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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

March 14, 2002

The Honorable Yancey McGill
Senator, District No. 32
P.O. Box 142
Columbia, South Carolina 29202

Re: Your Letter of February 12, 2002

Dear Senator McGill:

In your above-referenced letter, you ask for an opinion from this Office on the following questions:

When a judgment is placed on a person's estate as a result of a criminal action prior to his death, what is the statute of limitations on that judgment. Secondly, once that statute of limitations has run its course, can the same entity place the judgment against the entity a second time?

For purposes of this opinion, it is assumed that the judgment has been entered pursuant to S.C. Code Ann. §17-25-323 or §17-25-325 following a criminal conviction.

Section 17-25-325 provides that the judgment in a criminal case "... may be enforced in the same manner by execution against the property of the defendant as is provided by law for enforcing the judgments of the courts of common pleas in civil actions." Section 17-25-323 involves the entry of a judgment in favor of the State for any unpaid balance of fines, costs, fees, surcharges, or assessments imposed and/or judgment in favor of a victim for the unpaid balance if any restitution ordered. Section 17-25-323(D) provides that "[a] judgment issued pursuant to [§17-25-323] has the force and effect of a final judgment and may be enforced by the judgment creditor in the same manner as any other civil judgment with enforcement to take place in court of common pleas." In essence, judgments entered pursuant to these Sections of the Code are the equivalent of any other civil judgment entered in favor of a judgment creditor against a judgment debtor.

The law regarding the duration of judgments is found in S.C. Code Ann. §15-39-30 which states:

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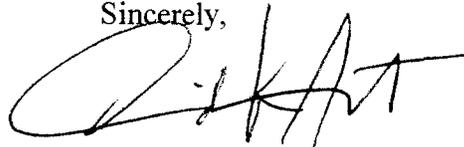
Executions may issue upon final judgments or decrees at any time within ten years from the date of the original entry thereof and shall have active energy during such period, without any renewal or renewals thereof, and this whether any return may or may not have been made during such period on such executions.

In LaRosa v. Johnston, 328 S.C. 293, 493 S.E.2d 100 (SC App. 1997), our Court of Appeals noted that "South Carolina courts have consistently held that a judgment is utterly extinguished ten years from the date of entry (citations omitted)." Accordingly, it would appear that a judgment entered pursuant to either Section 17-25-325 or 17-25-323 would remain viable for ten years from the date the Clerk of Court files the judgment in the civil judgment records of the court. The LaRosa Court also noted that "Section 15-39-30 is an absolute statutory limitation on judgments, which cannot be renewed." Therefore, once a judgment expires, an execution thereupon cannot take place. Id.

The expiration of the judgment, however, does not necessarily extinguish the underlying debt upon which the judgment is based. When, as part of a criminal conviction, the defendant is ordered to pay fines, costs, fees, surcharges, or assessments to the State or county, or restitution to a victim, the State, county and/or victim becomes a creditor of the defendant. In a prior opinion, this Office determined that no time limit exists on the collection of fines, fees and restitution imposed by the Court of General Sessions. See OP. ATTY. GEN. (Dated January 18, 1994). Given this determination, this Office has also stated that "all possibilities should be explored and perseverance maintained" in attempting to collect such debts. See OP. ATTY. GEN. (Dated April 21, 1995).

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant
Assistant Attorney General

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