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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

November 3, 2000

The Honorable Judy G. Hix  
Greenville County Register of Deeds  
301 University Ridge, Suite 1300  
Greenville, South Carolina 29601

**RE: Informal Opinion**

Dear Ms. Hix:

By your letter of September 27, 2000, you have requested an opinion of this Office concerning the recording of a power of attorney. Specifically you wish to know whether a certified copy of a power of attorney, certified by the register of deeds office from another county or state, is recordable.

As a general rule, absent statutory authority to the contrary, only an original instrument is entitled to be recorded. Therefore, a copy of the instrument will not be admitted for recording even though it is certified as a true copy. See Op. Atty. Gen. Dec. 28, 1966; Op. N. D. Atty. Gen. Nov. 13, 1996. As evidenced by the following, South Carolina appears to have no statutory authority to contradict this rule.

South Carolina Code § 62-5-501 governs the execution of a power of attorney. The relevant portion of that statute provides (with added emphasis):

(C) A power of attorney executed under the provisions of this section must be executed and attested with the same formality and with the same requirements as to witnesses as a will. In addition, *the instrument must be recorded in the same manner as a deed* in the county where the principal resides at the time the instrument is recorded. After the instrument has been recorded, whether recorded before or after the onset of the principal's physical disability or mental incompetence, it is effective notwithstanding the mental incompetence or physical disability. If the authority of the attorney in fact relates solely to the person of the principal, the instrument is effective without being recorded.

The statute requires the recording of the power of attorney in the same manner as the recording of

Request Letter

Ms. Judy Hix  
November 3, 2000  
Page 2 of 2

a deed.

South Carolina Code § 30-5-30 sets forth the prerequisites to recording a deed of any other instrument in writing:

Except as otherwise provided by statute, before any deed or other instrument in writing can be recorded in this State, *it must be acknowledged or proved* by the method described in (A) or (B) ... (emphasis added)

The statute makes no exceptions for certified copies of the instrument. Thus, before the actual instrument is recorded, it must be proved or acknowledged by witnesses as being the instrument it purports to be. In the case of a certified copy of a power of attorney, the instrument to be recorded (the certified copy) is only certified as a true copy of another document. The certified copy, itself, has not been acknowledged or proved as a valid power of attorney. Therefore, it is the opinion of this Office that a certified copy of a power of attorney, although certified by another register of deeds, is not recordable.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General