



ALAN WILSON  
ATTORNEY GENERAL

September 17, 2015

Marvin C. Jones, Esquire  
Office of the Jasper County Attorney  
Post Office Box 420  
Ridgeland, SC 29936

Dear Mr. Jones:

Attorney General Alan Wilson has referred your letter dated March 27, 2015 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

**Issue** (as quoted from your letter):

"...under the authority of Code of Laws of South Carolina § 30-9-30(B)(2) may a register of deeds, following th[e] statutory process remove a deed, previously recorded on the records from the public records when that deed has made reference to and/or attached as an exhibit a plat which has not received the approval of the county planning staff?"

**Law/Analysis:**

By way of background, this Office has previously opined on the duties and responsibilities of a register of deeds. See Op. S.C. Att'y Gen., 2006 WL 1207266 (April 12, 2006). In 2006, this Office opined that a recording officer is a ministerial officer and the recording process is pursuant to the statute. Id. (citing Milford v. Aiken, 61 S.C. 110, 39 S.E. 233 (1901)). In that opinion, this Office clarified that as a ministerial officer, the register of deeds "has a duty to ensure an instrument submitted for recordation meets the statutory requirements" but does not have to make a determination whether or not the instrument is valid. The opinion also explained that when one subdivides a tract of real property, a plat showing the subdivision must be filed in the register of deeds office. Id. In that opinion this Office went on to conclude that:

... the duties of a recording officer are ministerial in nature. Although the recording officer is charged with the duty to determine whether certain statutory requirements are met prior to the filing of an instrument, he or she is not charged with the duty to determine whether an instrument filed corresponds to a previously recorded plat. In addition, he or she is not charged with determining whether the instrument itself is valid. Accordingly, as long as the instrument meets the requirements for filing, the recording officer must file the instrument.

Id. This Office has also previously opined that the recording officer does not have a duty to determine the validity of the instrument submitted for recording. Op. S.C. Att'y Gen., 2006 WL 1207266 (April 12, 2006). See also Op. S.C. Att'y Gen., 2014 WL 3414954 (July 2, 2014) (concluding that a register of deeds could not implement requirements outside of those already statutory-declared). Our Office has also previously opined that we did not see any laws requiring the register of deeds to verify that the legal

Marvin C. Jones, Esquire  
Page 2  
September 17, 2015

description on the deed corresponded to a previously recorded plat before recording a deed. Op. S.C. Att’y Gen., 2006 WL 1207266 (April 12, 2006).

However, your question differs in that you ask two scenarios: when the deed has a plat attached that has not been approved by the county and when the deed references a previously-recorded plat that has not been approved by the county. Depending on the specific facts of either situation, the unapproved recorded plat could violate South Carolina law Section 6-29-1140. That section states:

After the local governing authority has adopted land development regulations, no subdivision plat or other land development plan within the jurisdiction of the regulations may be filed or recorded in the office of the county where deeds are required to be recorded, and no building permit may be issued until the plat or plan bears the stamp of approval and is properly signed by the designated authority. The submission for filing or the recording of a subdivision plat or other land development plan without proper approval as required by this chapter is declared a misdemeanor and, upon conviction, is punishable as provided by law.

S.C. Code Ann. § 6-29-1140 (1976 Code, as amended). As specified in the statute, recording a subdivision plat without approval is a misdemeanor and subjects the submitter to criminal punishment. Id. Moreover, S.C. Code Ann. § 30-5-240 states:

When real property is subdivided for the purpose of sale and is sold or offered for sale according to a plat of a survey thereof, the person first offering such property for sale shall file a plat or blueprint of such survey in the office of the clerk of court of the county in which such real estate is situate. In the event that the owner fails to comply with the above provision he shall become liable to the purchaser or to any subsequent grantee of the land, or of any portion thereof, in such sum as shall be found necessary to procure and record such plat. Such sum shall be recovered by any such grantee provided he be interested as owner of all or a portion of the subdivided property at the time of the institution of the action for the enforcement of the liability hereby created.

(Emphasis added). Moreover, Section 4-9-30(9) authorizes counties “to provide for land use and promulgate regulations pursuant thereto subject to the provisions of Chapter 7 of Title 6.” S.C. Code Ann. § 4-9-30(9). Therefore, your county may have regulations regarding plats and may require approval by the county planning commission before recording, as many counties do. Thus, when one records a deed with an unapproved plat, the conveyance could be found lacking a proper legal description (pursuant to S.C. Code Ann. § 30-5-240), violative of S.C. Code Ann. § 6-29-1140, or violative of a county or municipal ordinance or regulation. However, it should be noted that a plat filed by the register of deeds is deemed to be recorded. S.C. Code Ann. § 30-5-230; -260. Furthermore, a recorded deed may reference a properly recorded and indexed plat to show the dimensions of property in the deed, but note the plat must be authorized. S.C. Code Ann. § 30-5-250; -260. Moreover, the register of deeds is prohibited from recording a plat for a subdivision or land development subject to regulations that has not been approved. S.C. Code Ann. § 6-29-1160. However, this Office has previously opined that a plat referred to in a deed need not be recorded, nor is the legal description invalid because an improperly recorded map was referenced in the deed. Op. S.C. Att’y Gen., 1991 WL 633020 (May 24, 1991).

We believe a court could determine that it is a “sham legal process” to submit an unapproved plat for recording.<sup>1</sup> “Sham legal process” is defined as “a document that is not issued lawfully and that purports to be a judgment, lien, or order of a court of appropriate government entity, or otherwise purports to assert jurisdiction over or determine the legal or equitable status, rights, duties, powers, or privileges of a person or property.” S.C. Code Ann. § 30-9-30(B)(4)(a). “Lawfully issued” means “adopted, issued, or rendered in accordance with applicable statutes, rules, regulations, and ordinances of the United States, a state, or an agency or a political subdivision of a state. S.C. Code Ann. § 30-9-30(B)(4)(b). An unapproved plat would not be lawfully issued if it is not rendered in accord with a statute or an ordinance requiring approval by the county. S.C. Code Ann. § 6-29-1140. Thus, if a plat is not lawfully issued in that it was not approved by the county pursuant to county ordinance, the recording of could be considered part of a “sham legal process.”<sup>2</sup>

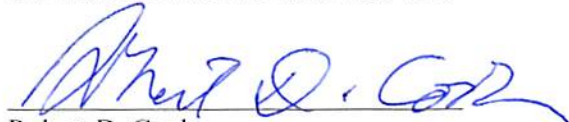
**Conclusion:** This Office believes a court will determine that pursuant to South Carolina Code Ann. § 30-9-30(B)(2) a register of deeds, though otherwise a ministerial officer, may remove a deed recorded that does not comply with the filing requirements in the law, but such determination should be made on a case-by-case basis without determining the validity of the deed and must comply with all requirements in the statute including prior notification to the parties. However, this Office is only issuing a legal opinion based on the current law at this time. Until a court or the Legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. S.C. Code § 15-53-20. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita S. Fair  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General

---

<sup>1</sup> Though this is not the only possible exclusive finding, it is sufficient to allow the register of deeds to remove the document pursuant to S.C. Code Ann. § 30-9-30(B)(2).

<sup>2</sup> Though this would be up to a court to determine.