

OPINION No. 443

Memorial Hospital, Monongahela—Fire Loss—Disposition of insurance—Commonwealth's lien—Acts of June 9, 1911, P. L. 736; April 29, 1915, P. L. 201.

If the lien for \$10,000, in favor of the Commonwealth is paid off by the hospital then the checks which are in the possession of the Department of Welfare should be returned to the various companies making them, or, at the option of the Memorial Hospital of Monongahela handed to the State Treasurer for endorsement and delivery to the hospital. If the lien is not paid off and satisfied, then the various insurance companies issuing the checks should be consulted with a view to having them issue in lieu thereof checks to the Commonwealth's sole order totaling the amount of the Commonwealth's lien.

Harrisburg, Pa., December 9, 1942.

Honorable E. Arthur Sweeny, Secretary of Welfare, Harrisburg, Pennsylvania.

Sir: We are in receipt of your request of December 3, for an opinion with regard to the disposition of the fire insurance proceeds of the fire loss at the Memorial Hospital in Monongahela, Pennsylvania.

You state that against property of the Memorial Hospital the Commonwealth has a lien filed August 29, 1916, of \$20,000 against the new hospital building owned by the Monongahela Memorial Hospital Association, comprising lots 68, 69, 70 and 71 in the Bellewood Plan of Lots, and lien filed August 29, 1916, for \$10,000 on the hospital building laundry located on the same lots. Insurance was carried with several companies, paid for by the Hospital Association to protect the interest of the Commonwealth.

As a result of a fire which occurred September 12, 1942, the laundry building, on which the Commonwealth had a \$10,000 lien, and its contents were destroyed to the extent of \$13,207, and checks for the proceeds of insurance thereon, made payable to Memorial Hospital of Monongahela, Commonwealth of Pennsylvania, and Receiver of Alexander and Company, were issued as follows:

Commercial Union Assurance Company, Limited, dated October 14, 1942, on the Irving Trust Company of New York, on Policy No. 200005, in the amount of \$2750;

North British and Mercantile Insurance Co., Limited, dated October 14, 1942, on the Bank of the Manhattan Company, New York, on Policy No. 329351, in the amount of \$2750;

The Continental Insurance Company, dated October 18, 1942, on The City Collection Department, New York Clearing House, on Policy No. 1660, in the amount of \$2000;

Springfield Fire and Marine Insurance Co., dated October 16, 1942, on Third National Bank and Trust Company, Springfield, Mass., on Policy No. 2894, in the amount of \$2000;

Milwaukee Mechanics' Insurance Company, dated October 16, 1942, on Federal Trust Company, Newark, New Jersey, on Policy No 1160, in the amount of \$2000.

These checks total \$11,500, and you ask what disposition is to be made of them.

The Commonwealth's lien on the destroyed laundry building of \$10,000 was acquired in accordance with the provisions of the Act of June 9, 1911, P. L. 736, 72 P. S. §§ 3484 to 3492, inclusive.

The pertinent portions of that act are here quoted:

All appropriations of money hereafter made by this Commonwealth to any benevolent, charitable, philanthropic, educational, or eleemosynary institution, corporation, or unincorporated association, not wholly supported by this Commonwealth, and not under the exclusive control and management of this Commonwealth, for structures, erections, or other permanent improvements of any kind, shall be a lien as hereinafter set forth on the real estate upon which such structure, erection, or other permanent improvement is to be made.

Such appropriation shall be non-interest bearing liens on said real estate from the date of such entry of said certificates in said dockets, and, in case of public or private sale of such real estate, shall be paid out of the proceeds thereof before any subsequent lien, mortgage, encumbrance, or other charge.

All such institutions, corporations, or unincorporated associations shall have the right to pay the amount of said liens to the State Treasurer, at any time, in full or in partial payments; and it shall be the duty of the State Treasurer to accept the same, and to forthwith transmit to the prothonotary of the respective county aforesaid his certificate, that he has received said payment or payments, and the date of receiving same; which certificate or certificates shall be forthwith filed and kept by said prothonotary with the other records in the case, and a notation thereof, setting forth the respective dates and amounts of such payments, shall be made by him on said dockets and indices, in the proper place; and when it appears that the full amount of said appropriation has been repaid as aforesaid to the State Treasurer, said prothonotary shall mark said lien as satisfied in full upon said dockets and indices, at the proper place. * * *

It is to be noted that the legislature made no provision with regard to liens of this type where fire damage totally or partially destroyed

the realty on which the lien existed; nor evidently was such a situation even contemplated, for there is no requirement that insurance be carried against loss.

That insurance was carried by the Memorial Hospital to protect the interests of the Commonwealth, is a fact. Consequently, this fact, even though dehors the contract under which the money was loaned and the lien acquired, must be considered as binding upon the hospital even though it were not adopted or sanctioned by the Commonwealth until after the fire loss actually occurred.

This is basic Pennsylvania law, enunciated as early as 1848. *Miltenberger v. Beacom*, 9 Pa. 198, See 20 *Vale Penna. Digest*, Insurance Section 580, et seq.

Undoubtedly one of your predecessors in office has adopted or sanctioned the act of insuring for the protection of the Commonwealth's lien prior to the occurrence of the fire loss. At any rate, your present correspondence indicates that you do adopt and sanction the procurement of insurance, which is sufficient to bring the case within the rule above stated and make the insurance proceeds available for the protection of the Commonwealth.

In the circumstances, the Commonwealth is entitled from the insurance proceeds to \$10,000, the amount of its lien. *Peoples St. Ry. Co. v. Spencer*, 156 Pa. 85 (1893); *Abbotsford B. & L. Assn. v. Wm. Penn Fire Ins. Co.*, 130 Pa. Super. 422 (1938).

We find no authority in the law which allows you, or any other department, to release the Commonwealth's claim for \$10,000 against the insurance proceeds until the amount of the Commonwealth's lien is paid in full. To endorse the checks which you have in your possession, before payment of the amount of the lien, or for the State Treasurer or any other State officer to endorse them under these conditions, even though given the most complete assurances that the money when paid would be devoted to rebuilding the demolished premises on which the lien exists, would be tantamount to paying out Commonwealth funds. And that cannot be done except by appropriation of the legislature: Constitution of Pennsylvania, Article III, Section 16.

We realize the harshness of this rule and the obstacles to speedy reconstruction of the fire-damaged premises it may impose; yet we are bound to adopt it and leave amelioration to the legislature where the Constitution of 1874 has placed it. Fortunately, in only a few weeks the General Assembly will be in session. Application for a requisite appropriation can be made when it convenes.

If the Memorial Hospital of Monongahela has sufficient funds available, it can pay off the amount of the Commonwealth's lien and have it satisfied under section 7 of the act of 1911, supra. In such case the checks can be endorsed by the State Treasurer and delivered to the hospital or returned unendorsed to the insurance company makers at the option of the hospital.

If the hospital does not have the funds to pay off the lien and cannot acquire them under the Act of April 29, 1915, P. L. 201, 72 P. S. § 4038, et seq., (which, in brief, allows Commonwealth liens of the type of this one, in certain cases to be postponed to subsequent mortgages), or cannot otherwise acquire the requisite funds, then the insurance company issuing the checks for the loss, must be required, either amicably or through appropriate action, to rewrite them so that checks payable to the Commonwealth only will be made in the exact amount for which it has a lien on the destroyed property.

It is our opinion that (1) If the lien for \$10,000, in favor of the Commonwealth of Pennsylvania, is paid off and satisfied under Section 7 of the Act of June 9, 1911, P. L. 736, 72 P. S. § 3490, then the checks which you have in your possession as follows:

Commercial Union Assurance Company, Limited, dated October 14, 1942, on the Irving Trust Company of New York, on Policy No. 20005, in the amount of \$2750;

North British and Mercantile Insurance Co., Limited, dated October 14, 1942, on the Bank of the Manhattan Company, New York, on Policy No. 329351, in the amount of \$2750;

The Continental Insurance Company, dated October 18, 1942, on The City Collection Department, New York Clearing House, on Policy No. 1660, in the amount of \$2000;

Springfield Fire and Marine Insurance Co., dated October 16, 1942, on Third National Bank and Trust Company, Springfield, Mass., on Policy No. 2894, in the amount of \$2000;

Milwaukee Mechanics' Insurance Company, dated October 16, 1942, on Federal Trust Company, Newark, New Jersey, on Policy No. 1160, in the amount of \$2000;

should be returned to the various companies making them, or, at the option of the Memorial Hospital of Monongahela handed to the State Treasurer for endorsement and delivery to the hospital.

(2) If the lien for \$10,000, in favor of the Commonwealth of Pennsylvania, is not paid off and satisfied under section 7 of the act of 1911, supra, then the various insurance companies issuing the checks above described, should be consulted with a view to having them issue in lieu thereof checks to the Commonwealth's sole order total-

ing the amount of the Commonwealth's lien. In the event of the failure of the companies or any of them to accède to demand in accordance herewith, the matter should be submitted to this department for appropriate action.

Very truly yours,

DEPARTMENT OF JUSTICE,

CLAUDE T. RENO,
Attorney General.

RALPH B. UMSTED,
Special Deputy Attorney General.