical manner employed with respect to collection of village taxes generally. On the basis of the plain language of R.C. 735.29, the court in Home Owners' Loan Corp., supra, concluded that utility charges incurred pursuant to R.C. 735.29 are not taxes on real estate and, therefore, do not come within the exception provided under R.C. 5719.01.[3] Thus, the collection of utility charges incurred under R.C. 735.29 is governed by R.C. 5719.04 rather than by R.C. 5719.01 and R.C. 5705.03. Cf. Union Properties, supra.

R.C. 5719.04 is a rather long statute whose full text need not be restated here. The gist of the statute is to the effect that when the county auditor receives from the county treasurer a list of taxes which have not been paid, he is to prepare a list of persons whose tax obligation is unpaid, and to publish that list in a newspaper of general circulation. The county auditor is also required to prepare a separate list of names of persons whose unpaid obligations exceed one hundred dollars, and to deliver that list to the office of the county recorder. R.C. 5719.04 further provides that:

> the same [the list filed with the county recorder] shall constitute a notice of lien and operate as of the date of delivery [the first day of December, annually] as a lien on the lands and tenements, vested legal interests therein, and permanent leasehold estates of each person named therein having such real estate in such county. Such notice of lien and such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor whose rights have attached prior to the date of such delivery. Such duplicate shall be kept by the recorder, designated as the personal tax lien record, and indexed under the name of the person charged with such tax. (Emphasis added.)

Thus, the lien for such charges, since they are to be collected in the same manner as other taxes, will not attach until delivery of the tax list to the county recorder on the first day of December, annually. By the express language of R.C. 5719.04, any interest which has attached prior to that date is free of the encumbrance. In your hypothetical example, "B's" interest in the property attached prior to the time that the delinquent utility charges were certified to the county auditor and placed upon the tax list for deliverance to the treasurer pursuant to R.C. 5719.04. Thus, "B" would take the land free of the utility lien.

The remaining statute to which you make reference, R.C. 743.04, authorizes the managing officer of a municipal water works to assess and collect a water rent for such services. The relevant language of R.C. 743.04 is as follows:

> The director of public service may. . .assess and collect a water rent of sufficient amount and in such manner as he deems most equitable from all tenements and premises supplied with water. When more than one tenant or water taker is supplied with one hydrant or off the same pipe, and when the assessments therefor are not paid when due, the director shall look directly to the owner of the property for so much of the water rent as remains unpaid, which shall be collected in the same manner as other city taxes. (Emphasis added.)

---

[3] As discussed infra, R.C. 5719.01 specifically excepts taxes charged on real estate from the notice and attachment provisions of R.C. Chapter 5719.

This statutory provision has been the source of no less than four opinions of my predecessors. In 1912 Op. Att'y Gen. No. 357, vol. I, p. 243, it was concluded that G.C. 3958 (presently R.C. 743.04) authorized only the charge of "rentals" for municipal water, and that such "rentals" were in no sense a tax. The syllabus of the opinion states: "[s]uch rentals are in no sense a tax and there is no authority to certify such rents to auditor for collection."

The section was next considered in 1929 Op. Att'y Gen. No. 1203, vol. III, p. 1788. That opinion was requested by the Bureau of Inspection and Supervision of Public Offices, which agency made specific references to 1912 Op. No. 357. 1929 Op. No. 1203 concluded that, under G.C. 3958, there was no authority for a city to certify unpaid water rentals to the county auditor for collection with other city taxes. The opinion noted, however, that village utility charges, including water rentals, could be certified to the auditor under G.C. 4361 (presently R.C. 735.29). Thus, the opinion effectively concluded that, while a village may certify water rentals to the county auditor for collection, a city may not. In "affirming" 1912 Op. No. 357, my predecessor went on to state:

> The ruling of the Attorney General to which you refer undoubtedly has been followed since the time of its pronouncement. There are many decisions to the effect that administrative interpretations of a statute, if acquiesced in for a long period of time, will be given great weight.
>
> In view of the foregoing, I would be reluctant to undertake to reverse said opinion. In fact, I am inclined to the belief that the opinion rendered was sound.
>
> In passing, it should be noted that Section 3958, General Code, hereinbefore referred to, which refers to the collection of the water rent in the same manner as other city taxes, in the use of such language has reference to the situation which is set forth in the second sentence of said section. In other words, the manner of collection, above mentioned, has reference to a situation wherein more than one tenant or water taker is supplied with one hydrant or from the same pipe and the assessment for such service is not paid when due.
>
> From the foregoing, it will be observed that Section 3958, General Code, is not of general application in so far as the method of collection in the manner of "other city taxes" is concerned. In other words, there are no provisions for the collection in the manner provided for other city taxes except in those cases wherein more than one tenant or water taker is supplied with one hydrant, etc., as mentioned in said section. It therefore would seem rather absurd that the Legislature would contemplate the certification in the one instance and not make such requirement in others, which is another argument for my conclusion above stated.

Id. at 1789-90.

In 1934, further analysis of the situation was requested, again by the Bureau of Inspection and Supervision of Public Offices. In 1934 Op. Att'y Gen. No. 2636, vol. I, p. 612, 1912 Op. No. 357 and 1929 Op. No. 1203 were approved and followed. The opinion concluded:

> There are no statutes in Ohio authorizing either a city to certify its delinquent water rental accounts to the county auditor to be collected in the manner of real estate taxes, nor is there any language authorizing a county auditor to enter such rental accounts upon the tax list and duplicate of real estate taxes when so certified.

Id. at 613.

In 1936 Op. Att'y Gen. No. 6214, vol. III, p. 1546, there followed a plea from the Prosecuting Attorney of Paulding County for reconsideration. In his request, the Prosecuting Attorney remarked:

> Since the later opinion [1934 Op. Att'y Gen. No. 2636] was rendered many persons of the Village of Paulding have been advised that they do not have to pay the County Treasurer the amounts certified against them as taxes for delinquent light and water rentals, and consequently have not paid this part of their taxes, . . .

Id. at 1547. In that opinion, my predecessor insured the solvency of waterworks of the Village of Paulding by pointing out that a village could, under G.C. 4361 (presently R.C. 735.29), certify unpaid water and light rentals to the county auditor for collection. The opinion, in reaching that conclusion, again took note that cities could not certify delinquent water rentals to the county auditor for collection.

While I am not unmindful of the historical tradition of this office in opining that a city does not enjoy the same right to collect unpaid water bills as does a village, I confess a distinct reluctance to blindly follow that precedent. There is room for criticism of the aforementioned opinions, and I am hard put to ignore the final phrase of R.C. 743.04 which states that unpaid water rentals "shall be collected in the same manner as other city taxes." It is a cardinal rule of statutory construction that all parts of a statute are to be given meaning. Accordingly, it could well be said that unpaid rentals are to be collected under the provisions of R.C. 5719.04, just as village charges are collected. Moreover, in response to the 1929 opinion, wherein the "absurdity" of certifying only unpaid charges where "more than one tenant or water taker is supplied with one hydrant, etc." is discussed, I find it equally troublesome to conclude that although a city may impose a charge which may be "collected in the same manner as other city taxes," the charge cannot be enforced by a tax lien.

Nonetheless, I choose to follow my predecessors for two reasons. First, there is a line of cases supporting the view adopted by the opinions. Most notable of these is Hohly v. State ex rel. Summit Superior Co., 128 Ohio St. 257, 257, 191 N.E. 1, 1 (1934), wherein the Ohio Supreme Court states: "neither Sections 3957 and 3958, General Code, [G.C. 3958 being the present R.C. 743.04]. . .create nor authorize the creation of a lien upon real property for charges for water supplied by such city to the premises of defendant in error." In accord with Hohly are Northern Savings & Loan Co. v. Demario, 18 Ohio Law Abs. 385 (Ct. App. Lorain County 1935), and Akron v. Citizens Savings & Loan Co., 17 Ohio Law Abs. 159 (Ct. App. Summit County 1934). The second reason in support of my decision to follow the precedent laid down by the previous occupants of this office is that for a period in excess of half a century the General Assembly has chosen to ignore this distinction between villages and cities. On the basis of this inaction, I must conclude that the legislative branch of our government embraces this concept, and supports the view that a village may certify unpaid water charges to the county auditor for collection where a city may not.

In response to your hypothetical example, then, the purchaser "B" need not be concerned with the point at which a lien attaches to the property for unpaid city water charges, since a tax lien is not authorized by R.C. 743.04.

Having discussed in detail the first question of your request, namely the point at which government-operated utility liens attach to the property supplied with service, I turn to the second portion of your request which concerns the right of such utilities to refuse service to properties where the charges are delinquent. In Mansfield v. Humphreys Manufacturing Co., 82 Ohio St. 216, 92 N.E. 233 (1910), the Ohio Supreme Court held that a municipal regulation which authorized the director of public service to turn off water to any property for which the water bill remains unpaid was a valid and enforceable regulation. Interestingly enough, the

court found that the director had such authority under G.C. 3958 (presently R.C. 743.04), which has been held not to allow certification of nonpayment to the county auditor for collection. In any event, it would appear that, with respect to all of the statutes to which you have made reference, the public body or official setting rates may adopt reasonable procedures, pursuant to the general authority found in those statutes to operate utilities in an efficient manner, to refuse service to the user who incurred the utility charges. Indeed, R.C. 6119.06(V) specifically authorizes the trustees of a regional water and sewer district to refuse service if any "rentals or other charges, including penalties for late payment, are not paid by the user thereof."

With respect to the specific question raised by your request, as to when the utility may refuse services to a subsequent purchaser, the Ohio Supreme Court has taken the position that the utility may not refuse services to such purchaser unless, prior to the recording of his interest, a lien for unpaid charges had attached to the property. Western Reserve, supra. While Western Reserve was decided under what is currently R.C. 735.29, the principle declared therein would appear to be valid with respect to any of the statutes to which you refer. Therefore, the hypothetical example you pose may be resolved with respect to the various statutes in question by referring to my earlier discussion as to when the utility lien attaches. Any purchaser who, like the purchaser in your hypothetical, has acquired and recorded his interest prior to attachment of the lien may not be refused service.

Accordingly, it is my opinion, and you are so advised, that:

1. Where charges made by a board of county commissioners for county refuse disposal service under R.C. 343.08 go unpaid, a lien will attach to the property served when such delinquent charges are certified to the county auditor and placed upon the tax duplicate. Where a subsequent purchaser has acquired and recorded his interest prior to the attachment of the lien, he takes the property free of the encumbrance.

2. Where charges made by a board of county commissioners for county sewerage and disposal services under R.C. 6117.02 go unpaid, a lien will attach to the property served when such delinquent charges are certified to the county auditor and placed upon the tax duplicate. Where a subsequent purchaser has acquired and recorded his interest prior to the attachment of the lien, he takes the property free of the encumbrance.

3. Where charges made by the board of trustees of a regional water and sewer district under R.C. 6119.09(V) go unpaid, a lien will attach to the property served when such delinquent charges are certified to the county auditor. Where a subsequent purchaser has acquired and recorded his interest prior to attachment of the lien, he takes the property free of encumbrance.

4. Charges made by the legislative authority of a municipal corporation for the operation of a municipal sewerage works under R.C. 729.49 are a lien against the property served as soon as the charges are incurred, and remain a lien until such time as they are paid. Such charges are in the nature of an obligation of the land itself, and a subsequent purchaser of the land takes the property subject to the obligation for any unpaid charges. Until such charges are paid, continued sewerage service may be refused.

5. Where charges made by a board of public affairs of a village for utility charges under R.C. 735.29 go unpaid, a lien will attach to the property served when such delinquent charge is

certified to the county auditor, and when such charge is included on the delinquent tax list delivered by the county auditor to the county recorder on the first day of December, annually, in accordance with R.C. 5719.04. Where a subsequent purchaser has acquired and recorded his interest prior to attachment of the lien, he takes the property free of the encumbrance.

6. Where charges made by the director of public service of a city for municipal water service under R.C. 743.04 go unpaid, the city may not certify such unpaid rental charge to the county auditor for collection with other city taxes, and the county auditor may not place such unpaid rental charge upon the tax duplicate for collection. Such charges can never be the source of a tax lien. (1912 Op. Att'y Gen. No. 357, vol. I, p. 243; 1929 Op. Att'y Gen. No. 1203, vol. III, p. 1788; 1934 Op. Att'y Gen. No. 2636, vol. I, p. 612; 1936 Op. Att'y Gen. No. 6214, vol. III, p. 1546 approved and followed.)

7. A government-operated utility may not refuse services to a purchaser of real property for the non-payment of utility charges by a prior owner of the property where the purchaser has acquired and recorded his interest prior to the time a lien for such unpaid utility charges attaches to the real property.