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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

November 18, 2005

The Honorable Timothy L. Nanney
Register of Deeds, County of Greenville
301 University Ridge, Suite 1300
Greenville, South Carolina 29601

Dear Mr. Nanney:

In a letter to this office you referenced the provisions of S.C. Code Ann. § 8-3-150 which provides for the recordation and filing of bonds of county officers. Such provision states:

Every county officer who is required to give bond for the faithful performance of the duties of his office shall, within thirty days after notification of his election or appointment, have his bond recorded in the office of the register of deeds or, if there be no such officer, in the office of the clerk of the circuit court for the county in which such officer resides and the register or clerk shall keep a separate book, properly indexed, for the purpose of recording such bonds, which shall be provided by the governing body of the county. The register or clerk shall be entitled to exact a fee from the public officer of one dollar for recording his bond. But no such bond shall be recorded until first approved as to surety by the proper officials as prescribed by law and as to execution and form by the Attorney General or such other official as may be designated for this purpose. Such bonds when recorded shall be immediately transmitted to the Secretary of State who, after recording them as required by § 8-3-140, shall file them with the State Treasurer.

You have asked the following questions:

1. Does the county official have any personal liability outside the bond regarding the duties of his office or for errors and omissions or does the county bond cover all liability?
2. What is the statute of limitations on actions brought against the register after he leaves office?

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3. In the 1980s, the county register of mesne conveyance stopped maintaining the "bond book". We have not recorded official bonds since that time. It was the impression of this office that county bonds did not require recording with the county office, only with the State. Has this law been abolished or amended or should the register of deeds still record and maintain a bond book?

As to your first question concerning the possible personal liability of a county official in the circumstances referenced, I would first note that it is generally the practice for the county to have an insurance policy that would cover the county official. If such is not available, generally, an official would be covered under a policy of the State Insurance Reserve Fund. Such policies would be applicable for actions undertaken by the county official in his official capacity.

As to the question of liability, the State Tort Claims Act, S.C. Code Ann. §§ 15-78-10 et seq. is designed generally to immunize public officials from personal liability for their torts when acting within the scope of their employment. Pursuant to Section 15-78-20(b)

(b) The General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived by this chapter. The General Assembly additionally intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, only to the extent provided herein. All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved. The remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b).

Section 15-78-70 (a) provides that "[t]his chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity. An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b)." Subsection (b).states that

[n]othing in this Chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm or a crime involving moral turpitude.

Therefore, any immunity of an employee would be waived in such designated circumstances. Also, of course, depending on the facts in a particular situation, there could be the possibility of a suit under the federal civil rights act, 42 U.S.C. § 1983 in circumstances of the deprivation of constitutional rights.

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As to your question regarding the statute of limitations, such would be dependent on the act involved. However, generally, pursuant to Section 15-78-110

Except as provided for in Section 15-3-40¹, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

As to your question regarding whether the register of deeds office should continue to record and maintain a bond book, as set forth by Section 8-3-150, each county officer required to give bond "...shall, within thirty days after notification of his election or appointment, have his bond recorded" in the designated office. Pursuant to that same section, the register or clerk "...shall keep a separate book, properly indexed, for the purpose of recording such bonds." Inasmuch as the provision sets forth the requirement for such a book, I would not be in a position to advise against the statutory requirement.

¹Such provision states:

If a person entitled to bring an action mentioned in Article 5 of this chapter or an action under Chapter 78 of this title, except for a penalty or forfeiture or against a sheriff or other officer for an escape, is at the time the cause of action accrued either:

- (1) within the age of eighteen years; or
- (2) insane;

the time of the disability is not a part of the time limited for the commencement of the action, except that the period within which the action must be brought cannot be extended:

- (a) more than five years by any such disability, except infancy; nor
- (b) in any case longer than one year after the disability ceases.

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If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General