



ALAN WILSON
ATTORNEY GENERAL

January 22, 2018

The Honorable Timothy L. Nanney
Register of Deeds
Greenville County Square
301 University Ridge, Suite 300
Greenville, South Carolina 29601

Dear Mr. Nanney:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter asks the following:

1. Do Registers of Deeds legally have the right to refuse to record documents from [South Carolina Department of Revenue (“SCDOR”)] which are not transmitted electronically in violation of [S.C. Code Ann. § 12-53-45]?
2. Does the SCDOR have the ability to enforce state tax liens which are filed improperly?

Law/Analysis

It is this Office's opinion that a court likely would find a Register of Deeds may not refuse to record documents from the SCDOR which are not transmitted in electronic format. The South Carolina Code of Laws provides that “[w]hen filing documents relating to the enforced collection of taxes due this State with county clerks of court and registers of deeds, the department shall file those documents electronically if the clerk of court or register of deeds accepts electronic filings.” S.C. Code Ann. § 12-53-45. This Office’s August 18, 2015 opinion to Representative Wendy K. Nanney interpreted Section 12-53-45 to impose “a mandatory obligation on the DOR to file state tax liens electronically if electronic filings are accepted by the applicable register of deeds office or clerk of court.” Op. S.C. Atty. Gen., 2015 WL 5074335 (August 18, 2015). Further, we opined that Section 12-53-45 must be construed consistently with the Uniform Real Property Electronic Recording Act (“URPERA”) and the regulations of the Secretary of State which are promulgated thereunder. Id. at 3; Joiner ex rel. Rivas v. Rivas, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000) (“It is well settled that statutes dealing with the same subject matter are in *pari materia* and must be construed together, if possible, to produce a single, harmonious result.”). The URPERA provides that a register of deeds “who accepts

electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index.” S.C. Code Ann. § 30-6-40(b)(4). As these statutes relate to the same subject matter, we determine the meaning of these statutes and their effect with reference to the other to “construe them together into one integrated system of law.” Op. S.C. Atty. Gen., 2000 WL 1347162 (Aug. 25, 2000); State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh'g denied* (Aug. 5, 2015) (“A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers.”). While Section 12-53-45 mandates that the SCDOR file state tax liens electronically, the statute does not state what duty a register of deeds has. When read in conjunction with Section 30-6-40(b)(4), however, the General Assembly’s legislative intent appears to mandate that a register of deeds, even one whose office accepts electronic documents, must accept and index a paper document from a filer, including the SCDOR. Therefore, it is this Office’s opinion that a court would likely find a register of deeds may not refuse to record documents from SCDOR which are not transmitted electronically.

The request letter further questions whether the SCDOR has the ability to enforce state tax liens which are filed improperly. The determination of whether a tax lien is enforceable or not as the result of an improper filing would necessarily require a factual determination. Because this Office is not empowered to make factual findings in an opinion, we are unable to answer this question. See Op. S.C. Atty. Gen., 2015 WL 4497734 (July 2, 2015) (“[A]s we have cautioned in numerous opinions, this Office does not have the jurisdiction of a court to investigate and determine facts.”). As discussed above, the August 18, 2015 opinion stated that Section 12-53-45 must be construed consistently with the URPERA and the regulations of the Secretary of State which are promulgated thereunder. These regulations provide that a filer and a register of deeds “shall enter into a memorandum of understanding (MOU) relating to the terms and conditions of participation in the register's electronic filing and recording program...” S.C. Code Ann. Regs. § 113-315(A) (2012). The opinion concluded by saying if there is a “compatibility issue with the files submitted by the [SCDOR] and the electronic recording delivery system being used by certain registers in our State accepting electronic filings, we believe the guidelines specified by the regulations should be followed to remedy the problem.” Therefore, whether the electronic transmittal of a document to a register of deeds is found to be an improper filing requires a factual determination of whether a MOU has been entered into and whether the terms of the MOU were violated by either party. Further, if a court does determine that the SCDOR has improperly filed a tax lien, even when such a document is submitted to a county register of deeds electronically due to technical difficulties accessing the information, the Court may find that such a violation is material or de minimis. Clearly, there are a number of factual determinations which must be made in order to answer whether such a lien would be enforceable, and this opinion is not the vehicle to deliver them.

Conclusion

It is this Office's opinion that a court would likely find that a register of deeds may not refuse to record documents from the SCDOR which are not transmitted electronically. See S.C. Code Ann. § 30-6-40(b)(4) (A register of deeds "who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index."). Because this Office does not have the authority to make factual determinations in an opinion, this opinion cannot comment on the enforceability of a tax lien due to an improper filing as doing so would require several factual determinations. However, you may petition our state courts for a declaratory judgment, as only a court of law can make such determinations. See S.C. Code § 15-53-20 (1976 Code, as amended).

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General