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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

July 16, 2002

Barbara J. Hahn, Administrative Assistant
Horry County Register of Deeds Office
P.O. Box 470
Conway, South Carolina 29526

Re: Your Letter of July 9, 2002
S.C. Code Ann. §8-21-310

Dear Ms. Hahn:

In your above-referenced letter, you request an opinion from this Office concerning the recent amendments to S.C. Code Ann. §8-21-310. Specifically, you indicate that

> The language states "for filing and enrolling and satisfying any tax lien....., ten dollars". Some County Offices interpret that the fee to file a tax lien is $10.00 and to satisfy a tax lien is $10.00, while other offices say that there is a flat fee of $10.00 that covers the filing of the tax lien and no charge to satisfy the lien. We would appreciate some clarification and guidance on this matter so that all the counties collect the proper fee on a uniform basis.

The Language you call into question is found in subsections 8-21-310(20)(a) & (b) and provides in pertinent part that

> Section 8-21-310. Except as otherwise expressly provided, the following fees and costs must be collected on a uniform basis in each county by clerks of court and registers of deeds or county treasurers as may be determined by the governing body of the county:
>
> ....
>
> (20) for filing and enrolling and satisfaction of South Carolina and United States Government tax liens:
>
> (a) for filing and enrolling and satisfying executions or warrants for distraint for the South Carolina Employment Security Commission, the South Carolina Department of Revenue, or any other state agency, where costs of the executions or warrants for

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distraint are chargeable to the persons against whom such executions or warrants for distraint are issued, ten dollars;

(B) for filing and enrolling and satisfying any tax lien of any agency of the United States Government, where the costs of the executions are chargeable to the persons against whom such executions are issued, ten dollars;

The South Carolina Supreme Court has consistently recognized that costs and fees " ... are in the nature of penalties and the statutes granting them have always been strictly construed." State, et al. v. Wilder, 198 S.C. 390, 18 S.E.2d 324(1941). Further, other authorities have stated that "statutes providing for fees are to be strictly construed against allowing a fee by implication, with respect to both the fixing of the fee and the officer entitled thereto ... ." 67 C.J.S., Officers, §224, See also, OPS. ATTY. GEN. DATED SEPTEMBER 25, 1985, AUGUST 7, 2000, & OCTOBER 11, 2000. Accordingly, applying this strict statutory construction principle to the fee provisions of Sections 8-21-310(a)&(b), it is evident that, in order for a separate fee to be charged for filing a tax lien and satisfying a tax lien, such must be clearly stated in the statute. Reviewing the language of the sections, it is further evident that there is not expressed a clear intention that separate fees be charged for the filing and satisfying of tax liens.

Based on the forgoing, it is my opinion that one fee of ten dollars ($10.00) should be charged for the "... filing and enrolling and satisfying ..." of executions or warrants of distraint or tax liens as provided for in S.C. Code Ann. §8-21-310(20)(a) & (b).

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

David K. Avant
Assistant Attorney General

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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

September 17, 2002

The Honorable Glenn F. McConnell
President *Pro Tempore*
The Senate
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator McConnell:

You seek an opinion as to "whether Act 225 passed by the General Assembly this year prohibits the dissemination of real estate information to members of the public if that information is to be used for commercial purposes." By way of background, you state the following:

> [t]he issue that I would like an opinion on is whether this law [the Family Privacy Protection Act] prohibits those involved in the real estate profession from accessing heretofore public information concerning real transactions for use in their businesses. My understanding from a review of the legislation is that the Act only applies to state agencies and not to political subdivisions. However, some counties and cities have been using the Act to bar realtors from accessing RMC records stating that the information could not be used to identify potential owners or buyers of property and that the use or disclosure of records was violative of state law. In fact, I have been informed that one county has gone so far as to copyright its real estate information in order to prevent its dissemination.
>
> If the law only applies to state agencies then it does not have the devastating effect of choking off valuable information needed by the South Carolina businesses that practice in this area. The act in question was passed in haste and seems to have some drafting problems that will need to be revisited when the General Assembly returns in January. However, during the interim an opinion is needed so that businesses will not be negatively impacted by a potential misinterpretation of the law. Therefore, I would appreciate an opinion as soon as possible as to whether the Act as passed applies only to state agencies or to political subdivisions as well, as if it does are real estate records "personal information" as defined in the Act.

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Rembert Dennis

Law / Analysis

Act No. 225 of 2002 added to Title 30 of the Code "The Family Privacy Protection Act of 2002," codified at S.C. Code Ann., Section 30-2-10 et seq. The clear and overriding purpose of the Act is the protection of the citizen's personal privacy. In that regard, Section 30-2-20 provides that

> [a]ll state agencies, boards, commissions, institutions, departments, and other entities, by whatever name known, must develop privacy policies and procedures to insure the collection of personal information pertaining to citizens of the State is limited to such personal information required by any such agency, board, commission, institution, department or other entity and necessary to fulfill a legitimate public purpose.

Moreover, Section 30-2-30 defines various terms as used in the Act, including the terms "personal information," "legitimate public purpose," "commercial solicitation," and "medical information." The term "personal information" is defined in § 30-2-30 (1) as

> ... information that identifies or describes an individual including, but not limited to, an individual's photograph or digitized image, social security number, date of birth, driver's identification number, name, home address, home telephone number, medical or disability information, education level, financial status, bank account(s) number(s), account or identification number issued by and/or used by any federal or state governmental agency or private financial institution, employment history, height, weight, race, other physical details, signature, biometric identifiers, and any credit records or reports.
>
> 'Personal information' does not mean information about boating accidents, vehicular accidents, driving violations, boating violations or driver status.

Section 30-2-30(2) defines "legitimate public purpose" to mean "a purpose or use which falls clearly within the statutory charge or mandates of an agency, board, commission, institution, department or other state entity." (emphasis added).

The thrust of the Act is contained in Section 30-2-50. That Section states:

(A) A person or private entity shall not knowingly obtain or use any personal information obtained from a public body for commercial solicitation directed to any person in this State.

(B) Every public body shall provide a notice to all requestors of records under this chapter and all persons who obtain records under this chapter that

obtaining or using public records commercial solicitation directed to any person in this State is prohibited.

(C) All state agencies shall take reasonable measures to ensure that no person or private entity obtains or distributes personal information obtained from a public record for commercial solicitation.

(D) A person knowingly violating the provisions of subsection (A) is guilty of a misdemeanor and upon conviction must be fined an amount not to exceed five hundred dollars or imprisoned for a term not to exceed one year, or both. (emphasis added).

The term "commercial solicitation" is defined by Section 30-2-30(3) as

... contact by telephone, mail, or electronic mail for the purpose of selling or marketing a consumer product or service. 'Commercial solicitation' does not include contact by whatever means for the purpose of:

(a) offering membership in a credit union;

(b) notification of continuing education opportunities sponsored by a not-for-profit professional associations;

(c) selling or marketing banking, insurance, securities, commodities services provided by an institution or entity defined in or required to comply with the Federal Gramm-Leach-Bliley Financial Modernization Act, 113 Stat. 1338; or

(d) contacting persons for political purposes using information on file with state or local voter registration offices.

Several principles of statutory construction are pertinent. First and foremost, the elementary and cardinal rule of statutory construction is to ascertain and effectuate the actual intent of the General Assembly. Horn v. Davis Elec. Constructors, Inc., 307 S.C. 559, 415 S.E. 2d 634 (1992). A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers. See, Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Words used must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Chas., 295 S.C. 408, 368 S.E.2d 899 (1988).

In addition, a statute will be construed to avoid an absurd result. Any statute must be interpreted with common sense to avoid absurd consequences or unreasonable results. U.S. v.

Rippetoe, 178 F.2d 735 (4th Cir. 1950). A sensible construction, rather than one which leads to irrational results, is always warranted. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964).

Moreover, we must remain sensitive to the requirements of disclosure contained in the Freedom of Information Act. See, § 30-4-10 et seq. Accordingly, there must be a balance between the competing interests of disclosure and the protection of personal privacy – weighing the individual's right to protection of privacy against the public's disclosure of government information. Cochran v. U.S., 770 F.2d 949 (11th Cir. 1985). Our Supreme Court has held that the protection of citizen's privacy from the use of records for commercial solicitation is a reasonable governmental interest. Walker v. S.C. Dept. of Highways and Public Transportation, 320 S.C. 496, 466 S.E.2d 346 (1996). On the other hand, courts will carefully scrutinize legislation which bans the use of public information for commercial solicitation because of the First Amendment interests which are affected thereby. See, Speer v. Miller and Bowers, 864 F.Supp. 1294 (N.D. Ga. 1994); State v. Casino Mkting. Group, Inc., 491 N.W.2d 882 (Minn. 1992); Tenn. Op. Atty. Gen., No. 98-091 (April 15, 1998).

Based upon the foregoing principles, we now turn to the specific questions which you have posed. With respect to your question as to whether the Family Privacy Protection Act of 2002 applies only to state agencies, it is my opinion that the Act is so limited. Section 30-2-20 makes reference to "[a]ll state agencies, boards, commissions, institutions, departments and other entities ...." (emphasis added). Under the doctrine of ejusdem generis, when general words follow the enumeration of particular classes or subjects, the general words should be construed as limited only to those of the general nature or class enumerated. State v. Wilson, 274 S.C. 352, 264 S.E.2d 414 (1980). It is evident that the "other entities" referenced in the foregoing passage refers to "state entities." Indeed, the definition of "legitimate public purpose," contained in § 30-2-30(2), makes reference to "other state entity."

Moreover, § 30-2-40(A) refers to "[a]ny state agency, board, commission, institution, department or other state entity ...." (emphasis added). Subsection (C) states that "[a]ll state agencies shall take reasonable measures to ensure that no person or private entity obtains or distributes personal information obtained from a public record for commercial solicitation." (emphasis added). While it is true that subsection (B) requires "[e]very public body" to "provide a notice to all requestors of records under this chapter ...," such language must be read consistently with the other referenced provisions each of which applies only to "state" agencies, departments, etc. Thus, it is my opinion that the "Family Privacy Protection Act of 2002" applies only to State agencies and entities.

That being the case, the Act clearly would not apply to RMC offices or clerks of court offices which maintain deeds and other title information. Such are county offices. See, Op. Atty. Gen., Op. No. 87-58 (June 11, 1987) [RMC is a county office]; Op. Atty. Gen., August 2, 2002 [clerk of court is a county officer]. In fact, the Act does not apply to political subdivisions at all.

You have also questioned whether title records and other records concerning land transactions which are maintained by the Register of Mesne Conveyances are "personal information" for purposes of the "Family Privacy Protection Act of 2002." It is my opinion that they are not.

It is well settled that the duties of a register of mesne conveyances are ministerial in nature. The register's function is primarily the maintenance of public recordation of deeds, mortgages, etc. duties which typically involve little or no discretion. Such duties are usually prescribed by statute or court rules. Op. Atty. Gen., Op. No. 77-337 (October 27, 1977).

The following statement with respect to the purpose of a state's recording law is illustrative of the function of a state's recording laws:

> [r]ecording acts provide a place and a method by which an intending purchaser or encumbrancer may determine just what kind of title he or she is obtaining without searching beyond public records. A record of the titles to land is made and kept so that all persons may obtain knowledge of the state of titles to real estate by deeds, conveyances, charges and encumbrances. Recording acts are based on the idea that intending purchasers and encumbrancers should be protected against the evils of secret grants and liens, as well as the subsequent frauds attendant upon them. ... In other words, the purpose of such statutes is to protect subsequent purchasers or encumbrancers from unrecorded conveyances by notifying them of the rights that recorded are intended to secure. (emphasis added).

66 Am.Jur.2d, Records and Recording Laws, § 40. Our Supreme Court has recognized that "the record of any instrument entitled to be recorded will give constructive notice to the persons bound to search for it." Franklin Savings and Loan Co. v. Biddle, 216 S.C. 367, 57 S.E.2d 910, 913 (1950) (emphasis added). The purpose of recording laws is to protect innocent purchasers. Sanchez v. Telles, 960 S.W.2d 762 (Ct. App. Tex. 1997). Such recording laws are designed to "protect subsequent judgment creditors, bona fide purchasers, and bona fide mortgagees against the assertion of prior claims to land based upon any recordable but unrecorded instrument." 66 Am.Jur.2d, supra, at § 82.

On the other hand, the purpose of the Family Privacy Protection Act is to insure that the provision of personal information pertaining to citizens of the State is "limited to such personal information required by any such agency ... to fulfill a legitimate public purpose." Section 30-2-30(2) defines "legitimate public purpose" as a "purpose or use which falls clearly within the statutory charge or mandates of an agency, board, commission, institution, department or other state entity."

The very essence of the RMC office is to provide the public in general and third party purchasers in particular notice regarding property transactions and land transfers. Clearly, it fulfills a legitimate public purpose, as defined in the Act, to provide such information to the public. While your letter does not specify precisely the kind of information regarding real estate transactions which

is being withheld by RMC offices, it is my opinion that, as a general rule, such information is not the type of "personal information" which is contemplated for protection by the "Family Privacy Protection Act of 2002." Although, obviously, our opinion cannot comment upon each and every document or particular piece of information which might come into play, or any particular agency or entity which might maintain possession of such information, certainly, it can be noted that the very purpose for which such real estate records were created, – the facilitation of property exchanges in the stream of commerce – entitles such records to be open to public view without limitation by the newly enacted Family Privacy Protection Act. Thus, for that reason also, the Act is generally inapplicable to the situation which you have presented.

Accordingly, in my opinion the following conclusions are presented in response to your questions.

(1) I agree with you that the Family Privacy Protection Act of 2002 is, by its terms, applicable only to state agencies and entities and would thus be inapplicable to county RMC offices, other similar county offices or political subdivisions generally.

(2) While I make no conclusion as to any particular document, it is my opinion also that records of the RMC are not the type of "personal information" contemplated by the "Family Privacy Protection Act of 2002." By definition, real estate transactions and the documents relating thereto are, generally speaking, public information and do not as a general rule invoke the personal privacy protections contemplated by the Act.

Sincerely,

Robert D. Cook
Assistant Deputy Attorney General

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