is no service in the community substantially similar to that to be furnished by a petitioner who seeks the use of public highways for utility lines or pipes.

I believe that the Board of Commissioners of Vigo County has no authority to permit the use of any public highway under its control for the laying of a natural gas pipe line if there is another private utility already furnishing substantially similar service unless the Public Service Commission has determined that public convenience and necessity require the service of a second utility. In my opinion, the Public Service Commission should entertain jurisdiction of the petition of the Frank N. Pierson Natural Gas Corporation at least to the extent of ascertaining whether there is another privately operated public service company furnishing the same or substantially similar service that the petitioner proposes to furnish. If this is found to be a fact, then the commission is required to determine whether public convenience and necessity require the service of the petitioner. If you find the service is needed, then the matter of use of the public highways will be for the board of county commissioners to determine.

FINANCIAL INSTITUTIONS, DEPARTMENT OF: Pawnbroker’s lien, right to, where title to chattel pledged is retained by vendor under conditional sales contract.

August 18, 1939.

Hon. Ross H. Wallace, Director,
Department of Financial Institutions,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter calling attention to section 32 of the Pawnbroking Law, the same being section 32 of chapter 195 of the Acts of 1935, which provides as follows:

"Sec. 32. Pawnbroker's Lien on Pledge. A pawnbroker shall have a first lien on all pledges for the amount of his loan, interest and charges in all cases except where the pledging or possession thereof by the pledger constituted larceny at the common law, or except where a prior lien exists by virtue of any other statute."

You submit the following question:

"Where a chattel is sold pursuant to the terms of a conditional sale contract, wherein the legal title to the chattel is reserved to the conditional vendor, and subsequently after payments are made by the conditional vendee, such vendee pledges the chattel so purchased to a licensed pawnbroker who receives the same without knowledge of the conditional sale contract and relying on the representations of the pledgor that the merchandise belongs to him, whether under the terms of the above section of chapter 195 of the Acts of 1935, a lien is granted to the pawnbroker for the amount of the pledge plus charges?"

I think your question should be answered in the affirmative, unless facts existed within the knowledge of the pawnbroker which would put him upon such inquiry as would lead to knowledge of the true state of the title; or something had occurred to make the possession of the pledge by the pledger unlawful even though it had originally been lawful.

Such a pledge of an article lawfully in the possession of the pledgor would not constitute larceny at common law.

See Clark and Marshall, The Law of Crimes (2d ed.) page 448, where the authors state the rule as follows:

"It may therefore be laid down as a general rule that one who lawfully takes possession of property by the direction or with the consent of the owner cannot commit larceny by afterwards converting it to his own use, provided he has done nothing to terminate his right to possession."

To the same effect, see Cyclopedia of Criminal Law (Brill), Sec. 760.

If the right to possession, however, had terminated prior to the conversion, the pledging would be larceny at common law, and the pawnbroker would acquire no lien.


The lien of the pawnbroker, of course, would, under the express terms of the statute, be postponed in favor of any prior lien existing by virtue of some other statute.