



ALAN WILSON
ATTORNEY GENERAL

August 10, 2017

James M. Holly, Esquire
P. O. Box 5925
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Dear Mr. Holly:

Attorney General Alan Wilson has referred your question dated August 10, 2017 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 you):

"I would ask the Office to consider clarifying the portion of the [July 28, 2017] opinion that relates to the validity of recording deeds for the benefit of all county officials. There are a number of possible relevant SC Code sections dealing with recording deeds, the assessor's duties, and the auditor's duties that may need to be considered based on current practices across the state. My concern is solely with the validity issue."

Law/Analysis:

As you mention in your question, this Office was asked to answer two questions in an opinion dated July 28, 2017 and is issuing this opinion to clarify our opinion and to overrule the conclusion expressed therein that deeds are invalid without strict compliance with South Carolina Code § 30-5-80. First and foremost, this Office recognizes statutes must be complied with. This includes South Carolina Code § 30-5-80, which states that:

Before any deed of conveyance of real property, including timber deeds, timber leases and contracts of conveyance of timber, can be placed on record in the office of the register of deeds or clerk of court, it must have thereon the endorsement of the county auditor that it has been entered of record in his office.

S.C. Code Ann. § 30-5-80 (1976 Code, as amended) (emphasis added). Furthermore, the law states that:

(A) Each county auditor may keep a record of all sales or conveyances of real property made in the county, in which he shall enter, in columns, the names of the purchaser and seller, the quantity of land conveyed and the location and price of such land, and from such record he shall correct the county duplicates annually. For the purpose of carrying out this provision, the clerk of courts or register of deeds of each county shall have the endorsement of the county auditor on each deed of conveyance for real property that the conveyance has been entered in his office before such deed can be placed on record in the recording office, and the county auditor shall be entitled to a fee of twenty-five cents, for his own use, for making such entry and endorsement.

(B) The Department of Revenue may approve other means and methods of processing and accounting for the accurate and timely recording of sales, transfers, and other conveyances of real property.

S.C. Code Ann. § 12-39-260 (1976 Code, as amended) (emphasis added). Additionally, the law requires that auditors be given twenty-five cents for every deed recorded in their office when it states:

For every entry and endorsement on any deed of conveyance of real property recorded in his office, each county auditor shall receive a fee of twenty-five cents.

S.C. Code Ann. § 8-21-130. It is this Office's understanding that many, if not all, recording offices (register of deeds, register of mesne conveyances, clerk of court) in practice record a deed as long as it complies with 30-5-30 (and any other applicable statutes, i.e., § 30-6-40) and then provide a copy to the county auditor for recording purposes. It is also this Office's understanding that the South Carolina Department of Revenue authorizes recording offices to accept deeds first and then to deliver a copy of the deed to the county auditor pursuant to South Carolina Code § 12-39-260. Regarding administrative decisions by administrating agencies, this Office has consistently deferred such decisions to the administrative agency, as long as such determination by the agency was reasonable. See, e.g., Op. S.C. Att'y Gen., 2017 WL (January 4, 2017); 2005 WL 2250210 (September 8, 2005). Thus, we first defer to the Department of Revenue's administrative determinations for the "accurate and timely recording of sales, transfers, and other conveyances of real property" pursuant to South Carolina Code Ann. § 12-39-260(B). S.C. Code Ann. § 12-39-260(B).

Certainly the electronic recording of documents, as authorized by the General Assembly, contemplated South Carolina Code §§ 30-5-80, 12-39-260, and 8-21-130. For example, one law concerning the recording of electronic documents states that:

- (a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying this chapter.
- (b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.
- (c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

S.C. Code Ann. § 30-6-30. A register is authorized to receive an electronic document and fees pursuant to South Carolina Code § 30-6-40. These two laws were both passed in 2008 even while South Carolina Code §§ 30-5-80, 12-39-260, and 8-21-130 were already in the law. See 2008 S.C. Act No. 210 (effective May 13, 2008). Surely it would be absurd to think the General Assembly passed laws authorizing attorneys and individuals to pay recording fees online and to submit documents to be recorded online only after the attorney or individual first goes to the auditor's office to get an endorsement. See, e.g., Op. S.C. Att'y Gen., 2017 WL 3105903 (July 11, 2017) (regarding absurd results). As this Office stated previously regarding the interpretation of statutes:

The Supreme Court of South Carolina has stated, however, that where the plain meaning of the words in a statute “would lead to a result so plainly absurd that it could not have been intended by the General Assembly ... the Court will construe a statute to escape the absurdity and carry the [[legislative] intention into effect.” Duke Energy Corp. v. S. Carolina Dep’t of Revenue, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 845 (2002) (“[C]ourts are not confined to the literal meaning of a statute where the literal import of the words contradicts the real purpose and intent of the lawmakers.”). “A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers.” State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh’g denied* (Aug. 5, 2015).

When two statutes are found incapable of being reasonably reconciled, the choice of which statute prevails is guided by the following principles:

[W]here two statutes are in conflict, the more recent and specific statute should prevail so as to repeal the earlier, general statute. Hodges v. Rainey, *id.* at 85, 533 S.E.2d at 581; Stone v. City of Orangeburg, 313 S.C. 533, 535, 443 S.E.2d 544, 545 (1994).

Op. S.C. Att’y Gen., 2017 WL 3105903 (S.C.A.G. July 11, 2017). This statute does not authorize the auditor to receive electronic filings for recording deeds. See S.C. Code Ann. §§ 30-5-80 (7) (“Register” means the official, including the register of deeds, register of mesne conveyances, or clerk of court, charged with the recording and indexing duties in Chapter 5 of Title 30). Moreover, South Carolina Code § 30-5-30 lists the prerequisites to recording documents but does not include the auditor’s recoding as a prerequisite. Also, the General Assembly has previously validated conveyances without the auditor’s endorsement. See S.C. Code § 30-5-120. Lastly, the South Carolina Supreme Court has concluded that there is a presumption that an auditor complied with his statutory duty when it stated that:

The evidence fails to disclose whether or not the auditor corrected the tax duplicate so as to conform to this change of ownership. It was his plain duty, under section 366, Civ. Code 1902 (volume 1), to have made this change when he came to make up tax duplicate for the following year. That portion of section 366 which relates to the auditor's duty in this respect is as follows: ‘That each county auditor shall keep a record of all sales or conveyances of real property made in his county in which he shall enter, in columns, the names of the purchaser and seller, the quality of land conveyed, the location and price of the same and therefrom correct the county duplicates annually: and, for the purpose of carrying out this provision the clerks of court or the register mesne conveyance of each county are hereby required to have the indorsement of the county auditor, on each and every deed of conveyance for real property, that the same is on record in his office, before the same can be placed on record in the office of the said clerks of court or register mesne conveyance; and the said county auditor shall be entitled to collect a fee of twenty-five cents for his own use for making such entry and endorsement.’ ...

It is not to be presumed that the county auditor in this instance assumed that the only purpose of requiring a deed of conveyance to pass through his office was to

enable him to collect a charge of 25 cents, but the presumption is that he did his duty, ...

Smith v. Cox, 83 S.C. 1, 65 S.E. 222, 223 (1909). While in Smith the record showed the deed had been recorded in both the auditor's and recorder's office, the court still presumed the auditor complied with the statute. Likewise, this Office believes a court will conclude that §§ 30-5-80, 12-39-260, and 8-21-130 are substantially complied with as long as the recorder furnishes a copy of the deed to the auditor. This Office has repeatedly opined and cited our state courts in finding substantial compliance with a statute is satisfactory. See, e.g., Ops. S.C. Att'y Gen., 2004 WL 1182072 (April 30, 2004), 1968 WL 12879 (January 22, 1968); 1961 WL 11540 (July 28, 1961). Quoting from one such opinion we state that:

Our Supreme Court has, on occasion, held that an overly literal reading of a statute or other provision of law will not defeat the Legislature's purpose in enacting the law. In such instances, the Court has concluded that substantial compliance with the statute is sufficient. For example, in S.C. Police Officers Retirement System v. City of Spartanburg, 301 S.C. 188, 391 S.E.2d 239 (1990), the Court held that an employee's failure to file a written request and pay his special contribution prior to retirement in strict compliance with the governing statute did not preclude the retiree from receiving his requested retirement benefits. The State Retirement System argued that the statute was directory rather than mandatory and that there had been substantial compliance with the statute. The City of Spartanburg, however, argued that failure to follow the literal requirements of the statute regarding the provision of written notice was fatal. The Supreme Court disagreed, concluding that substantial compliance was adequate. The Court cited the following rule of construction:

[g]enerally speaking, those provisions which are a mere matter of form, or which are not material, do not affect any substantial right, and do not relate to the essence of the thing to be done so that compliance is a matter of convenience rather than substance, are considered to be directory. This is true of statutory provisions for the expeditions, proper, or orderly conduct of business merely.

301 S.C. at 190, quoting 73 Am.Jur.2d, Statutes § 19 (1974).

Likewise, in Davis v. Nationscredit Financial Services, 326 S.C. 83, 484 S.E.2d 471 (1997), the Court rejected the argument that the statute requiring a lender to use a separate sheet of paper to ascertain a borrowers preferences of legal counsel and hazard insurance had been violated even though "a lender technically deviates from the literal language of [the statute] ... by not ascertaining the attorney and insurance agent preferences through information contained on the first page of the application" There, the Court held that "a lender substantially complies with section 37-10-102 if the borrower receives a clear and prominent disclosure of the statutorily required information." 326 S.C. at 86. The Court explained:

[i]t would elevate form over substance to hold to the contrary. The facts certified to us declare that Davis received an attorney and hazard insurance preference statement "contemporaneous with her credit application." Although not part of the record, a copy of the statement indicating her preferences in this transaction has been included by Davis herself as an

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appendix to her brief. Thus, we find that the purpose of the statute - clear and prominent disclosure of the information necessary to ascertain the relevant preferences has been satisfied.

484 S.E.2d at 471-472.

Op. S.C. Att'y Gen., 2004 WL 1182072 (S.C.A.G. Apr. 30, 2004). Thus, this Office believes a court would likely find that the statutes were substantially complied and that such recordings are valid.

Conclusion:

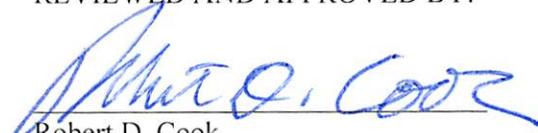
This Office believes a court will find that South Carolina Code §§ 30-5-80, 12-39-260, and 8-21-130 are substantially complied with as long as the auditor receives a copy of the deed from the recording officer within a reasonable amount of time of being recorded. The statute requiring the auditor to endorse a deed prior to it being recorded was drafted over a century before the statutes authorizing electronic recording of documents. Smith v. Cox, 83 S.C. 1, 65 S.E. 222, 223 (1909); S.C. Code § 30-6-30 et seq. Additionally, pursuant to South Carolina Code § 12-39-260(B), we defer to the Department of Revenue's administrative determinations for the "accurate and timely recording of sales, transfers, and other conveyances of real property" with the understanding they approve such a process. However, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. This opinion is not an attempt to comment on any pending litigation or criminal proceeding. Until a court or the General Assembly 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. This opinion only addresses some of the sources in the subject area, but we can address other authority or additional questions in a follow-up opinion. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See 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 (Mardi) S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General