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April 11, 2007

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 indicated that in Greenville County, the Register of Deeds collects payments for recording fees and deed stamps. You stated that as part of its regular routine, each day the deed office balances and closes its registers. The following morning the deed office submits the money to the county treasurer. You indicated that occasionally a check will be returned by the bank for lack of payment. I presume that this is a check that was initially received by the deed office prior to it being submitted by that office to the treasurer's office. You have questioned which office, the deed office or the treasurer's office, has the responsibility with regard to the bad check.

The criminal offense of issuing a fraudulent or bad check is set forth in S.C. Code Ann. § 34-11-60. Such statute provides that

[i]t is unlawful for a person, with intent to defraud, in his own name or in any other capacity, to draw, make, utter, issue, or deliver to another a check, draft, or other written order on a bank or depository for the payment of money or its equivalent...when at the time of drawing, making, uttering, issuing, or delivering the check...the maker or drawer does not have an account in the bank or depository or does not have sufficient funds on deposit with the bank or depository to pay the same on presentation....

Therefore, the offense is drawing, making, uttering, issuing or delivering to another a fraudulent check. See: Ops. Atty. Gen. dated October 4, 2000 ; August 10, 1999; January 23, 1997. In the circumstances described by you, inasmuch as it appears that the deed office actually receives the check initially, i.e., the check is uttered, issued or delivered to the deed office, in the opinion of this office, the deed office would have the responsibility of initiating any action on the check.

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If there are any questions, please advise.

Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General