

December 13, 2007

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Dear Ms. Winters:

We understand that you are the attorney for Chester County (the "County") and are seeking an opinion on the County's behalf concerning custodial right to public documents. In your letter, you informed us that the County does not have an office of mesne conveyances. You state: "In the absence of such a position, however, it is not clear who is the legal custodian of the public records of a county." In addition, you provided us with the following information:

S.C. Code §30-1-20 states that the Chief Administrative Office of any agency or subdivision or any public body in the charge of public records is the legal custodian of these records. Chester County is currently operating under the supervisor form of government under which the supervisor is the chief administrative office of Chester County. As a result, can the Supervisor take charge of public records, including those records that would normally come under the purview of the office of the mesne conveyances and move them from one facility to another?

The Clerk of Court for Chester County contends that such records are hers, whether there is an absence of an office of the mesne conveyances or not, and that such records may not be removed from her purview. In the coming months, the County offices will be moved to a new facility located approximately five miles from the Court House. The Clerk of Court and her office will remain in their current location at the Chester County Court House. It is unclear what the County may take with them with regard to public records, deed books, etc., and thus our request to you.

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Accordingly, you ask “whether the County Supervisor can remove the deed books, mortgage books, and all such records as would be under the control of the office of the mesne conveyances under authority in § 30-1-20 or do they ‘belong’ to the Clerk of Court?”

Law/Analysis

Section 30-1-20 of the South Carolina Code (2007), which you mention in your letter, provides as follows:

The chief administrative officer of any agency or subdivision or any public body in charge of public records or creating, filing, or keeping public records is the legal custodian of these records and is responsible for carrying out the duties and responsibilities of this chapter which are assigned to public agencies, bodies, offices, or subdivisions. He may appoint a records officer to act on his behalf.

(emphasis added). In accordance with this provision, the legal custodian of particular public records is determined based on who is charged with the duty of creating, filing, or keeping those public records.

Chapter 5 of title 30 of the South Carolina Code generally governs the recording of public records. The provisions under chapter 5 cover the recordation of numerous types of instruments including marriage settlements, conveyances, mortgages, plats, liens on real property, and state tax liens. Some of these provisions call for such instruments to be recorded in the office of the register of deeds. See S.C. Code Ann. §§ 30-5-16 (concerning recording of state tax liens); § 30-5-90 (pertaining to the recordation of marriage settlements, conveyances, mortgages, and other writings) (2007). Thus, your question arises when the county does not employ a register of deeds.

We believe section 30-5-10 of the South Carolina Code (2007), provides guidance in answering your question. Specifically, this statute calls for the clerk of court in certain counties to perform the duties of the register of deeds. This provision states as follows:

In every county in the State other than Aiken, Anderson, Beaufort, Berkeley, Charleston, Chesterfield, Colleton, Dorchester, Georgetown, Greenville, Horry, Jasper, Kershaw, Lexington, Oconee, Orangeburg, Pickens, Richland, Spartanburg, and Sumter the duties prescribed by law for the register of deeds must be performed by the clerk of court who has all the powers and emoluments given the register of deeds in Aiken, Anderson, Beaufort, Berkeley, Charleston,

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Chesterfield, Colleton, Dorchester, Georgetown, Greenville, Horry, Jasper, Kershaw, Lexington, Oconee, Orangeburg, Pickens, Richland, Spartanburg, and Sumter counties. The registers of deeds in Berkeley and Dorchester counties are elected for terms of four years and until a successor is elected in the general election and qualifies.

S.C. Code Ann. 30-5-10. Chester County is not contained among the counties listed as an exception to this general rule. Thus, we presume the statutory duties normally bestowed upon registers of deeds are bestowed upon the clerk of court in Chester County.

Furthermore, we note other provisions contained in the recording statutes that specifically state that certain instruments may be filed in the office of the clerk of court in those counties in which the office of register of deeds does not exist. See S.C. Code Ann. § 30-5-230 (2007) (recordation of plats); S.C. Code Ann. § 30-7-10 (2007) (recordation of various instruments); S.C. Code Ann. § 30-7-70 (2007) (recordation of liens against personal property). We also note the existence of numerous provisions outside of the recording statutes contained in title 30 that also provide for certain instruments to be recorded in either the office of the register of deeds or the clerk of court. See, e.g., S.C. Code Ann. §§ 6-29-1200 (2004) (street name changes); 6-31-120 (2004) (development agreements); 8-3-150 (Supp. 2006) (bonds for county officers); 12-57-30 (2000) (federal government liens); 28-2-270 (2007) (condemnation notices); 29-3-350 (2007) (mortgage satisfaction and release). Thus, numerous provisions call for the filing and maintenance of instruments with a clerk of court when the county does not employ a register of deeds.

Because section 30-1-20 defines the custodian of a public record as that body responsible for the keeping of that public record, we are of the opinion that the answer to your question may depend on who or what body is statutorily mandated to maintain such records. In the case of the instruments mentioned above, it appears clear that because the County does not have a register of deeds, these instruments must be filed with and maintained by the County's clerk of court. Furthermore, we do not find any guidance calling for the keeping of such documents by other county officials. Accordingly, we believe these records must be maintained by the clerk of court.

Conclusion

In order to determine who shall be the legal custodian of a public record under section 30-1-20, we believe it is pertinent to look to those who are statutorily charged with the maintenance of such records. Pursuant to chapter 5 of title 30, in the case of instruments such as marriage settlements, conveyances, plats, and various other instruments, when the county does not have a register of deeds, these instruments are maintained by the clerk of court. Because Chester County does not have a register of deeds, we would presume the County's clerk of court shall maintain these

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records. As for other documents and instruments, we suggest you look to the legislation governing the filing or maintenance of such documents and instruments to determine the proper custodian.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General