

1978 WL 207619 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 30, 1978

*1 Mr. Neal Forney
Assistant Director
South Carolina Court Administration
P.O. Box 11788
Columbia, S. C. 29211

Dear Neal:

In your letter of May 22, 1978 to this Office, you asked the following questions:

1. Is Section 45-157 of the 1962 Code of Laws relating to selling mortgaged personal property repealed by implication because of its being deleted from the 1976 Code of Laws?
2. Do the provisions of Section 29-1-30 relating to the wilful sale of property on which lien exists include the same acts as were prohibited by Section 45-157 of the 1962 Code of Laws?

As to your first question, please be advised that Section 45-157, Code of Laws of South Carolina, 1962 was repealed by implication and was deleted from the 1976 Code. The basis for such repeal was that it was determined that [Section 36-9-311, Code of Laws of South Carolina](#), 1976 controlled. However admittedly some controversy exists over the repeal since in the South Carolina Reporter's Comments following [Section 36-9-311, supra](#), it is stated that:

... this section should not affect the provisions of South Carolina Code Section 45-157 making it a crime to sell mortgaged property without the written consent of the mortgagee and without paying the secured debt within ten days after such sale.

In an attempt to resolve any confusion, there is presently a bill before the South Carolina House of Representatives, a copy of which is enclosed, "to prohibit the sale of personal property subject to a security interest without the written consent of the secured party and payment of the debt and (to) provide a penalty." This particular bill has been read for the third time in the Senate, sent to the House, and was read for the second time in the House on May 25th. Apparently this will correct any confusion which resulted when Section 45-157, supra, was deleted from the 1976 Code. Final passage of the bill is anticipated.

As to your second question of whether [Section 29-1-30, Code of Laws of South Carolina](#), 1976, includes the same acts as were prohibited by Section 45-157, supra, please be advised that [Section 29-1-30, supra](#), is for the protection of a purchaser while Section 45-157, supra, was as earlier indicated designed to prevent a sale of mortgaged personal property without the consent of the secured party. In [State v. Johnson, 20 S.C. 387 \(1884\)](#), the South Carolina Supreme Court in referring to this provision now codified as [Section 29-1-30, supra](#), indicated that:

"the manifest object of this ... (statute) ... is to prevent intentional fraud or deceit in the sale of property by the suppression of facts which it would be important for a purchaser to know before the sale is completed." (Emphasis added)

Therefore, the two sections do not relate to the same acts.

With best wishes, I am
Very truly yours,

Charles H. Richardson
Assistant Attorney General

Approved by:

*2 (Illegible Signature)

1978 WL 207619 (S.C.A.G.)

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.