



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

November 4, 2003

The Honorable Steven E. Thomas  
City Administrator, City of Conway  
Post Office Drawer 1075  
Conway, South Carolina 29528-1075

Dear Mr. Thomas:

In a letter to this office you requested an opinion regarding an applicant for a business license. According to your letter, Brenda Dunn of BD of Conway, Inc. stated in her application for the license that her type of business is "legal" with the main business being "document preparation". It is your understanding that Ms. Dunn conducts legal document preparation for real estate transactions and possibly other legal matters. Ms. Dunn is not a licensed attorney but prepares the documents at her business and then delivers the documents to one or more attorneys for review and execution.

A response to your letter would require the complete review of all the facts involved and would necessitate a review of the exact type of work performed by Ms. Dunn along with a clearer understanding of the type of review undertaken by the attorneys. You mentioned that she prepares documents for real estate transactions and "possibly" other legal matters. This office has repeatedly indicated that an opinion of the Attorney General cannot determine facts. A complete review of all the facts involved here would be needed to make a determination and such is beyond the province of this office in the issuance of opinions. Op. Atty. Gen. dated December 12, 1983.

However, to be of some assistance, I would refer you to the prior decisions of the State Supreme Court that have dealt with this issue. In State v. Despain, 319 S.C. 317, 319-320, 460 S.E.2d 576, 577-578 (1995) (quoting In re Duncan, 83 S.C.186, 189, 65 S.E.210, 211 (1909)), the State Supreme Court indicated that

The generally understood definition of the practice of law "embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts.

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The Court further stated

Applying this definition, we have held that the preparation of a deed for another individual, having the deed executed, and filing the deed, without the approval of a licensed attorney, constitutes the unauthorized practice of law...(citing In re Easler, 275 S.C. 400, 272 S.E.2d 32 (1980)... We have also held that the preparation of deeds, mortgages, notes, and other legal instruments related to mortgage loans and transfers of real property by a commercial title company constitutes the unauthorized practice of law...(citing State v. Buyers Service Company, Inc., 292 S.C. 426, 357 S.E.2d 15 (1987)).

In Despain, the Court ruled that the preparation of legal documents for other individuals to present in proceedings in family court constituted the practice of law when such preparation included the giving of advice, consultation, explanation, and recommendations on matters of law. In Buyers Service, supra, the Court had ruled that the practice of law "...is not confined to litigation, but extends to activities in other fields which entail specialized legal knowledge and ability." 292 S.C. at 430. The Court specifically ruled that "real estate and mortgage loan closings should be conducted only under the supervision of attorneys." 292 S.C. at 434. The Court noted that as to the fact that Buyers Service had retained attorneys to review the closing documents, "...this does not save its activities from constituting the unauthorized practice of law." 292 S.C. at 431.

In Doe v. McMaster, 355 S.C. 306, 585 S.E.2d 773 (2003), the Court dealt with various situations involving a lawyer's business association with a lender bank and title insurance company. Included in the transactions reviewed were preparation of loan documents by the lender bank. The Court recognized that the lender corporation involved in that situation could prepare legal documents for use in refinancing a real property loan as long as an independent attorney reviewed and corrected those documents so as to ensure compliance with the law.

You may wish to review these decisions with your city attorney in review of the application for a business license by Ms. Dunn.

Sincerely,



Charles H. Richardson  
Senior Assistant Attorney General