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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

September 2, 1998

The Honorable Sallie G. Smith
Clerk of Court
P.O. Box 678
Walhalla, SC 29691

Dear Ms. Smith:

By separate letters, you have requested advice as to two matters. They are separately addressed below.

You have first asked whether you have a duty to provide statements of worth to magistrates and municipal judges for use in determining a person's worth to sign a surety bond. I located no authority specifically requiring clerks of courts to provide this information in this form, but they are permitted to do so.[1] Clerks do have certain responsibilities regarding bail bonds, particularly as to professional bail bondsmen. See, S.C. Code Ann. §38-53-270 (Supp. 1997); see also §38-53-20. The type of bondsmen with whom you may be dealing as to your question may be accommodation bondsmen. Those bondsmen receive no consideration other than "love and affection," etc. and have to provide "...satisfactory evidence of ownership, value and marketability of ...property to the extent necessary to satisfy reasonably the official taking bond...." §38-53-10 (1989). If you are providing information for these types of bonds, the statutory burden of satisfaction is on the bondsman; however, if a judge wants verification as to assets, and calls on you to provide that information as to assets in your records, you are permitted to provide assistance including creating a document with the requested information if you choose. You may wish to discuss with the County Attorney your continuation of this practice and ask him to review your reporting document.

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[1] Although the Freedom of Information Act requires access to public records it does not require the creation of a record not otherwise in existence by extracting information from other documents. Ops. Atty. Gen. (Inf. Op. March 5, 1996).

Request Letters

In the same letter in which you raised the above question, you also asked whether you must provide statements to people stating that they have no judgments or liens pending against them. Similarly, no statute appears to require you to create a document with this information, but you do have the duty to provide access to such information, as you know. See § 30-9-30 (Supp. 1997).

Finally, by separate letter, you have asked whether the Electronic Commerce Act (Act No. 374, 1998 S.C. Acts ___) requires you to record a mortgage with a computer generated signature. This law provides, in part, that " [a] record may not be denied legal effect, validity, or enforceability solely because it is in the form of an electronic record or signature" (§ 26-5-310 as added by Act 374); however, " [t]his section does not apply: (1) to the extent that its application would result in a construction of law that is clearly inconsistent with the manifest intent of the law making body...."[2] See also § 26-5-40(1). Accordingly, this law does not appear to override recording requirements that subscribing witnesses, grantors or others executing instruments for recording appear "before" a notary or others competent to administer an oath under certain circumstances (§ 30-5-30 (Supp 1997)). Nevertheless, as long as appearance requirements are met, an electronic signature should be permissible under the express terms of the Electronic Communications Act [3] For example, certain statutory short forms of acknowledgment are signed by the person taking the acknowledgment. §26-3-70 (1991). Electronic signatures should be permissible for those signatures and others in recorded documents provided that appearance and other requirements are met unless the express terms of an applicable statute are to the contrary. To review each and every circumstance now to determine whether electronic signatures may be used would involve too many different situations to be useful. I suggest, instead, that you use the above general guideline and then contact us should other questions arise. These conclusions are the same for rubber stamp signatures in that a previous Opinion of this Office has found them permissible under the principle that , generally, an officer may affix his signature in any manner as long as a statute does not specifically prescribe a particular mode of signature. Ops. Atty. Gen. 12-16-77.

This letter is an informal opinion. It has been written by the designated Assistant Deputy Attorney General and represents the opinion of the undersigned attorney as to the specific questions

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[2] "...However, the mere requirement that information be 'in writing', 'written', 'printed', 'signed' or any other word that purports to specify or require a particular communication medium, is not by itself sufficient to establish such intent...."

[3] This conclusion is also consistent with the title to the Act which references its amending the title to notaries public and acknowledgments . "...[I]t is proper to consider the title or caption of an act in aid of construction to show the intent of the legislature...." University of South Carolina, 248 S.C. 218, 149 S.E. 2d 433 (1966).

asked. It has not, however, been personally reviewed by the Attorney General nor officially published in the manner of a formal opinion.

If you have further questions, please let me know.

Yours very truly,

J. Emory Smith, Jr.
Assistant Deputy Attorney General

JESJr.