

1975 WL 28846 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 30, 1975

\*1 Mr. Bernard V. Kearse  
Historical Programs  
South Carolina Department of Archives and History  
Post Office Box 11,669  
Capital Station  
Columbia, SC 29211

Dear Mr. Nearse:

You have requested an opinion of this Office on the following question:

Can a covenant agreement entered into by and between the South Carolina Department of Archives and History and a Private Organization be recorded and legally enforced by the State when the Private Organization has no deed but has possessed the property for over 50 years?

First, if the Private Organization with which the State intends to enter into a covenant agreement does not have a deed showing ownership to the property it possesses, there is a cloud on the Organization's title. The Private Organization should have clear title to the property before the Department of Archives and History enters into any covenant with them concerning that property.

Second, it is impossible to record a covenant agreement concerning property where there is no deed to refer to in the covenant. Consequently, the Private Organization must go to court to clear title prior to the time the Department enters into the covenant with it and before any covenant agreement may be recorded in the Courthouse. In order to determine the cost of clearing title, the Private Organization should contact attorneys in their particular areas.

Sincerely,

M. Elizabeth Crum  
Assistant Attorney General

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