



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

January 5, 2005

The Honorable Catherine Ceips
Member, House of Representatives
326-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Ceips:

In a letter to this office on behalf of a constituent, the question was raised as to the legality of a real estate transfer fee imposed by the Harbor Island Owners Association (HIOA) of Beaufort County. It was indicated that HIOA "is a quasi-governmental body which is responsible for the 'exclusive management, operation and control of the common areas of Harbor Island and all improvements thereon.'" According to the request letter, on February 21, 2003, the Board of Directors of the HIOA voted to impose a one hundred dollar real estate transfer fee in order to generate income for HIOA.

While HIOA was referred to as a "quasi-governmental body", I am unaware of any State statute granting the HIOA any particular authority. Reference was made in the request letter to the provisions of S.C. Code Ann. § 6-1-70 (2004) which provides in part that

(A) Except as provided in subsection (B), the governing body of each county, municipality, school district, or special purpose district may not impose any fee or tax of any nature or description on the transfer of real property unless the General Assembly has expressly authorized by general law the imposition of the fee or tax.

(B) A municipality that originally enacted a real estate transfer fee prior to January 1, 1991 may impose and collect a real estate transfer fee, by ordinance, regardless of whether imposition of the fee was discontinued for a period after January 1, 1991.

I am unaware of any basis to apply such provisions to the HIOA as that organization is clearly not a county, municipality, school district or special purpose district. Moreover, I am unaware of any other State statutory provision that would be applicable so as to prohibit the charging of a real estate transfer fee by the HIOA. A prior opinion of this office dated August 30, 2001 commented that

...the ability of a property or homeowners' association to assess and collect fines and penalties for violations occurring on private property would probably depend on the

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nature of the homeowners' association's agreement and whether the violator was a member of the association or in a position contractually which would bind the violator to the terms of the agreement. Courts in other jurisdictions have addressed similar questions. In Florida, the State District Court of Appeal held that a homeowners' association had the authority to assess fines against a homeowner based on violations of covenants restricting parking...Similarly, the Court of Appeals of Wisconsin noted...that the property owners' "association's power to fine its members depends on the contract between the association and the members embodied in the bylaws and articles.

The opinion further stated that a property owners' association ability to collect penalties would be strictly a private matter between the association and the member.

Consistent with the above, in my opinion, the matter of the propriety of a real estate transfer fee imposed by the Harbor Island Owners Association (HIOA) of Beaufort County is a private matter dependent upon the applicability of any agreement or contract between the Association and a member of the Association. Reference may be made to the bylaws of the Association as one possible means of determining such question.

With kind regards, I am,

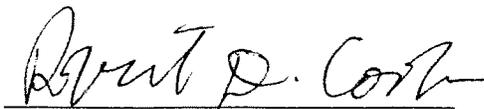
Very truly yours,



Charles H. Richardson

Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook

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