

The State of South Carolina



Office of the Attorney General

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October 7, 1986

Honorable James I. Davis
Clerk of Court, Lee County
Post Office Box 281
Bishopville, South Carolina 29010

Dear Mr. Davis:

You have requested the advice of this Office as to whether you have the authority to sign an order for immediate possession of a mobile home under Section 15-69-50 of the CODE OF LAWS OF SOUTH CAROLINA, 1976. This statute provides in part as follows:

"...[If] the clerk of court or judge finds, as provided in [Section 15-69-100], that there is a probability that the subject property is in immediate danger of being destroyed or concealed by the possessor of such property, then the clerk of court or judge shall endorse upon the affidavit for possession a direction to the sheriff requiring him to take the property described therein from the defendant and keep it, to be disposed of according to the law."

Therefore, express statutory authority is given to the clerk of court to sign an affidavit of possession under these circumstances and under other circumstances set forth in Section 15-69-50 (See Ops. Att'y Gen. November 27, 1972); however, as provided in Section 15-69-100, the affidavit must contain sufficient facts to make the following showing:

"...[that] it is probable to believe that the property at issue is in immediate danger of being destroyed or concealed by the possessor of such property and particularly describing such property and its location...."

Therefore, the affidavit must meet these standards. See also §15-69-30. In particular, the affidavit must describe the mobile home sufficiently for you to determine whether the mobile home is personal or real property.


Honorable James I. Davis
Page 2
October 7, 1986

Your authority under Section 15-69-50 extends only to personal property and mobile homes are considered personal property if they are parked and attached to convenient facilities. Ops. Att'y Gen. (July 28, 1969). If the mobile home is attached to a permanent foundation, with the intention that it not be readily moved, it would become a part of the real property, and you would lack authority to sign an affidavit for its possession. Id. and Ops. Att'y Gen. (December 31, 1981).

In conclusion Section 15-69-50 permits a clerk of court to sign an affidavit for the possession of a mobile home that is in immediate danger of being destroyed, etc. The affidavit must contain sufficient facts to show such immediate danger and that the mobile home is personal rather than real property.

If you have any questions or need additional assistance, please let me know.

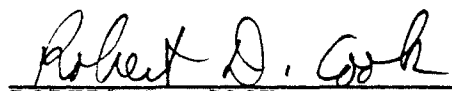
Yours very truly,



J. Emory Smith, Jr.
Assistant Attorney General

JESjr:ppw

REVIEWED AND APPROVED BY:



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