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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

December 11, 2002

J. Terry Laws, Esquire  
Eight Whitsett Street  
Greenville, South Carolina 29601

Dear Mr. Laws:

You have brought to my attention that an Informal Opinion which I authored, dated November 3, 2000, did not consider a controlling statute, thus making the opinion erroneous. I agree. Upon consideration of the materials which you have submitted, the Informal Opinion of November 3, 2000 is superseded by the following opinion.

The question considered in the earlier opinion was "whether a certified copy of a power of attorney, certified by the register of deeds office from another county or state, is recordable." Therein, I concluded that absent statutory authority to the contrary, only an original instrument is entitled to be recorded.

My opinion was based upon an earlier 1966 opinion of this Office, Op. No. 1958 (December 28, 1966), wherein we concluded that statutory authority was lacking to "permit a copy of an instrument to be recorded where the original is lost" and thus "certified copies of a deed would not be entitled to recordation."

Neither the 1966 opinion nor my Informal Opinion of November 3, 2000, however, considered the impact of S.C. Code Ann. Section 30-5-220 which you reference in your letter. Such Section provides as follows:

[p]hotostatic copies or photo-recording copies, duly authenticated by the signature of the clerk of court, or other proper official charged with the duty of recording legal papers, of any county in this State shall be sufficient compliance with the law with reference to the recording of all legal papers. Such recording shall have all of the legal incidents and effect otherwise provided by the recording laws of this State and copies of legal papers so recorded shall be admissible in evidence as such record.

We have issued at least two opinions concluding that § 30-5-220 is applicable. In an opinion dated June 22, 1982, we referenced § 30-5-220 in finding that copies of legal instruments attached to original legal documents may be recorded pursuant to § 30-5-220. Therein, we noted that a

*Rembert C. Dennis*

Mr. Laws  
Page 2  
December 11, 2002

previous opinion, 1972 Op. Atty. Gen., No. 3272 at page 75, had concluded that the filing of xerox copies with a clerk of court's office was permissible under § 30-5-220. There, it was determined that a xerox copy of a document would come within definition of a photostatic copy or photo-recorded copy for purposes of § 30-5-220. Thus, in the 1982 opinion, we advised that "copied attachments of documents may be recorded along with the original legal documents to which they are attached provided they meet the requirements of such section. To comply with such section, such copies must be photostatic copies or photo-recording copies and be duly authenticated."

Accordingly, in our opinion, § 30-5-220 provides the legal authorization to record a certified copy of a power of attorney, properly certified in compliance with said Section. Thus, our conclusion in the earlier Informal Opinion of November 3, 2000 is hereby superseded. Section 30-5-220 governs such recording.

Sincerely,



Robert D. Cook  
Assistant Deputy Attorney General

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